

June 25, 2015

Todd Stevenson
Secretary
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

CPSC Hearing on Data Sources and Consumer Product-Related Incident Information

Dear Mr. Stevenson, Commissioners, and Staff:

The Retail Industry Leaders Association (“RILA”) respectfully submits the following comments about sources of consumer product-related incident information that could be used to inform the Commission’s hazard identification, risk management, and regulatory enforcement work. RILA appreciates the opportunity to provide the perspective of its members on this important topic.

RILA promotes consumer choice and economic freedom through public policy and industry operational excellence. Our members include the largest and fastest growing companies in the retail industry—retailers, product manufacturers, and service providers—which together account for more than \$1.5 trillion in annual sales. RILA members provide millions of jobs and operate more than 100,000 stores, manufacturing facilities, and distribution centers domestically and abroad.

RILA’s testimony today focuses on one data source that has been the topic of much discussion lately, a pilot CPSC-industry partnership program known as the Retailer Reporting Program (RRP). Under this program participants provide the CPSC with real time product-related incident information on a weekly or biweekly basis. Specifically, RILA’s testimony will focus on the following three main areas regarding the Retailer Reporting Program:

- 1) Retailers’ role as a part of the “front line” for early detection of product risks and ability to provide reports that contain valuable information to inform the agency’s hazard identification and risk reduction work;
- 2) The need for CPSC to more extensively engage with the retail and manufacturing industry on ways to improve reports submitted as part of the program and the manner in which they are transmitted to the agency; and
- 3) The fact that these reports are Section 15 reports under the Commission’s regulations and must be treated as such to provide a baseline incentive for company participation.

1. Retailers Are in a Unique Position to Provide Valuable Information to Assist the CPSC in the Early Detection of Product Risks and Emerging Hazards

Retailers have a unique relationship with their customers and in the normal course of their business gather a large amount of data about customers’ interactions with the products that they sell. In many instances, customers report their experiences with products, including experiences that may involve a potential safety issue, to the retailer where the item was purchased rather than to the product

manufacturer. Retailers' sources of product-related information include customer product reviews, customers' stated reasons for product returns, complaints to a company's customer service department merchandise and quality assurance teams, saferproducts.gov, insurance claims and product liability cases. The Retailer Reporting Program was meant to capitalize on the fact that information quickly submitted to the Commission from retailers concerning safety issues with products may be among some of the first reports the agency receives.

Reports from retailers are not only valuable because of their timeliness, but also because they are incident reports that contain valuable information. Currently, each RRP submission contains up to 64 pieces of data related to a specific product-related incident. The minimum data retailers provide for each product-related incident under the RRP includes product description information, product manufacturer, UPC code, item cost, description of the potential product safety issue or incident, the date the issue was reported to the retailer, customer contact information if available, the retailer's case management number for the incident, and whether the retailer is the importer (and thus considered to be the manufacturer) of the product.

These RRP reports fill many of the gaps found in National Electronic Incident Surveillance System (NEISS) data by providing detailed product information, manufacturer names, and product-related injuries or risks of injuries that are not treated by hospital emergency departments, as well as any available customer contact information. This type of data is valuable because it includes both product specific information, rather than a general category to type of product typically contained in other data sources, and customer contact information, which can be followed up on by the CPSC. The CPSC can use the data from the RRP reports along with all of the other sources of product incident data, including RRP data submitted by other participants, to conduct a risk analysis to help identify emerging product safety hazards. These reports have previously proven their value as CPSC staff members have acknowledged that recalls have occurred as a direct result of incident data obtained through the Retailer Reporting Program.

RRP reports are only one of the many sources of data that the agency uses to enhance its ability to identify and reduce unreasonable consumer product-related risks. However, due to the unique position retailers occupy in the consumer product supply chain, the regular frequency with which RRP reports are made, and the usefulness of the information contained in the reports, RILA and its members believe the Retailer Reporting Program already serves, or could serve, as one of the agency's most valuable tools to detect product risks early.

2. *The CPSC Should Engage with Retail Community to Improve the Retailer Reporting Program*

The Retailer Reporting Program has been operated as a pilot for over ten years. At this time, there are five retailer and two manufacturer participants in the RRP pilot with an additional half a dozen companies with pending applications to participate in the program. RILA is aware that CPSC staff is continuing to evaluate the efficacy of the Retailer Reporting Program and will be making a recommendation on whether it should be discontinued or converted from its current pilot format to a formal program with broadened participation. RILA believes part of this review should include direct interaction with interested stakeholders, including current participants and pending applicants, to

discuss where the CPSC sees strengths and weaknesses with the program and how the report content and transmission process can be improved.

Currently, each participant in the RRP pilot operates under a separate, sometimes informal, agreement with the CPSC. As participants came into the program at different times, there is no standardization of the agreements between participants and the CPSC detailing the obligations of the participants and the benefits accorded by the CPSC. Given this lack of standardization and the program's pilot status, RILA believes the Commission's review and judgment of the Retailer Reporting Program should be based not only on the value the program already provides, but also any unexplored potential value the agency believes the program could provide.

RILA is prepared to engage directly with the CPSC on enhancing the current program and is hopeful that the agency will make efforts to improve the program rather than discontinuing the current pilot or continuing it in a way that lessens the incentives for retailers to provide these reports to the agency. Given the value of the data that retailers possess, RILA believes it would be a mistake to do anything other than make improvements to and expand the program.

3. Retailer Reports are Transmitted Pursuant to Section 15(b) of the Consumer Product Safety Act and 16 CFR § 1115.13(b)

One of the fundamental underpinnings to participating in this type of program with the CPSC was the understanding that the information reported to the agency would have sufficient detail in order to qualify as a Section 15 report pursuant to 16 CFR § 1115.13(b), which states:

A distributor or retailer who receives reportable information from a manufacturer (or importer) shall report to the Commission unless the manufacturer (or importer) informs the distributor or retailer that a report has been made to the Commission. A report under this paragraph should contain the information detailed in paragraph (c) of this section insofar as it is known to the distributor or retailer. Unless further information is requested by the staff, this action will constitute a sufficient report insofar as the distributor or retailer is concerned. [Emphasis added.]

As previously noted, RRP participants currently provide up to 64 different data elements for each product-related incident. A review of the minimum data elements required to be submitted as part of the RRP report reveals that these elements meet the required information of 16 CFR § 1115.13(c). Thus, pursuant to the Commission's own regulations, the reports retailers have been submitting via the Retail Reporting Program have contained the necessary information to constitute a sufficient Section 15 report. Accordingly, the information must be protected as confidential in the same manner as any other information reported under Section 15(b) of the Consumer Product Safety Act in accordance with Section 6(b)(5) of the CPSA. Confidential treatment for the information provided as part of the RRP pilot is an important benefit for the companies providing this information.

RILA has learned that these bedrocks of the Retail Reporting Program have recently been called into question. It would be a mistake and extremely detrimental to the Retailer Reporting Program for the agency to contradict not only the arrangements previously made with program participants but also to

not honor the agency's own regulations regarding whether these reports are submitted pursuant to Section 15(b) of the CPSA.

While the duty of retailers to report substantial product hazards to the agency is, of course, required by law, much of the data reported to the CPSC falls into a "grey area" where companies are unsure whether the information known indicates that there could be a potential substantial product hazard requiring a Section 15(b) report. Under the Retailer Reporting Program model, rather than make a reasonable determination that the information may not be required to be reported, the information is transmitted to the CPSC pursuant to the "when in doubt, report" guidance often repeated by CPSC staff. By no longer considering these reports submitted pursuant to Section 15(b) of the CPSA, the agency would be removing a strong incentive for early reporting and punishing retailers for following the "when in doubt, report" guidance.

RILA urges the agency to provide clarification on whether Retailer Reporting Program reports are currently considered to be submitted pursuant to Section 15(b) of the CPSA. If the CPSC believes changes need to be made to the underlying reports in order to achieve Section 15(b) status or to improve the usefulness of the data in the RRP reports, then RILA and its members are open and willing to help collaborate on what those changes should be.

Conclusion

RILA's members and the CPSC share the common goals of ensuring the safety of products sold in the United States, early detection of product hazards and the speedy removal of unsafe and noncompliant product from the marketplace and consumers' homes. It is in both the CPSC's and retailers' interest to have a Retailer Reporting Program that provides valuable, easily usable, and timely data to the agency and, in so doing, provides a strong incentive for retailers to report product safety information that falls into a "reportability grey zone."

RILA believes the agency should continue to see the Retailer Reporting Program as a "win-win" for the agency and retailers. Retailers are able to follow the Commission's "when in doubt, report" guidance and receive Section 15 treatment for information provided in RRP reports. At the same time, the CPSC is able to receive a significant amount of valuable data from multiple companies that can be used to detect product risks and emerging hazards more quickly.

Thank you again for the opportunity to provide comments on this important CPSC data source. RILA shares Commission's commitment to improving consumer safety and looks forward to continuing its collaborative relationship with the agency on this and many other issues.

Sincerely,



Kathleen McGuigan
Senior Vice President, Legal & Regulatory Affairs