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U.S. Consumer Product Safety Commission
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**Testimony for Hearing on
FY 2020 Proposed Agenda & Budget Priorities
U.S. Consumer Product Safety Commission
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Introduction

Thank you for giving the public an opportunity to weigh in on how the U.S. Consumer Product Safety Commission (CPSC, Commission or Agency) should be allocating its finite resources. As discussed in detail at the recent U.S. House of Representatives Energy and Commerce Committee CPSC oversight hearing, the Agency would benefit, in any number of ways, with more federal funding. RILA members support the Agency's important consumer safety mission and goals. RILA has advocated Congress for an increase in CPSC's budget and will continue that effort, so that the Agency can fulfill its critical safety mission, fully funded.

By way of background, the Retail Industry Leaders Association (RILA) is the U.S. trade association for leading retailers. We convene decision-makers, advocate for the industry, and promote operational excellence and innovation. Our aim is to reimagine and transform the retail ecosystem - and equip leading retailers to succeed in it. RILA members include more than 200 retailers, product manufacturers, and service suppliers, which together account for more than \$1.5 trillion in annual sales, millions of American jobs, and more than 100,000 stores, manufacturing facilities, and distribution centers domestically and abroad.

Executive Summary

RILA members appreciate the Commission's leadership on consumer product safety matters, including consumer education campaigns, and stakeholder and industry outreach. The CPSC and RILA members have a tradition of working together to address consumer product safety issues. For example, several of RILA's

members participate in the Agency's industry partnership programs, including the CPSC's voluntary Retailer Reporting Program pilot and RILA's member retailers regularly cooperate with the CPSC to promote CPSC's consumer education programs while also implementing product recalls. Through these efforts and others, RILA's members work with the CPSC to find practical ways to address consumer product safety concerns.

As the Commission determines its Fiscal Year 2020 priorities, RILA respectfully submits its recommendations, summarized below:

First, the CPSC should continue its efforts to enhance data-driven decision making by bolstering its data collection and analysis capabilities, particularly in the areas of product safety incident reporting. To this end, the current Retail Reporting Program pilot where participants partner with the Agency to provide real-time data on consumer product hazards, should be formalized and expanded.

Second, the CPSC should dedicate resources to implement several recommendations made by the Office of the Inspector General (OIG) to update processes and systems implementing Freedom of Information Act (FOIA) requests to ensure compliance with all applicable requirements, including the unlawful release of Section 6(b) of the Consumer Product Safety Act (16 C.F.R. § 1101) protected information so that only accurate information about manufacturers and importers is made public.

Third, as technology advances, an increasing number of consumer products are incorporating technology to enhance functionality and increase product efficiency. The CPSC needs to better understand these products to address any potential safety hazards associated with their use.

Fourth, the CPSC should develop a trusted trader program for low-risk importers as part of its import surveillance program to include importers that are currently certified as part of the joint Customs and Border Protection (CBP)/CPSC Importer Self-Assessment – Product Safety (ISA-PS) program.

Fifth, the Commission should maximize regulatory predictability for the regulated community by eliminating pending rulemaking activities for the Voluntary Recall Rule¹ and 6(b) rulemaking².

Each of these topics is discussed in more detail below.

1. Enhancing CPSC's Data Collection and Analytics Capabilities is Critical to the Agency's Data-Driven Safety Mission

The CPSC, as the primary federal agency with authority over the safety of consumer products, has a long-held position that it is a data-driven agency – in that its decisions and rulemakings are based upon sound

¹ 16 CFR Part 1115, [Voluntary Remedial Actions and Guidelines for Voluntary Recall Notices](#). 78 Fed. Reg. 69793 (proposed Nov. 21, 2013)

² 16 CFR Part 1101, [Information Disclosure Under Section 6\(b\) of the Consumer Product Safety Act](#). 79 Fed. Reg. 10712 (proposed Feb. 26, 2014)

data and science. In today's rapidly changing marketplace, the volume of data that is relevant to important product safety issues is increasing at an exponential rate. The collection and analysis of data are now an important part of government and industry strategic planning processes and daily operations. For the CPSC to meet its core mission, it is critical that it invest in internal staff, information technology (IT) systems, and software resources to enhance the Agency's data collection and predictive data analytics capabilities. Without such resources, the Agency will fall woefully behind and will not be able to protect U.S. consumers.

One area where the Commission should dedicate increased data collection and analytics resources is the expansion and formalization of the so-called "Retail Reporting Program" (RRP). When the RRP was created, it was intended to capitalize upon the breadth of information that retailers and manufacturers gather about customers' interactions with products. The original concept for the pilot was that the CPSC could analyze information from disparate sources to identify emerging product safety risks and defect trends and work with manufacturers and retailers to recall defective products much earlier than under the current timeline, thereby preventing untold consumer injuries and property damage. This idea was truly unique and ahead of its time. The challenge for the CPSC in achieving the full benefits of the RRP has been that until recently, IT and data analytic tools had not yet been developed that could handle multiple reporting companies and the volume and complexity of information provided. Thus, the RRP stagnated and expansion of the program to other applicants has been closed while the Agency conducts an internal review of the program and how the Agency can best utilize the data provided for purposes of predictive analytics. What was impossible at the time of the creation of the RRP program, is commonplace now. Today, there are IT and data analysis solutions that can handle millions of data points and predictive analytic tools that enable government and businesses to identify patterns and trends and even predict consumer behavior.

Of course, for any new electronic reporting tool to be embraced by industry, it must to be easy to use and cost effective for reporting entities. If the CPSC moves forward in this direction, it is critical that it engage with and get input from stakeholders during the development process. One good first step would be for the Agency to begin formal rulemaking activity to allow interested stakeholders to help develop a true government-industry partnership, with defined benefits and requirements to participate.

One significant benefit would be having the data submitted to the Agency as a part of revised and expanded program, satisfy a company's initial 15(b) reporting requirement. To be clear, RILA is not advocating for this new program to absolve participants of their responsibility to fulfill all reporting obligations under section 15 of the Consumer Product Safety Act (CPSA). RILA members simply request that when the CPSC constructs the new government-industry partnership program, including determining the specific information required for reports, that any filing made under a new program fulfill a company's obligation to file an initial report under the Act. A second benefit to spur participation is for the CPSC to amend its regulations to clearly identify that company participation in the new program will be considered as a mitigating factor in civil penalty cases.

Another way to help make the program more efficient would be to break the program into tier levels. Those tiers could be for either participation level (i.e. number of data fields they contribute, as not every organization has the same level of information available to them), company size, or even another level of the agency's choosing. Having a variety of entry points into the program can increase participation and allow any size company to begin sharing valuable product safety information with the Agency. RILA asks only that those entry points to participation, or tier levels, be clearly defined so that industry has a strong understanding of where and how they can join the program. A codified and well-defined reporting program of this nature could transform the current procedures at the CPSC and truly bring it into the twenty first century, while providing maximum benefit to American consumers.

However, such a program will be not possible without dedication of significant funding and increased data analytics staffing, including a chief technology officer, proper training and software. RILA members were pleased that the Commission's most recent Fiscal Year 2019 Operating Plan included a project to evaluate the RRP program with a view for its potential expansion, and are hopeful that the result will be an investment of the Agency's data collection and analytic capabilities and formalization and expansion of the program. Once CPSC has updated technology and qualified staff to review incident data in a more effective and efficient manner, it can much quicker identify if additional information from a submitter would be required. The CPSC's mantra when it comes to reporting is, "if in doubt, report," and by allowing those participating in such a program to satisfy that initial report, the quality and quantity of data the agency will be able to review will be invaluable in identifying emerging hazards. RILA members urge the CPSC to invest in staff and resources to expand its data collection and predictive data analytic capabilities and to expand the RRP pilot.

2. Investing in Implementing the CPSC OIG's Reports Recommendations Will Ensure FOIA and 6(b) Compliance and the Release of Accurate Product Information to the Public

The CPSC recently announced that certain product incident summary information, including product and manufacturer/importer name information, typically protected under Section 6(b) of the Consumer Product Safety Act, was inadvertently made public. This unfortunate incident highlights the policy and rationale behind Section 6(b) protection, which is to ensure that any information that the CPSC releases about products and manufacturers/importers is accurate and not misleading. The releases involved reported incident information without context or related information regarding the results of any CPSC investigation including whether the incident was substantiated, if the product caused the injury, if there was a substantial product safety hazard or if the product did not meet mandatory safety standards. The CPSC's failure to follow the requirements of Section 6(b) and releasing of unredacted information contained in incident reports does not provide consumers a complete or accurate picture, misleads the public about what consumer products are indeed hazardous or noncompliant and puts manufacturers'/importers' reputations at risk. While this release of 6(b) protected data was not intentional, the Agency can and should take action to ensure that it does not happen again.

It is disappointing to note that the Agency has been aware of deficiencies in its FOIA and 6(b) processes, procedures, training and oversight for at least four years. In 2015, the CPSC's Office of the Inspector General (OIG) issued a report³ finding eleven different ways the Agency could improve the efficiency and accuracy of data being disseminated through the FOIA process. The report noted that no oversight was being done for information being sent out through certain departments of the Agency and that proper training of key staffers in FOIA processes was lacking. The most recent OIG report⁴ issued on October 30 of 2018 lists nine of those eleven 2015 recommendations as not yet addressed. Some of the key OIG recommendation that should be remedied as soon as possible are recommendations FOIA-1 "Revise and implement the CPSC FOIA Program directive and related appendices to ensure consistency with current legal requirements established by the FOIA to include document retention, training, fee assessment requirements, program monitoring, revenue reconciliation, timely updating of the public reading room" and FOIA-11 - "Management documents a review of the data fields in FOIAXpress for accuracy, completeness, and timeliness."

RILA strongly encourages the CPSC to review the OIG 2015 and 2018 reports and dedicate resources to implement the remaining nine recommendations to establish a more effective, organized, informed, and accurate FOIA processing system compliant with the Agency's 6(b) obligations. Having documented FOIA and 6(b) compliance policies and procedures, regular staff training, monitoring and oversight will ensure that complete and accurate information regarding product safety hazards is released to the public.

3. Investing in New Resources to Address Potential Safety Risks Associated with Emerging Technologies Including Internet of Things (IoT)

Internet of things technology is being incorporated into a wide array of consumer and industrial products. From smart door locks and security cameras, to home appliances, electronics, smart cars, personal care products, and wearables – the potential list of IoT products is endless. While these IoT products are meeting customers' demand for new functionality and increased convenience, they also create cybersecurity, privacy and safety challenges.

One of the first issues that the CPSC must face is whether the *mere possibility* for an IoT product to be hacked by a rogue actor creates a substantial product safety hazard. RILA's position is that it does not and urges the CPSC to look to the example of sister agencies that have addressed this issue. For example, the FTC understands that creating an impenetrable barrier that will completely prevent any cyber hacking is impossible, so instead, it requires companies to have a "reasonable" data security program that takes into consideration the sensitivity of the data collected, scale and scope of operations and level of risk if a breach occurs. We urge the CPSC to adopt similar reasonableness ideas around connected consumer products.

³ U.S.C.P.S.C., [Office of Inspector General Audit of the Freedom of Information Act Program](#), (September 30, 2015)

⁴U.S.C.P.S.C., [Office of Inspector General Semiannual Report to Congress April 1, 2018-September 30, 2018](#), (October 30, 2018)

To make sure that the CPSC is prepared to proactively tackle the complex IoT-related issues, the Commission must dedicate the resources and staffing to gain an understanding of new innovative technologies, how various technologies are being incorporated into consumer products, potential safety risks, and ways to mitigate those risks. Industry, trade, consumer advocates, and nongovernmental organizations are also working on these issues. By engaging with these stakeholders, Agency staff can learn about IoT product trends and ongoing stakeholder efforts to ensure IoT product safety.

Currently, there are multiple federal agencies including the Federal Trade Commission (FTC), National Highway Transportation Safety Administration (NHTSA), Department of Commerce, and the Department of Homeland Security (DHS), that are grappling with IoT-related issues. It is critical that federal agencies work together to develop a comprehensive risk-based approach to regulation of IoT products to address, privacy, cybersecurity and consumer safety concerns while promoting innovation and new product development. RILA members are encouraged by recent announcements of the CPSC taking the lead to develop an intergovernmental group to address connected consumer products to identify lanes of responsibility and understanding and urge the Agency to continue these efforts. We look forward to hearing the outcomes of this joint effort.

4. The CPSC Should Enhance Its Import Surveillance by Developing a Robust Trusted Trader Program

The CPSC is a small agency that has limited resources to conduct its critically import mission. For import surveillance, RILA members believe that the best use of these resources is to target high-risk importers and high-risk shipments. One way for the CPSC to conserve its limited resources is to leverage low-risk importers that are willing to partner with CPSC in a Trusted Trader program.

In theory, the CPSC already has a trusted trader program in the joint Customs and Border Protection (CBP)/CPSC Importer Self-Assessment- Product Safety (ISA-PS) pilot. However, the unfortunate truth is that the ISA-PS program has not lived up to its promise, in large part, because it lacks real and significant benefits to justify participants opening their product safety compliance program to CPSC's scrutiny and annual review. Nor, despite repeated requests from industry, has the CPSC provided data demonstrating benefits of ISA-PS program participation in terms of lower levels of inspections or holds of import shipments when compared to those importers that participate only in the Importer Self-Assessment or Customs-Trade Partnership Against Terrorism (C-TPAT) programs. Without concrete and demonstrable benefits, the ISA-PS program has stalled and failed to attract new participants.

As part of the CPSC's efforts to enhance import surveillance, RILA once again urges the Agency to create a new Trusted Trader program with clearly defined benefits such as: 1) exemption from any future import certificate E-Filing requirement; 2) program participation as a mitigating factor in enforcement cases; and 3) demonstrably lower percentage of CPSC inspections and holds for CPSC Trusted Trader participants. By developing a robust Trusted Trader program that will encourage low-risk importers to participate, the CPSC will be able to focus its limited import surveillance resources on high-risk importers and high-risk shipments

where the potential for detecting and preventing non-compliance and unsafe consumer product is much more likely.

5. The CPSC Should Clarify Rulemaking Priorities and Increase Regulatory Predictability For the Regulated Community by Withdrawing Pending Rulemakings That Do Not Directly Advance Product Safety

There are several process-focused rulemakings, including proposed amendments to the Voluntary Remedial Actions and Guidelines for Voluntary Recall rule (16 C.F.R. § 1115), and the proposed amendments to information disclosure rules under Section 6(b) of the Consumer Product Safety Act (16 C.F.R. § 1101) that have been pending before the Commission for quite some time. RILA and other stakeholders submitted extensive comments on both the proposed Voluntary Recall and Section 6(b) rules detailing serious issues with each proposal⁵. The Commission has indicated on multiple occasions that both proposed rules, being primarily process-focused, did not warrant the expenditure of resources among the Commission's other priorities. RILA members agree with the CPSC's ordering of agency priorities. However, RILA asks that the agency vote to formally terminate both rulemakings. Having these rules continually be pending creates uncertainty for the regulated community since a pending rulemaking could be revived and finalized at any time despite significant concerns by stakeholders. To provide industry with increased regulatory predictability, RILA urges the Agency to vote to remove these rulemakings from its regulatory agenda.

Conclusion

In closing, RILA members strongly support the CPSC's safety mission and share the Agency's commitment to protecting consumers and ensuring that all products sold to U.S. consumers meet or exceed all applicable safety requirements and standards. The CPSC's open-door policy for all stakeholders extended not only to commissioners and their staff, but also to the career staff within the Agency, has truly let the CPSC be the example for how a government agency can engage with stakeholders to achieve important public policy goals. RILA offers these comments to continue that great partnership and collaboration and to enhance the work of the CPSC going forward.

Sincerely,

Autumn Moore
Director Regulatory Affairs and Compliance

⁵ [RILA Comments](#) on Proposed Amendments to Voluntary Remedial Actions and Guidelines for Voluntary Recall Notices (Docket Number CPSC- 2013-0040), February 4, 2014

⁶ [RILA Comments](#) on Information Disclosure under Section 6(b) of the Consumer Product Safety Act (CPSA) Docket No. CPSC-2014-0005, April 28, 2014