



RETAIL INDUSTRY LEADERS ASSOCIATION

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Via Electronic Filing

Alberta E. Mills
U.S. Consumer Product Safety Commission
Office of the Secretary
4330 East-West Highway
Bethesda, MD 20814

Re: Proposed Agenda and Priorities FY 2021 and 2022; 95 Fed. Reg. 18926 (April 3, 2020)

Dear Secretary Mills:

The Retail Industry Leaders Association (RILA) appreciates the opportunity to submit written comments on the U.S. Consumer Product Safety Commission's (CPSC or Commission) proposed agenda and budget priorities for Fiscal Years (FY) 2021 and 2022. RILA and its members support the Commission's critical consumer safety mission and appreciate the CPSC's leadership on product safety matters, including consumer education campaigns, and stakeholder outreach.

By way of background, RILA is the U.S. trade association for leading retailers. We convene decision-makers, advocate for the industry, and promote operational excellence and innovation. 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.

RILA and its members have a long history of collaborating with the CPSC to address consumer product safety issues. RILA members cooperate regularly in implementing product recalls, actively participate in the Commission's industry partnership programs, and promote CPSC's consumer awareness initiatives.

As the Commission determines its FY 2021 and 2022 priorities, RILA wishes to renew and reemphasize a few of its previous recommendations to the Commission on FY 2020 budget priorities provided in detailed written and oral testimony delivered on May 1, 2019¹ and raise additional recommendations, detailed below.

¹ [RILA Testimony](#), Hearing on FY2020 Proposed Agenda and Budget Priorities, U.S. CPSC, Docket No. CPSC-2019-05102 (May 1, 2019).

The Commission should:

- Continue efforts to enhanced data-driven decision making by increasing capacity for data collection and analysis including formalization and expansion of the Retail Reporting Program (RRP).
- Enhance import surveillance by transforming the current joint Customs and Border Protection (CBP)/CPSC Importer Self-Assessment – Product Safety (ISA-PS) Program into a robust Trusted Trader Program for low-risk importers and align with the CBP's Trusted Trader Program, when that program eventually rolls out.
- Prioritize increased Commission understanding of the safety hazards and risks associated with emerging technologies, including Internet of Things (IoT).
- Prioritize promulgation of standards for consumer product categories where, in the absence or delay of a federal standard, states and cities are moving to enact state and local standards (e.g., crib bumpers) that can lead to a patchwork of conflicting standards and regulatory uncertainty for retailers and manufacturers.
- Pilot a tiered recall system that would elevate awareness of products that pose the greatest risk to consumers.

Each of these recommended priorities is discussed in more detail below.

1. Increasing Capacity for Data Collection and Analysis is Critical to Advancing the Commission's Data-Driven Safety Mission

Data collection and analysis are an integral part of the Commission's core mission and industries' daily operations. The volume of data relevant to consumer product safety issues continues to increase at an exponential rate. As previously emphasized in our 2019 testimony before the Commission, RILA and its members urge the CPSC to maintain investment in staffing resources, including a chief technology officer, and in enhancing information technology (IT) systems, and software resources. The CPSC has made strides in its data gathering and predictive analytics capabilities in recent years, and continued investment to further grow its capacity in this area is necessary to protect U.S. consumers.

RILA also continues to recommend that the Commission invest resources in the expansion and formalization of the so-called Retail Reporting Program (RRP) pilot. In theory, the RRP pilot concept held great potential for CPSC to leverage data from retailers and other participating companies on consumers' interactions with products to gain valuable insight into emerging risks and defect trends. This information could then be used by CPSC to work with participants to recall products much earlier than current timelines, thereby preventing consumer injuries and property damage. However, without adequate capacity at the time to handle the volume and complexity of data the RRP stagnated.



Data analysis tools that employ machine learning and predictive analytics have grown rapidly in the years since the RRP pilot stalled. With the capacity now possible, the CPSC should dedicate resources to reviving the RRP and implementing it through a formal rulemaking process. Formal rulemaking would allow those interested to collaborate in a true government-industry partnership, with defined benefits and requirements to participate. Under a revised and expanded program, data submissions should serve as a functional equivalent of a participating company's *initial* 15(b) reporting requirement. This is not to suggest it would replace or absolve participants from fulfilling all the other section 15 reporting obligations. Another potential participant benefit could be for participation in the program to be considered as a mitigating factor in civil penalty cases. A formal program should have tiered levels of participation tied to company size and/or other metrics such as number of data fields contributed. Having a variety of entry points will facilitate broader participation and benefit the program and its overall goal of more efficient and timely action on recalls.

RILA encourages the CPSC to revisit and formalize the RRP concept and prioritize engagement with its members and other stakeholders on how the Commission can best partner with retailers and manufacturers to leverage industry gathered data on customers' interaction with products to further shared consumer safety goals.

2. Continued Enhancement of CPSC's Trusted Trader Program Will Ensure CPSC's Import Surveillance is Directed Where Most Needed to Protect Consumers

As a relatively small federal agency with limited resources, the CPSC should target its import surveillance toward monitoring and inspection of high-risk importers and high-risk shipments where there is the greatest potential for detecting and preventing non-compliant and unsafe consumer products. In addition, high-risk importers and high-risk shipments could include those affiliated with criminal enterprises that traffic in counterfeit and stolen goods, which can harm consumers, retailers, and manufacturers alike. One way to ensure surveillance resources are directed where they are most needed, is to leverage low-risk importers that are willing to partner with federal agencies in a Trusted Trader Program.

For almost a decade, the CPSC has carried out a trusted importer program in the form of the joint CBP/CPSC Importer Self-Assessment- Product Safety (ISA-PS) pilot. Unfortunately, in practice the ISA-PS pilot effort has failed to live up to initial promise due in part to its lack of real and significant benefits to justify participants opening their product safety compliance program to CPSC's scrutiny and annual review. In spite of industry requests, CPSC has yet to provide data demonstrating where program participation has led to a measured decrease in inspections or customs holds for pilot participants as 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.



To that end, RILA wishes to re-emphasize its previous recommendations urging the Commission 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, the CPSC will be able to focus its limited import surveillance resources where they are needed most to protect consumers.

3. Increasing Understanding of Emerging Technologies Will Assist the Commission with Addressing Safety Risks Associated While Enabling Innovation

Fostering industry innovation is central to RILA's mission and the modern retail industry. The rapid expansion of technologies in the consumer product space and proliferation of IoT products, from smart door locks to fitness wearable technologies, has provided new functionality and conveniences that consumers have come to expect and rely on in their daily life. While the benefits and potential for these products are endless, they also come with cybersecurity, privacy and safety challenges that federal agencies and industry are working to address.

As RILA has emphasized in the past, the mere possibility that an IoT product may be hacked by a bad actor, should not alone substantiate a CPSC finding that it presents a substantial safety hazard. Rather, CPSC should look to follow the risk-based assessment taken by other federal agencies (e.g., Federal Trade Commission) and take into account whether a company has incorporated "reasonable" data security measures that take into consideration the sensitivity of the data collected and level of risk if a breach occurs. To that end, RILA applauds CPSC's leadership in forming an intergovernmental group to address connected consumer products and establish individual agency responsibilities.

RILA urges the CPSC to continue to prioritize resources and staff toward furtherance of these interagency efforts. 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.

4. Prioritize Promulgation of a Federal Standard Where Emerging State Activity is Creating a Potential Patchwork of Inconsistent Product Safety Mandates

Faced with staff and resources limitations, the CPSC must make difficult decisions as to which discretionary rulemakings should be prioritized. RILA recognizes there can be many other drivers at play that slow the pace of the Commission's promulgation of federal consumer product safety standards. In recent years, there has been increasing momentum from some cities, state legislatures and rulemaking bodies to move forward with issuing locality and state-specific consumer product safety mandates where federal standards are delayed or absent. This growing trend can lead to a patchwork of state and local



standards that creates confusing inconsistencies and differing compliance requirements for retail businesses operating in multiple states or nationwide. Crib bumpers and liners are one recent example of a product category where perceived CPSC inaction or delay led states to pursue setting standards at the state level, including an Ohio law enacted in 2017 that went into effect this month.²

RILA urges the Commission to account for emerging state activity around standard setting as it prioritizes resources toward promulgating federal product safety standards. In the case of Ohio, the crib bumper law enacted in 2017 included a three-year delay in the effective date to afford time for the development of a federal standard. RILA is encouraged to see that the CPSC recently issued its proposed crib bumper/liner standard.³ We urge the Commission to act expeditiously to finalize the standard following the close of comment period in June 2020 and to include regulatory language preempting state and local standards. In this case a federal safety standard is needed to restore regulatory predictability and consistency nationwide.

5. Pilot a Tiered Recall System that Elevates Awareness of Those Recalled Products that Pose the Greatest Risk to Consumers

RILA and other stakeholders have long advocated for the CPSC to consider tiering recalls so that the most hazardous product safety notices get the much needed and greatest attention. The current system requiring that all corrective action announcements use of the word "recall" does little on its own to convey the gravity of the potential safety hazard. A consumer can be confused as to whether the recalled product poses a risk of death or serious bodily issue or only a minor issue not requiring immediate action. What is worse, this one-label-fits-all approach can lead to a "recall fatigue" phenomenon where a consumer over time ignores announcements of recalled products that may pose serious harm. Having a tiered approach would not only give consumers the important safety information they need, when they need it, but it could also significantly increase the rate of consumers acting on the most serious recalls.

The idea of having a tiered recall system is not new. The Food and Drug Administration (FDA) has been issuing "classes" of recalls based on the level of hazard to consumers for many years. Under a tiered recall system, the word "recall" would be reserved for the most severe hazard cases, and thus could require direct notification of consumers. Other terms to identify recalls of products that pose less risk to consumers could include "safety alert" or "warning." Such terms would clearly alert consumers that they should be aware of a notice, but immediate action to remove the product from their homes may not be necessary. The tiering not only identifies the level of risk but also determines the level of public outreach by the recalling company.

² [Title 37 Ohio Rev. Code § 3713.022](#)

³ [Notice of Proposed Rulemaking, Safety Standard for Crib Bumpers/Liners](#), 85 Fed. Reg. 18878 (April 3, 2020).



Piloting a tiered system should not come with substantial resource strains or additional staffing and training and holds great potential to improve recall effectiveness. RILA recommends the CPSC collaborate with all stakeholders to make sure the intended purpose of a tiered recall system is achieved. Clearly identifying risk for consumers is paramount. Having broad stakeholder input is critical to a tiered recall system's success. RILA and its members encourage the CPSC to consider implementing a tiered recall pilot program to test how implementation of such a process would work.

Conclusion

In closing, RILA and its members strongly support the CPSC's safety mission and share the Commission's commitment to protecting consumers and ensuring that all products sold to U.S. consumers meet or exceed all applicable safety requirements and standards. We appreciate CPSC's leadership and consistent track record of meaningful engagement with stakeholders, including its efforts to work collaboratively with voluntary standard-setting bodies. RILA offers these comments to continue that great industry-government partnership and collaboration and to enhance the work of the Commission going forward.

Sincerely,

Susan Kirsch
Director Regulatory Affairs and Compliance

