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**Oral Testimony for
Hearing on
FY 2018 and FY 2019 Proposed Agenda & Budget Priorities
U.S. Consumer Product Safety Commission
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Introduction

Good morning Acting Chairman, Commissioners, and staff. I am Kathleen McGuigan, Senior Vice President and Deputy General Counsel for the Retail Industry Leaders Association (RILA). By way of background, RILA's members include the largest and most innovative retailers. The retail industry employs over 42 million Americans and accounts for \$1.5 trillion in annual sales.

I want to thank you for the opportunity to testify before you today regarding the Commission's Agenda and Budget Priorities for Fiscal Years 2018 and 2019. RILA has previously provided detailed written comments on the level of resources it believes the Commission should allocate for various agency activities in 2018 and 2019. It is not my intention to repeat what we previously submitted. My testimony today highlights and expands upon four issues raised in our written comments.

1. Formalizing CPSC Engagement with Stakeholders

First, I want to express the gratitude of our membership for the opportunity to participate in yesterday's Recall Effectiveness Workshop. To bring about significant improvement in the effective communication of product hazards to consumers to quickly remove defective and noncompliant products from the marketplace will take real partnership among all stakeholders. Yesterday's event demonstrated stakeholders' genuine desire to have a positive impact. We hope yesterday's workshop will not be a "check-the-box" or one-time event. For progress to be made on recall effectiveness and other critical product safety issues, there will need to be ongoing and continuing engagement.

Over the past several years, RILA has put forth a suggestion that the CPSC establish a formal advisory committee under the Federal Advisory Committee Act (FACA). Such a committee has several advantages. The format of the FACA provides structure and a forum for timely, ongoing discussions between the agency and stakeholders. Also, as a permanent structure, a federal advisory committee ensures agency engagement with stakeholders on an ongoing basis without being subject to changing agency leadership and preferences and personal philosophy on stakeholder engagement of individual agency leaders. We continue to urge the CPSC to explore ways to bring about a change in agency culture and

institutionalize stakeholder engagement, including the possibility of establishing a formal advisory committee under FACA. Only in this way can the agency bring about transformational change.

2. Enhancing CPSC's Data Collection and Analytics Capabilities and Establishment of Electronic 15b Reporting

Let me turn now to my second topic – enhancement of CPSC's data collection and analytics capabilities. 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 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 are used in daily operations. For the CPSC to meet its core mission, it is critical that the CPSC invest in internal or external staff, 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 agency 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 wealth of information that retailers and manufacturers gather about customers' interactions with products. The original concept was that the CPSC could analyze information from disparate sources to identify emerging product safety risks and defect trends. After doing so, the CPSC could work with manufacturers and retailers to recall defective products much earlier than under the current timeline, thereby preventing untold 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 has stagnated. Participation has been closed and the CPSC has never fully utilized the data provided for purposes of predictive analytics.

What was impossible at the time of the creation of the RRP program, is commonplace in 2017. 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. We urge the CPSC to invest in staff and resources to expand its data collection and predictive data analytic capabilities. We further urge the CPSC to expand the RRP pilot and to use technology to create a tool that allows any reporting entity to file an electronic Section 15b report.

Of course, for any new electronic reporting tool to be embraced by industry, it must 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. To test the usefulness and ease of use of any electronic reporting tool, the CPSC should conduct a pilot program with interested partners to provide feedback. In addition, a pilot would also allow the CPSC to gain experience and expertise using new data analytics software.

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

My third topic continues the technology theme – in this instance specifically emerging technologies like IoT that are being incorporated into consumer products. It is amazing to think that the first iPhone was only introduced 10 years ago, in 2007. Today, smart phones are viewed by many consumers to be a necessary part of their daily life.

IoT 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 increased convenience, they also create cybersecurity, privacy and safety challenges. Currently, there are multiple federal agencies including the Federal Trade Commission, National Highway Transportation Safety Administration, Commerce, and the Department of Homeland Security, that are grappling with IoT-related issues. Industry, trade, consumer advocates and nongovernmental organizations are also working on these issues.

To make sure that the CPSC is prepared to proactively tackle the complex IoT-related issues, it is critically important that the CPSC dedicate the resources and staffing to gain an understanding of new innovative technologies and engage with partner government agencies and stakeholders. The goal of these efforts should be 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. As part of this approach, we urge that the CPSC adopt a risk-based reasonableness standard for product safety for IoT products similar to the FTC's "reasonableness" standard for data privacy. 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.

The development of innovative technologies and products is moving at lightning speed and it is moving forward with or without CPSC input. For the CPSC to continue to be relevant and protect consumers, the CPSC must invest in internal or external staff and resources to proactively address this issue now. Failure to do so will undermine the agency's core safety mission.

4. Enhancing Import Surveillance – Developing a Robust Trusted Trader Program

The last issue that I want to address today is how the CPSC can save money and reallocate resources while enhancing the CPSC's import surveillance 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. The 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 Importer Self-Assessment- and C-TPAT- only importers. Without concrete and demonstrable benefits, the ISA-PS program has stalled and failed to attract new participants.

We urge the CPSC as part of its efforts to enhance import surveillance to create a new trusted trade program with clearly defined benefits such as: 1) exemption from any future import certificate e-filing requirement; 2) participation in the CPSC's Trusted Trader program should be 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.

RILA members have recently noted with concern comments by CPSC agency leadership that indicates the agency intends to wait until CBP completes its revisions of its customs compliance trusted trader program before developing a CPSC product safety compliance Trusted Trader program. The CBP's revision of its trusted trader program is not anticipated anytime soon. Rather than wait on the uncertain timetable of the CBP, the CPSC should dedicate resources now to the create a Trusted Trader program using the risk-based approach that has already been agreed upon in the interagency process. As the CPSC begins this process, it should engage with interested stakeholders to develop a program that provides the agency the assurances that it needs while according real benefits to the participating importers.

Conclusion

Let me close by restating the support of RILA members for the mission of the CPSC. RILA members share the CPSC's commitment to product safety and ensuring that all products sold to U.S. consumers meet or exceed all applicable safety requirements and standards. We look forward to continued collaboration with the Commission.

Sincerely,



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