



RETAIL INDUSTRY LEADERS ASSOCIATION

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Oral Testimony for Hearing on
FY 2020 Proposed Agenda & Budget Priorities
U.S. Consumer Product Safety Commission
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Acting Chairman Buerkle and commissioners, thank you for inviting the public to be a part of the CPSC's budget process. I am Autumn Moore, director of regulatory affairs and compliance at the Retail Industry Leaders Association. RILA members appreciate the Commission's leadership on product safety matters, including consumer education campaigns, and stakeholder outreach, and we're proud partners of each.

By way of background, RILA is the U.S. trade association for leading retailers and our 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 and distribution centers.

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

The CPSC is a data-driven agency and in today's rapidly changing marketplace, the volume of data that is relevant to product safety issues is increasing at an exponential rate. The collection and analysis of data are now an important part of government and industry daily operations. For the CPSC to meet its core mission, it is critical that it invest in internal staff, including a chief technology officer, information technology (IT) systems, and software resources to enhance the Agency's data collection and predictive 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 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 safety risks and defect trends, and work with participants to recall products much earlier than the current timeline, thereby preventing consumer injuries and property damage. This idea was truly unique and ahead of its time. However, until recently, the tools to handle the volume and complexity of this kind of data, had not yet been developed. Thus, the RRP stagnated and expansion of the program was closed. What was impossible at the time of the creation of the RRP, is commonplace now. New systems can handle millions of data points and predictive analytics tools enable identification of patterns and trends and can even predict consumer behavior.

As the CPSC moves forward, it is critical to get input from stakeholders during the development process. Formal rulemaking allows those interested to help develop a true government-industry partnership, with defined benefits and requirements to participate. One significant benefit would be having the data submitted as part of a 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 section 15 reporting obligations, merely the initial 15(b) report. A second benefit could be for participation in the program to be considered as a mitigating factor in civil penalty cases.

CPSC should also consider breaking participation into tier levels. Those tiers could be for company size or level of participation (i.e. number of data fields they contribute, as not every organization has the same amount of information available to them). Having a variety of entry points into the program will 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 there is a strong understanding of where and how one can join.

RILA members were pleased that the Commission's most recent Operating Plan included a project to evaluate the RRP with a view for its potential expansion. RILA is hopeful that the

result will be an investment in the Agency's data analytics capabilities leading to formalization and expansion of the RRP.

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

CPSC recently announced that some product incident summary information, including product and manufacturer or importer names, was inadvertently made public. The information was released without context including the results of any CPSC investigation as to whether the incident was substantiated, if the product even caused the injury, if there was a substantial product safety hazard determination made, or if the product met safety standards. Releases of information such as these, mislead the public about what consumer products are indeed hazardous or noncompliant and puts manufacturers' and importers' reputations at risk. As the agency begins responding to those companies effected, full, fast and specific communication is important. This release of information shakes the confidence of the regulated community in the ability of the commission to protect confidential information, and the agency should take steps to assure 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 since the Office of the Inspector General released a report in 2015. The report noted that no oversight was being done for information sent from certain departments and that proper training of key staffers was lacking. The most recent OIG report from last year notes that 9 of the 11 recommendations from the 2015 findings have yet to be addressed. RILA strongly encourages the CPSC to review the 2015 and 2018 OIG reports and dedicate resources to implement their recommendations to establish a more formal FOIA processing system. This system should be compliant with the Agency's 6(b) obligations so that only complete and accurate information regarding product safety hazards is released to the public, consistent with the scope of information that is permitted to be released under FOIA and the Agency's own regulations.

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

RILA also strongly encourages the CPSC to focus on connected products. Internet of things technology is being incorporated into a wide array of consumer and industrial products and

the list of places it could be used, is endless. While these products are meeting customers' demand for new functionality and increased convenience, they may also create cybersecurity, privacy, and safety challenges.

Multiple federal agencies are grappling with IoT-related issues and RILA members are encouraged by recent announcements that the CPSC is taking the lead to develop an intergovernmental group to address connected consumer products and identify lanes of responsibility. We look forward to hearing the outcomes of this joint effort as it is critical that federal agencies work together to develop a comprehensive, risk-based approach while promoting innovation.

One of the first issues that the CPSC must address is whether the *mere possibility* that an IoT product could be hacked creates a substantial product safety hazard within the meaning of the Commission's governing authority. RILA's position is that it does not, and urges the CPSC to look to the example of the Federal Trade Commission which understands that completely preventing any cyber hacking is impossible. Instead, the FTC requires companies to have "reasonable" data security programs that take 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.

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

Import surveillance is another critically important area for the CPSC. RILA members believe that the best use of the Commission's limited resources is to target high-risk importers and shipments. CPSC can do that by leveraging the resources it will save from low-risk importers that are willing to partner with the CPSC in a Trusted Trader program.

To enhance import surveillance efforts, RILA once again urges the Agency to create this program with clearly defined benefits such as: 1) exemption from any future import certificate E-Filing requirements; 2) program participation as a mitigating factor in enforcement cases; and 3) demonstrably lower percentage of CPSC inspections and holds. By developing a robust Trusted Trader program that will encourage low-risk importers to participate, the CPSC will be able to focus on high-risk importers and shipments that contain a higher likelihood of non-compliant and unsafe goods.

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

Lastly, there are a few process-focused rulemakings, including the proposed amendments to the Voluntary Recall rule and the information disclosure rule under Section 6(b) of CPSA, that have been pending for quite some time. RILA and other stakeholders submitted extensive comments on both the rules, detailing serious issues with each proposal. The Commission has indicated on multiple occasions that these process-focused rules did not warrant resources given the agency's higher priorities. To provide industry with increased regulatory predictability, RILA urges the Agency to remove these rulemakings officially from its regulatory agenda by undertaking the necessary vote.

Conclusion

In closing, RILA members strongly support the CPSC's safety mission and share the Agency's commitment to protecting consumers. The agency's open-door policy that extends from commissioners and their staff to all career staff within the Agency, is an example for all government agencies on how to achieve important public policy goals. RILA wishes to be a continued resource and I'm happy to answer any questions you may have.