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April 28, 2014

Todd A. Stevenson
Secretary
U.S. Consumer Product Safety Commission
Office of the Secretary, Room 820
4330 East West Highway
Bethesda, MD 20814

RE: Information Disclosure under Section 6(b) of the Consumer Product Safety Act (CPSA)
Docket No. CPSC-2014-0005

Dear Secretary Stevenson,

We respectfully submit the following comments to the U.S. Consumer Product Safety Commission (CPSC or the Commission), regarding the proposed changes to the regulations governing the disclosure of information under Section 6(b) of the Consumer Product Safety Act. 79 Fed. Reg. 10712 (February 26, 2014). We appreciate the opportunity to provide our perspective on the proposed changes, and we ask you to consider our comments carefully as you finalize this rule.

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 members appreciate the Commission's dedication and efforts to improve the safety of consumer products, quickly remove unsafe products from the market, and engage and educate consumers on product safety issues. We share the CPSC's goal of ensuring the safety of all consumer products sold to U.S. consumers and of providing consumers with adequate information to enable them to make informed decisions regarding their purchase and use of consumer products.

Overall, RILA members support the goals of the CPSC as stated in the proposed rule to enhance the agency's transparency and openness. We also support the agency's efforts to increase efficiency and responsibly allocate staff resources by streamlining the CPSC's processes and procedures for disclosure determinations under 6(b) and incorporating updated technology for

methods of notifications. However, there are several areas where the proposed rule is unclear regarding the disclosure of information. These should be clarified in the final rule.

First, the proposed rule specifically addresses the disclosure of manufacturers' and private labelers' information related to a product. We note that there are many instances where a retailer may be the private labeler or the importer (and in that case, treated as the manufacturer) of a product, and therefore would continue to be accorded 6(b) protections under the proposed rule. However, there are additional situations where a retailer provides information to the Commission that should be protected from disclosure under 6(b).

For example, in the past, the CPSC has reached out to retailers to obtain information regarding an issue reported under 15(b) by another company (manufacturer, importer or private labeler) or an incident reported about a product on SaferProducts.gov. Information provided by retailers to the CPSC is submitted pursuant to Section 15(b) and can contain confidential business information, ranging from a company's internal product safety and quality assurance processes and procedures to lists identifying customers who purchased recalled product. This information is highly sensitive for the retailer and should be protected from disclosure under 6(b).

Additionally, companies who participate in the Retailer Reporting Program voluntarily submit data on a weekly basis that contains confidential customer, supplier, and sales data. This information can and does include business critical information not available to the public and is not disclosed by retailers to the Commission with the intent to make this information public. As such, RILA requests clarification that this information will remain protected from disclosure under Sections 6(a)(2) and 6(b)(5)of the CPSA.

Second, the preamble to the proposed rule states that it will not change or impact the agency's compliance with the statutory requirements and the protections of section 6(b)(5) for information filed in accordance with the requirements of section 15(b) of the CPSA. We agree with this position and request that the Commission state such in the rule to ensure consistent interpretation by staff. The 6(b) protection should continue to apply to filings made by all parties subject to the section 15(b) reporting requirements, including retailers. Continued protection of information filed in connection with section 15(b) reports is critical. Often, companies will file a section 15(b) report on a particular product out of an abundance of caution and based upon very preliminary and sometimes incomplete information. Many reports filed under section 15(b) do not result in product recalls. Disclosure of section 15(b) information in this situation would be prejudicial and unfair. Additionally, as noted above, these reports often contain confidential business information that should be protected from disclosure. RILA requests clarification in the rule that this information will remain protected from disclosure under Sections 6(a)(2) and 6(b)(5)of the CPSA.

Third, under current 6(b) regulations, with exception of a public announcement of a product recall by a company, other remedial actions in voluntary corrective action plans agreed to by a company and the CPSC in connection with a section 15(b) report have been protected from public disclosure under 6(b). RILA urges the CPSC to continue this practice. Companies can agree to a wide range of internally-facing actions in a voluntary corrective action plan, including changes to sourcing, manufacturing, product testing, quality assurance or businesses processes and procedures; enhanced employee and supplier training; increased internal reporting and oversight; and third party auditing. All of these actions are uniquely designed to increase the safety of consumer products manufactured and sold to U.S consumers by individual retailers, and as such, involve confidential business information or trade secrets. RILA requests clarification that they will remain protected under Section 6(a)(2) of the CPSA.

Fourth, the CPSC in its Proposed Voluntary Recall Guidelines, 78 Fed. Reg. 69783 (Nov. 21, 2013), has proposed to make voluntary correction plans legally binding on the company involved. RILA has stated our serious concerns with the CPSC's proposal to make voluntary corrective action plans legally binding in our prior comments. We note that one area that the CPSC did not address in its proposal is the impact that making voluntary corrective action plans legally binding will have on a company's ability to retain 6(b) protection for internally-facing actions designed to increase consumer product safety agreed to in a voluntary correction action plan. In the regrettable event that the CPSC decides to move forward with its proposal to make voluntary corrective action plans legally binding, it should insert language in both the final rule for Information Disclosure under Section 6(b) of the Consumer Product Safety Act and in the final rule for Voluntary Recall Guidelines specifically detailing that the protections against disclosure under Sections 6(a) and 6(b) of the CPSA for voluntary corrective action plans will remain in place.

Fifth, the Commission has proposed abandoning its current practice of re-notifying firms of subsequent requests for information. In addition, the CPSC proposes to change the standard of information that may be disclosed from "identical" to "substantially the same". The standard of what information is "substantially the same" is a subjective one. The preamble to the proposed rule states that the purpose of this change is to eliminate the need to re-notify a company for subsequent disclosure of information that "*may differ only slightly*" for "*changes in the appearance of the information or for minor editorial changes*." The preamble language makes it clear that the proposed rule seeks only to eliminate the re-notification of a company when the information to be disclosed is essentially identical to the information in the original disclosure.

However, the language of the proposed rule contains no language limiting the term "substantially the same". The staff's opinion of "substantially the same" might vary substantially from the firm's opinion. Depending on how broadly this term is interpreted by CPSC staff, the result of these two proposed changes could be that a firm's right to be notified of and object to a pending disclosure of information will be eliminated. We urge the Commission to provide clarification in

the final rule and give guidance to staff that when determining whether a firm is required to be notified under 6(b), the term "substantially the same" is to be narrowly construed and decisions should lean in favor of notification.

Sixth, the Commission has proposed to exempt information from publicly available sources from the notification requirement. We note that any information, including publicly available information that a company submits under a section 15(b) report would continue to be protected. RILA members do have a concern with the CPSC's release of publicly available information contained in CPSC files without any disclaimer as to the accuracy of the information. Much of the publicly available information about companies and their products is not only inaccurate, but often inflammatory. The release of information by the CPSC adds credibility to the alleged facts, allegations and conclusions contained in the released information. The CPSC was confronted with a similar issue when it established the SaferProducts.gov public data base. To prevent mischaracterization of information reported on the data base and resulting consumer confusion, there is a clear disclaimer on the first page of the website stating that:

> **CPSC does not guarantee the accuracy, completeness, or adequacy of the contents of the Publicly Available Consumer Product Safety Information Database on SaferProducts.gov, particularly with respect to information submitted by people outside of CPSC.**

We ask that the final rule be revised to include a similar disclaimer when the CPSC releases publicly available information under 6(b).

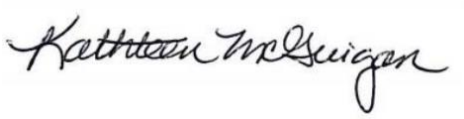
Seventh, the Commission has proposed to revise its current practice of not disclosing a firm's comments in response to a notification by requiring the firm to provide a rationale for its objection to disclosure of its comments. The Commissions existing policy of honoring requests for withholding disclosure of comments should be retained because it serves the important purpose of encouraging open dialogue about the *underlying* information that was the subject of the notification. Because it was the underlying information that was originally proposed to be disclosed and not any commentary, such comments should continue to be withheld from disclosure unless the firm affirmatively consents.

Finally, RILA supports the initiative of the agency to use electronic communication for both notification and the submission of comments. The proposed rule, however, does not include specific information on the platform the CPSC plans to utilize to achieve electronic notification. Most of RILA's members are already registered for CPSC's business portal, which seems the most logical place to include this capability. RILA recommends use of the existing business portal for electronic 6(b) notification and requests clarification on whether the CPSC plans to utilize it for 6(b) notification and submission of comments.

In conclusion, RILA members applaud the CPSC for taking actions to its streamline processes, eliminate unnecessary burdens and incorporate current technology for notification. These steps will enhance the transparency and efficiency of the agency and allow it to allocate precious resources to strengthen its efforts in support of its core mission ensuring the safety of all consumer products sold in the U.S. market. As the CPSC moves forward to finalize the proposed 6(b) rule, we encourage the CPSC to continue to be mindful of its need to comply with the statutory requirements and the protections of section 6(b)(5) for information filed in accordance with the requirements of section 15(b) of the CPSA. We also urge the Commission to provide the clarifications and language changes requested in this letter.

We appreciate your consideration of our comments and look forward to our continued partnership. Do not hesitate to contact me if you have any questions or need any additional information.

Sincerely,



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