

June 24, 2015

Todd Stevenson
Secretary
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

**RILA Testimony for CPSC Agenda and Priorities Hearing for
Fiscal Years 2016 and 2017**

Dear Mr. Stevenson, Commissioners, and Staff:

The Retail Industry Leaders Association (“RILA”) respectfully submits the following comments regarding the Commission’s Fiscal Years 2016 and 2017 Agenda and Priorities. RILA appreciates the opportunity to provide the perspective of its members regarding agency priorities and is hopeful that the Commissioners and agency staff meaningfully consider RILA’s views while developing both the Fiscal Year 2016 Operating Plan and the 2017 Budget Request.

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 are also among the largest US importers.

As requested in the hearing notice, RILA’s testimony primarily focuses on the level of resources it believes the Commission should allocate for various agency activities in 2016 and 2017. RILA’s comments are rooted in the interests of its members of ensuring the products they sell meet the highest safety standards while facilitating legitimate trade and take into account the agency’s “Policy on Establishing Priorities for Commission Action,” which includes the following mandatory considerations:

- Frequency and severity of injuries
- Causality of injuries
- Chronic illness and future injuries
- Cost and benefit of CPSC action
- Unforeseen nature of the risk
- Vulnerability of the population at risk
- Probability of exposure to hazard

I. CPSC's Proposed Pilot for E-Filing Certificates of Compliance and Related Import Surveillance Activities

Our members fully support the CPSC's mission of product safety and consumer protection and its efforts to advance its import surveillance activities through enhancement of the Risk Assessment Methodology ("RAM") for targeting non-compliant products prior to importation into the United States. As part of this process, RILA has consistently urged the CPSC to develop a robust Trusted Trader program that provides significant trade benefits for those importers willing to subject their product safety and import processes and supply chains to CPSC scrutiny. RILA greatly appreciates the CPSC's engagement and outreach efforts regarding its alpha pilot for certificate e-filing, and has welcomed the opportunity to actively engage with the CPSC on this issue. However, our members remain deeply concerned about the proposed pilot because despite receiving significant stakeholder feedback on this issue through comments, public workshop testimony and Customs Operations Advisory Council ("COAC") Working Group meetings, to date, the agency has refused to deviate even slightly from its original e-filing requirements as contained in CPSC's Notice of Proposed Rulemaking to Amend 16 CFR Part 1110 (Certificates of Compliance) ("1110 Rule").

A. CPSC's Proposed E-Filing Requirements and Import Surveillance Expansion

RILA supports CPSC's efforts to develop the RAM for targeting non-compliant imported products, which is an effort that directly advances consumer safety in accordance with the principles governing how the agency establishes priorities. It is difficult for industry to understand, however, how the proposed certificate e-filing requirements advance and enhance the development of a robust RAM program. In fact, the agency's current RAM pilot program, which has been touted as a successful model that is worthy of being nationalized, does not have an e-filing requirement.

The agency has repeatedly cited Executive Order 13659 as the driving force for the CPSC to implement a certificate e-filing requirement to be consistent with the goal of the Executive Order of a "single window" at the border for importers to file all import-related documentation. While RILA understands that the agency may move forward on certificate e-filing in some manner, it must be made clear that there is no underlying Executive Order provision or statute mandating that the CPSC implement an electronic certificate filing system for imported consumer products. Instead, the Consumer Product Safety Improvement Act left the choice of whether to impose some kind of e-filing requirement on importers to the discretion of the agency. It is the Commission's decision to move forward with an e-filing program that triggers Executive Order 13659 and its requirements that any import-related document filing requirement, including the proposed e-filing pilot, must facilitate trade and not unduly burden importers.

Currently, the CPSC uses an "on-demand" process of requesting certificates which, from our members' perspectives, has worked well over the past seven years and does not need to be changed. Because RILA's members prefer the current "on demand" and considering that one of the goals Executive Order 13659 sets forth is the "reduction of unnecessary procedural requirements that add costs to both agencies and industry and undermine our Nation's economic competitiveness," RILA believes the agency must clearly demonstrate why e-filing is necessary, cost-effective, and should be a priority under the Commission's priorities setting regulation.

B. CPSC's E-Filing Alpha Pilot

RILA and its members remain deeply concerned about the proposed e-filing alpha pilot because, despite significant stakeholder feedback concerning the need to demonstrate how the proposed e-filing system and required data fields would improve safety, the agency has not, to date, clearly articulated how the e-filing system and each of the data fields proposed as a part of the e-filing alpha pilot would directly and cost-effectively impact CPSC's import surveillance targeting efforts. Additionally, as the Chairman recently acknowledged, the technological impediments of implementing e-filing of certificates to match product line on customs entries are challenging for all importers. (Product Safety Letter, June 8, 2015). Further, as RILA has stressed previously, the costs of implementing, maintaining, and operating such an e-filing capability would also be staggering and mostly borne by companies who are following the rules and importing compliant products.

RILA understands and supports the agency's decision to conduct a pilot program to test the practical implementation of a proposed e-filing program from the perspectives of regulated parties and the CPSC. RILA along with many other stakeholders have consistently argued that collection of many of the data fields in the proposed rule (e.g. the name and address of the person who maintains testing records, certification that an item is exempt from testing) add no value to the CPSC's import risk assessment methodology and therefore are not an effective use of agency resources. Consistent with the CPSC's agenda setting priorities, the agency should be able to articulate the link to improved import surveillance targeting for each data field it will require as a part of the alpha pilot program. Those data fields that have tenuous links to the direct advancement of safety or are duplicative of information already required by CBP should be eliminated from any pilot e-filing program because they do not advance safety, come at a significant administrative cost to companies and the CPSC, and may deter otherwise willing companies from participating in the pilot program.

RILA urges the CPSC to develop an e-filing pilot to collect only those data fields that will directly enhance its import surveillance program. If, however, the staff still decides to recommend retaining all of these controversial components for the alpha pilot, then, at a minimum, importers are owed an explanation as to why the agency continues to require each of the individual data fields. To date, the CPSC has not provided such an explanation to interested stakeholders.

C. CPSC's Engagement on Proposed E-Filing Requirements

RILA and its members are very appreciative of the efforts CPSC staff and the Chairman in particular have undertaken in response to calls from industry to meaningfully engage with the regulated community on the e-filing program. While the process has not been perfect, our members appreciate the opportunity to have constructive dialogue directly with the CPSC staff responsible for the e-filing program. Despite many meetings with the staff, however, it appears that the agency has not changed its initial approach concerning the e-filing alpha pilot even slightly. RILA is hopeful that some of the changes it has recommended, especially the limitation of required data fields to only those necessary for enhanced targeting, will be reflected in the *Federal Register* notice announcing and outlining the alpha pilot program. It would be a disappointing result if all of the effort and extensive dialogue

between the CPSC and stakeholders yielded an alpha pilot that looks exactly the same as the proposal CPSC outlined at the outset of this process.

D. Trusted Trader Program

RILA members strongly support the development of a Trusted Trader program as part of the CPSC's overall import surveillance program. We thank the Commissioners for allocating staff resources at the CPSC's mid-year to develop a Trusted Trader Pilot Program and recommend that any new Trusted Trader program should include those companies that currently participate in the joint CPSC/Customs and Border Protection (CBP) Importer Self-Assessment – Product Safety (ISA-PS) program. Trusted Traders should be exempted from any future e-filing requirements in recognition of having passed have subjected CPSC's scrutiny of their product safety and import processes and procedures and demonstrated reliability of their supply chains. In order to continuing building on the progress that has been made already from the Commission's funding of the pilot Trusted Trader program this year, the agency should devote an adequate amount of resources for the full development of a pilot Trusted Trader program in its 2016 Operating Plan and 2017 Budget Request.

E. Funding of CPSC's Import Surveillance Program

The CPSC in its Fiscal Year 2015 and most recently in its Fiscal Year 2016 budget request has requested statutory authority to promulgate user fees to fund the nationalization of its import surveillance RAM program. RILA members strongly support the CPSC's efforts to strengthen and expand its import surveillance program and have actively engaged with the CPSC to accomplish this goal. However, as detailed in the joint industry letter on this issue previously submitted to the CPSC, there are significant legal and operational issues related to the implementation of the CPSC's user fee proposal. Therefore, RILA recommends that the CPSC seek funding of a nationalized RAM program from Congress through the normal appropriations process rather than seeking statutory authority to collect user fees. RILA also believes that more stakeholder engagement and transparency regarding the detailed plans for this program must be outlined by the CPSC prior to receiving such funding.

Finally, although the agency can expand its import surveillance activities without an e-filing requirement, the agency should not implement an e-filing requirement without obtaining the funding from Congress necessary to expand the agency's import surveillance efforts. While RILA believes the current "on-demand" system is already effective and does not need to be changed, there would truly be no reason for moving forward with an e-filing requirement if the agency lacks the necessary resources to use the data that would be gathered through a certificate e-filing program.

II. Ongoing CPSC Rulemakings

There are several recently proposed processed-focused rulemakings where the agency should continue to not allocate resources to developing a final rule or expend additional resources to more meaningfully engage with stakeholders prior to issuing a final rule. For purposes of this testimony, RILA will focus its comments on the pending 1110 rule, the Notice of Proposed Rulemaking to Amend 16 CFR Part 1115 (Voluntary Remedial Actions and Guidelines for Voluntary Recall

Notices) (“Voluntary Recalls Rule”), and the Notice of Proposed Rulemaking to Amend 16 CFR Part 1101 (Information Disclosure Under Section 6(b) of the Consumer Product Safety Act) (“6(b) Rule”).

A. Section 1110 Final Rule

In addition to the concerns raised by the proposed e-filing requirements associated with the 1110 rulemaking, this rulemaking also contains many other controversial components that warrant similar stakeholder engagement. RILA submitted a 27 page comment in response to the 1110 proposal and most of those pages were focused on aspects of the rule outside of the e-filing requirement. Some of the pending issues that would greatly benefit from public discussion include: the shift of certification obligations from domestic manufacturers to private labelers, elimination of password protection for certificates, imposition of new and burdensome record keeping requirements, and balancing the costs and benefits of the proposal.

The CPSC’s FY 2016 Budget Request forecasts that the agency will complete this rulemaking in 2016 and RILA believes there is much work and engagement yet to be completed with regard to this rule. Because the agency and industry have primarily engaged on the e-filing component over the past two years and the Commission composition has changed significantly since the original comment period closed, RILA recommends that the agency reengage stakeholders through re-proposing the rule or at least engaging directly with stakeholders on these issues in the same manner it has on the e-filing requirements.

B. Voluntary Recalls Final Rule

RILA submitted extensive comments concerning many of the serious issues its members have with this rule, which we will not repeat here as it appears that a majority of the Commission believes this process-focused rule does not warrant the expenditure of resources among the Commission’s other priorities. RILA agrees with this ordering of priorities. The forecast for this rule, however, does not reflect this prioritization. Instead, the final rule continues to appear on the agency’s mandatory standards chart contained in its operating plan and budget request documents creating uncertainty for potentially impacted stakeholders. In other non-prioritized rulemakings, such as the rulemakings titled Staff Participation in Voluntary Standards, Firepots and Fuel Gels, or VGB Public Accommodations, the rules either do not appear in the mandatory standards chart at all or are more accurately labeled as “data analysis/technical review” instead of being listed as a final rule. RILA asks that the agency provide predictability to the regulated community by accurately reflecting the status of the rule in its future operating plan and budget request documents.

C. 6(b) Final Rule

Similarly, the 6(b) rule, another process-focused rule that does not directly impact the safety of products, also does not appear to be a Commission priority for resource allocation. RILA also agrees with this prioritization for the reasons set forth in its comments previously submitted to the CPSC. Like the voluntary recalls rule, the forecast of a final rule continues to appear on the agency’s mandatory standards chart in its operating plan and budget request documents. Also, the 6(b) rule is also still listed on the agency’s spring 2015 regulatory agenda. Therefore, RILA asks that the agency

accurately reflect whether it plans to allocate resources to the finalization of this rulemaking as it develops its FY 2016 Operating Plan and FY 2017 Budget Request. As it stands right now, the agency's planning documents conflict with the verbally stated priorities of the Commission.

III. Collaboration & Cooperation with Retail Community

A. CPSC Engagement with Retailers on Product Specific Issues

RILA and its members have demonstrated a longstanding and continuing commitment to engaging with the CPSC to advance the safety of consumer products. Recently, the CPSC staff held a meeting with UL where it was reported that there was discussion of “leveraging retailer requirements” to “speed desired safety requirements” where the CPSC may be having difficulties getting specific provisions into voluntary safety standards (Product Safety Letter, June 1, 2015). Retailers purchase tens of thousands of different finished consumer products to sell to their customers. As such, retailers do not possess the same product specific design and manufacturing expertise as product manufacturers, CPSC and other safety experts, and voluntary standards committee members. While RILA members are always open to enhancing their internal requirements for the consumer products they sell, it is important that the CPSC understand that retailers are not product manufacturers. Due to the sheer magnitude and diversity of products that retailers sell, they must rely on product manufacturers, CPSC and other safety experts and the respective voluntary standards organizations to establish effective industry standards. Accordingly, rather than attempting the “leverage retailer requirements” to implement CPSC’s future proposed changes to product specific technical designs and performance specifications, these discussions are more appropriately left to the CPSC, manufacturing industry and safety experts participating in the voluntary standards process.

B. Retailer Reporting Program Pilot

RILA plans to discuss the Retailer Reporting Program Pilot in more detail as a part of the Commission’s public hearing on data sources and consumer product-related incident information but also wishes to note that it should be among the Commission’s priorities for purposes of this hearing. RILA believes the Commission should dedicate resources in its FY 2016 Operating Plan to continuing its review of this program but also more formally exploring whether the program should be expanded through solicitation of public comment and direct engagement with retailers and manufacturers.

To date, the agency has based its review of the usefulness of the data received through an ad-hoc Retailer Reporting Program that was not standardized, and instead, operated through seven independent agreements with the participating companies. RILA believes that the usefulness of the data received through the Retailer Reporting Program would be more properly evaluated if the Commission were to explore what it would look like and how it would function if it were formalized. Before the usefulness of the overall program is judged, it should be refined in the same manner the agency is developing its e-filing alpha pilot. Accordingly, RILA believes the Commission should allocate resources to conduct a formal review and evaluation of the program as a part of its FY 2016 Operating Plan.

IV. Additional Issues of General Concern to Retailers

A. Civil Penalty Transparency

RILA and its members have taken notice of recent civil penalties that have resulted in ongoing litigation at the Department of Justice and opposing statements from Commissioners regarding the appropriateness and justification of the amounts of recent civil penalties. RILA believes that the current system, in which companies find themselves facing a civil penalty demand from the CPSC that explains why the agency believes a penalty is warranted but provides no insight into how the agency calculated the amount of the penalty demanded, is not an ideal system. Currently, companies are simply told that all of the statutory civil penalty factors were taken into consideration in assessing a civil penalty demand with no further explanation or detail. Additionally, while the civil penalty factors regulation give definitions of the individual factors, it provides little insight into how the agency calculates penalty amounts. This is concerning especially in light of the Chairman's recent announcement regarding future increased civil penalty amounts.

RILA appreciates Chairman Kaye's recognition at the recent regional ICPHSO conference of the regulated community's desire for more transparency and predictability with respect to civil penalties and commitment to taking the issue back to the agency staff. We urge that the agency should dedicate resources in FY 2016 to efforts that would provide more clarity, guidance, and predictability to the regulated community on how civil penalty amounts are assessed.

B. Recall Effectiveness

The CPSC, consumer advocates, manufacturers, retailers and consumers all share the common goals of timely and effectively informing consumers about product recalls and quickly removing unsafe products from the marketplace and consumers' homes. All stakeholders in the consumer products arena would like to see recall effectiveness improved. To that end, RILA believes the CPSC should dedicate resources in FY 2016 and 2017 to take a scientific approach and conduct studies and/or consumer surveys on recall awareness trends and to determine the most effective methods of communicating recall information to consumers. RILA believes that such a complex issue is deserving of a thorough study and stands willing to collaborate with the CPSC and other stakeholders on developing a comprehensive and empirically-based approach to improving recall effectiveness.

Thank you again for the opportunity to provide comments on the CPSC's agenda and priorities over the next two fiscal years. RILA shares CPSC's commitment to improving consumer safety and looks forward to continuing its collaborative relationship with the agency.

Sincerely,

A handwritten signature in cursive script that reads "Kathleen McGuigan".

Kathleen McGuigan
Senior Vice President, Legal & Regulatory Affairs