

Via Electronic Filing

June 1, 2016

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

Dear Secretary Stevenson,

The Retail Industry Leaders Association (RILA) respectfully submits the following comments to the U.S. Consumer Product Safety Commission (CPSC or Commission), regarding its Fiscal Years 2017 and 2018 Agenda and Priorities. RILA appreciates the opportunity to provide the perspective of its members regarding agency priorities and hopes that the Commission and agency staff carefully consider RILA's views while developing its Fiscal Year 2017 Operating Plan and 2018 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. As some of the largest U.S. importers, 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 while facilitating legitimate trade.

As the CPSC aligns its activities with its proposed 2016-2020 Strategic Plan, the following comments seek to provide input into the Commission's priorities, regulatory enforcement efforts, and rulemaking and the level of resources RILA believes the Commission should allocate for various agency activities in 2017 and 2018. RILA submits these comments in the spirit of collaboration and partnership taking into account the guidance provided by the agency's "Policy on Establishing Priorities for Commission Action."¹ We look forward to continuing to work with the CPSC to achieve our shared product safety goals.

Executive Summary

RILA members appreciate the Commission's leadership on consumer product safety matters, including consumer education campaigns, stakeholder and industry outreach, and international regulatory alignment. The CPSC and RILA members have a tradition of working together to address consumer product safety issues. For example, several of RILA's members participate in the agency's industry partnership programs, including the CPSC's voluntary Retailer Reporting Program pilot and the combined U.S. Customs and Border Protection (CBP)/CPSC Importer

¹ 16 C.F.R. § 1009.8

Self-Assessment Product Safety Pilot (ISA-PS) program. In addition, RILA's member retailers regularly cooperate with the CPSC to promote CPSC's consumer education programs and on third-party product recalls. Through these efforts and others, RILA's members work with the CPSC to find practical ways to address consumer product safety concerns.

As the Commission determines its 2017 and 2018 priorities, RILA respectfully submits its recommendations, summarized below:

First, it is critical that the Commission provide transparency into regulatory enforcement decisions, particularly in the area of civil penalty determinations. In the wake of the agency's first post-Consumer Product Safety Improvement Act (CPSIA) maximum civil penalty settlement, industry and, ultimately, consumers are best served by the CPSC providing clear guidance on effective compliance programs and mitigating and aggravating penalty factors so as to strengthen industry compliance efforts and meet the shared goal of enhancing consumer product safety;

Second, retailers, distributors, importers and manufacturers all occupy unique positions within the supply chain with separate and distinct roles and responsibilities. Although retailers always strive to be collaborative partners with the CPSC, it is inappropriate for the Commission to seek to impose manufacturers' responsibilities for product design and recalls on retailers. Therefore, the CPSC's enforcement and regulatory priorities should be aligned to reflect the appropriate role of all members of the supply chain;

Third, as the Commission moves forward with its efforts to enhance and strengthen its import, surveillance capabilities, transparency regarding the metrics the CPSC will use to evaluate the value of the alpha e-filing pilot information and continued stakeholder engagement are key to ensuring that a final CPSC import surveillance program targets high-risk products without unduly burdening legitimate trade. CPSC should develop a trusted trader program for low risk importers as part of its import surveillance program to include importers that are currently certified as part of the joint Customs and Border Protection (CBP)/CPSC Importer Self-Assessment – Product Safety (ISA-PS) program. Also, the CPSC's import surveillance program should be funded under the agency's normal operating budget;

Fourth, the CPSC should continue its efforts to enhance data-driven decision making by bolstering its data collection and analysis capabilities, particularly in the areas of product safety incident reporting. To this end, the current Retail Reporting Program pilot where participants partner with the agency to provide real-time data on consumer product hazards should be formalized and expanded;

Fifth, the Commission should maximize regulatory predictability for the regulated community by updating its priorities for Fiscal Years 2017 and 2018 and future budget request documents to accurately reflect the status of two pending low priority process-oriented rulemakings – the Voluntary Recall Rule and 6(b) rulemaking; and

Sixth, the CPSC should continue to emphasize and create opportunities for stakeholder engagement and agency collaboration with industry. While recent engagement efforts with

impacted stakeholders on the proposed import e-filing alpha pilot have proven productive and should be continued, many other issues such as consumer education, recall effectiveness, and expansion of the CPSC's import surveillance program would benefit from the creation of a federal advisory committee or other vehicle to provide sustained, structured stakeholder engagement.

I. The CPSC Should Provide Transparency and Clarity to Enforcement Decisions and Calculation of Civil Penalties

RILA and its members note with concern the upward trend of civil penalty cases in addition to the Chairman's recent statements regarding his desire to see "civil penalties in the double-digits." In March, the CPSC announced a record-breaking \$15.45M settlement with Gree Electric,² marking the first post-CPSIA maximum penalty settlement. While the settlement achieved notoriety and was widely reported in the trade press, due in large part to the high dollar amount of the settlement, the CPSC missed a unique and important opportunity to provide the regulated community much-needed clarity and guidance. The CPSC's failure to include critical facts and the specific aggravating and mitigating factors considered by the Commission in its penalty decision, leaves the regulated community with little guidance to enable companies to review and enhance product safety compliance programs.

RILA members believe that transparency and candor by the Commission on best practices for compliance programs and how penalties are calculated, including specific mitigating and aggravating factors, will spur compliance efforts. Recent statements by Commissioner Mohorovic and Commissioner Buerkle have argued that the Commission should be more transparent in penalty decisions.³ RILA supports these statements and urges the Commission to dedicate sufficient resources and funding in FY 2017 and 2018 to accomplish this goal.

II. The CPSC Should Respect and Not Blur the Unique Roles and Responsibilities of Individual Supply Chain Members for Product Safety Compliance

The CPSC and the regulated community share the same goal of ensuring the safety of all products sold to U.S. consumers. The retail industry historically has worked collaboratively with agency staff on a variety of issues including consumer education efforts, such as the CPSC's *Anchor It* program to inform consumers about furniture tip-over risks and options to mitigate the risk. In addition, in situations where a manufacturer is no longer in business or able to conduct a recall, retailers have voluntarily taken on the role of the manufacturer to recall a defective product (e.g., drop-side cribs recalls). However, it is important for the Commission to remember that each type of businesses within the supply chain (i.e., manufacturer, importer, distributor, wholesaler and retailer) has a different and distinct role

² CPSC News Release 16-127: [Gree Agrees to Pay Record \\$15.45 Million Civil Penalty, Improve Internal Compliance for Failure to Report Defective Dehumidifiers](#), March 25, 2016

³ [Statement of Commissioner Joseph P. Mohorovic Regarding the Commission's Provisional Acceptance of a Settlement Agreement with Gree Electric](#), March 24, 2016 and [Statement of Commissioner Ann Marie Buerkle on the Commission's Growing Civil Penalty Settlements](#), March 25, 2016.

and responsibility for product safety compliance particularly as it relates to product design and recalls.

RILA members are deeply concerned about recent actions by the Commission and agency staff attempting to blur the roles of retailers and manufacturers and to push retailers to take on compliance responsibilities that more appropriately lie with manufacturers. In connection with corded window coverings, high-powered magnet office toys, and most recently hoverboards, the Commission has attempted to leverage retailers in order to effectuate desired actions, including changes to product design, withdrawal of a product category from the market, product testing and potential product recall, that are typically within the scope of manufacturers' responsibilities. The Commission's recent actions, including the public shaming in the media of retailers that the agency believes are not being "cooperative," stands in stark contrast to the long history of collaboration between the CPSC and the retail industry. As the agency develops its enforcement priorities for FY 2017 and 2018, RILA urges the agency to recognize the unique and distinct roles of retailers and manufacturers and restore the long-standing cooperative relationship between the CPSC and the retail industry by realigning its regulatory enforcement approaches with statutory and regulatory responsibilities.

III. CPSC Proposed E-Filing Pilot and Related Import Surveillance Activities

RILA members support the CPSC's efforts to strengthen its import surveillance activities through enhancement of its Risk Assessment Methodology ("RAM") for targeting high risk and potentially unsafe and non-compliant products prior to importation into the United States. In this regard, RILA offers the following suggestions for the agency to consider as it moves forward with its import surveillance priorities for FY 2017 and 2018.

- a. CPSC Should Clearly Articulate the Metrics It Intends to Use Evaluate the Value of the Information Provided Through the Alpha E-filing Pilot and Continue to Engage with CBP and Stakeholders on Future Developments

RILA and its members are appreciative of CPSC staff and the Chairman, in particular, for engaging with the regulated community regarding the structure and components of the alpha e-filing pilot. We note that, in response to stakeholder feedback, the Commission decided to limit the number of required data fields for the alpha e-filing pilot to five fields from the previously proposed 10 fields.⁴ However, much work remains to be done before the program demonstrates its value and ability to enhance import surveillance without unduly burdening legitimate trade.

As part of this process, the agency should develop and clearly articulate to all stakeholders the specific metrics it will use to evaluate whether the information provided under the alpha e-filing pilot directly advances and enhances the CPSC's import surveillance capabilities. Additionally, the CPSC should conduct a cost-benefit analysis to measure the administrative costs of the e-filing program to pilot participants and the agency compared to the value of the information received. As the proposed pilot develops

⁴ 80 Fed. Reg. 50827

and enters its Beta and future phases, RILA urges the CPSC to continue and broaden stakeholder engagement. Also, it is critical that CPSC continue to collaborate with CBP to incorporate the technology-based streamlined approach and strategic vision of CBP's Automated Commercial Environment into CPSC import surveillance program. We encourage CPSC work with CBP to integrate its import surveillance and risk management program into CBP's Centers of Excellence (CEEs) (e.g., CBP's Apparel, Footwear & Textiles CEE located in San Francisco and the Consumer Products and Mass Merchandise CEE located in Atlanta, Georgia). It is only through constructive dialogue among CPSC, CBP and impacted stakeholders, that the proposed pilot can achieve shared product safety goals and, ultimately, produce a final import surveillance program that will safeguard U.S. consumers while avoiding needless regulatory burdens on trade.

b. The CPSC Should Develop a Trusted Trader Program as an Integral Part of Its Risk-Based Import Surveillance Program

One important benefit of a risk-based import surveillance program is that it will allow the CPSC to allocate its limited resources to targeted high risk importers and products. A government-industry partnership or trusted trader program for low risk importers is a key component to a strong risk-based import surveillance program. RILA members strongly support the development of a Trusted Trader program as part of the CPSC's overall import surveillance program. RILA renews its recommendation that the agency develop a robust Trusted Trader program, inclusive of significant trade benefits for importers willing to subject their product safety compliance programs, import processes, and supply chains to CPSC scrutiny. Additionally, importers that are currently certified and participating the joint CBP/CPSC ISA-PS program should be considered to be "trusted traders" and integrated into any new CPSC Trusted Trader program.

RILA appreciates the Commission's prior decisions to allocate staff resources towards the development of a Trusted Trader program and placement of the initiative in the CPSC's proposed 2016-2020 Strategic Plan. However, recent comments by agency staff have raised concerns that the creation of CPSC's Trusted Trader program could be delayed until after CBP completes development of its new trusted trader program. RILA urges the Commission to move forward now and not delay the development of a mutually beneficial CPSC-industry partnership program pending another agency's uncertain timeline. Instead, a CPSC Trusted Trader Program developed and based upon the risk-based approach for imports already agreed upon in the interagency process can be implemented and ultimately incorporated as one component of into the new overarching CBP trusted trader program with minimal modifications. Therefore, RILA urges the CPSC to allocate sufficient resources in Fiscal Years 2017 and 2018 to develop a risk-based, voluntary Trusted Trader program with clearly defined obligations and benefits.

c. Import Surveillance Activities Are Part of the CPSC's Core Mission and Should Be Funded Under The CPSC Normal Operating Budget

The CPSC has requested statutory authority to levy user fees to fund the nationalization of its import surveillance RAM program in its previous requests for Fiscal Years 2015

and 2016, and most recently in its Fiscal Year 2017 budget request. To date, Congress has declined to provide such authority to the Commission. RILA members continue to support the agency's efforts to strengthen and expand its import surveillance program to ensure the safety of consumer products that enter into U.S. commerce and actively engage with the CPSC to accomplish this goal.

However, RILA renews its recommendation that the CPSC seek funding of a nationalized RAM program through the normal congressional appropriations process. As import surveillance is an essential part of the agency's product safety mission, these activities should be part of CPSC's normal appropriations process subject to Congressional approval, monitoring and oversight. RILA believes that further stakeholder engagement is critical to enhancing transparency and clarity regarding plans for national RAM implementation. The CPSC should work with the regulated community to provide more detail as to the roll-out of the nationalized RAM program prior to receiving such funding.

IV. The CPSC Should Take Steps to Expand Data Collection Efforts and Analysis Capabilities to Enhance Data-Driven Decision Making

As noted in recent statements by several commissioners, the CPSC is a data driven safety agency.⁵ RILA members support the CPSC's efforts to enhance its data collection and analysis capabilities in order to promote data-driven decision making. At last year's Data Collection Hearing, RILA's testimony detailed the value of real-time, product-specific safety incident data provided as part of the Retailer Reporting Program pilot and outlined opportunities for improvement and expansion of the program.⁶ The ten-year old RRP pilot program is currently under review by the CPSC. To date, the agency has only focused on attempting to evaluate the usefulness of specific data received through the current ad-hoc RRP pilot, which does not have standardized processes or procedures, and instead, operates through independent agreements with the participating companies. RILA believes that the usefulness of the data received through the RRP would be more properly evaluated if the Commission explored the potential value of data provided under a more formalized program using advanced data analytics tools.

RILA urges the Commission to dedicate resources in its priorities for Fiscal Years 2017 and 2018 to completing its internal review of its Retailer Reporting Program pilot and pushing forward to formally explore program expansion through solicitation of public comment and direct engagement with retailers and manufacturers. RILA members noted with interest the Chairman's recently expressed intention to hold a public workshop on ways by which the agency's Section 15(b) reporting system can be improved. RILA encourages the Commission to include the following topics in the upcoming workshop: formalization and expansion of the RRP and confirmation that reporting product safety incident information through the RRP meets the requirements for an initial report under Section 15 (b).

⁵ CPSC Hearing on Data Sources and Consumer Product-Related Incident Information – [Panel 1](#) and [Panels 2 & 3](#), June 26, 2015.

⁶ [RILA Testimony on Data Sources and Consumer Product-Related Incident Information](#), June 25, 2015

V. The CPSC Should Clarify Rulemaking Priorities and Increasing Regulatory Predictability For the Regulated Community by Withdrawing Pending Rulemakings That Do Not Directly Advance Product Safety

The Chairman has repeatedly stated, including at last year's Priority Hearing, that he is interested in moving forward with only those rulemakings that directly advance product safety.⁷ There are several process-focused rulemakings, including proposed amendments to the Voluntary Remedial Actions and Guidelines for Voluntary Recall rule (16 C.F.R. § 1115), and the proposed amendments to information disclosure rules under Section 6(b) of the Consumer Product Safety Act (16 C.F.R. § 1101) that are pending before the Commission where the agency should either allocate additional resources to broaden stakeholder engagement prior to developing a final rule or accurately reflect the status and priority of the completion of rulemaking, so as to provide industry with increased regulatory predictability.

RILA submitted extensive comments on both the proposed Voluntary Recall and Section 6(b) rules detailing serious issues retailers have with each proposal. Last year, the Commission indicated that both proposed rules, being primarily process-focused, did not warrant the expenditure of resources among the Commission's other priorities. However, the forecast for final rules in both the proposed Voluntary Recall and Section 6(b) rulemaking proceedings continues to appear on the agency's mandatory standards chart in its operating plan and budget request documents. RILA agreed with the CPSC's ordering of agency priorities last year with respect to these two proposed rules and urges the Commission to adopt the same position for FY 2017. RILA further requests that the Commission's FY 2017 priorities, operating plan, and FY 2018 budget request do not allocate any resources or budget to finalization of these rules.

VI. CPSC's Continued Engagement, Collaboration, and Cooperation with All Stakeholders Will Enhance Agency Rulemaking and Enforcement Decisions, Increase Product Safety and Better Protect U.S. Consumers

RILA members believe in fostering a strong mutual partnership with the CPSC, yielding a collaborative and comprehensive approach to rulemaking, information collection, and program development. Retailers appreciate the Commission's efforts, thus far, to work with the regulated community on the import alpha e-filing pilot and note the Chairman's announcement that the agency will hold two public workshops this year on the topics of improving recall effectiveness and streamlining and enhancing Section 15(b) reporting. While RILA members are optimistic that the workshops will produce beneficial results, the CPSC can and should be doing to advance consumer product safety goals through formal and informal stakeholder engagement efforts. RILA continues to recommend that the Commission establish a permanent stakeholder group, under the Federal Advisory Committee Act, similar to CBP's Advisory Committee on Commercial Operations (COAC). Stakeholder groups, such as the COAC, provide invaluable insight to regulators and would foster more informed CPSC actions and rulemaking. Collaboration with the regulated

⁷ CPSC Agenda and Priorities Hearing for Fiscal Years 2016 and 2017 – [Panel 1](#), [Panel 2](#), and [Panel 3](#) – June 26, 2015

community will continue to raise the bar on product safety compliance resulting in increased protection for U.S. consumers.

Conclusion

RILA appreciates the opportunity to provide comments on the CPSC's agenda and priorities over the next two fiscal years. RILA and its members share the Commission's commitment to improving consumer product safety and consumer education and to quickly removing potentially harmful products from the U.S. marketplace. We look forward to continuing to working collaboratively relationship with the agency to advance our shared safety goals.

Sincerely,

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

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