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COMMITTEE ON ENERGY AND COMMERCE
SBCOMMITTEE ON COMMERCE, MANUFACTURING AND TRADE

HEARING ON
“INDUSTRY PERSPECTIVES ON THE U.S. CONSUMER PRODUCT
SAFETY COMMISSION”

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Good morning Chairman Burgess, Ranking Member Schakowsky, and distinguished members of the Subcommittee:

Thank you for the opportunity to testify this morning on “Industry Perspectives on the U.S. Consumer Product Safety Commission.” I appreciate this opportunity to provide the Subcommittee with how the National Retail Federation’s views on a number of activities and developments in recent years at the Consumer Product Safety Commission and the impact of those on the retail community.

The National Retail Federation is the world’s largest retail trade association, representing discount and department stores, home goods and specialty stores, Main Street merchants, grocers, wholesalers, chain restaurants and internet retailers from the U.S. more than 45 other countries. Retail is nation’s largest private sector employer, supporting one in 4 U.S. jobs—over 42 million working Americans. NRF’s [*This is Retail*](#) campaign highlights the industry’s opportunities for life-long careers, how retailers strengthen communities, and the critical role that retail plays in driving innovation.

I would also like to state from the outset that NRF has a proud history of engaging with the CPSC, including since enactment of the landmark Consumer Product Safety Improvement Act of 2008. While we have had a number of issues with that law and its implementation and interpretation by the agency, we have always sought to positively interact with the CPSC. And we have always done so with the viewpoint and objective of ensuring that the products our members sell are safe for American families.

Indeed, it has been the retail community that continues to lead and innovate with numerous product safety initiatives and efforts that often go well beyond legal and regulatory requirements. NRF members have no interest in selling unsafe or violative products, and not only supports the CPSC in its mission to prevent, identify and remove such products from the market, but very often leads the charge to do so. A vibrant and well-resourced CPSC, and a marketplace free of unsafe products, is therefore absolutely aligned with the interests and desires of retailers, not to mention the safety and well-being of their customers.

In this spirit, NRF has, for several years, strongly encouraged the CPSC to create a permanent trade advisory group, similar to the Advisory Committee on Commercial Operations to U.S. Customs and Border Protection (COAC), which routinely advises the CBP on the many complex issues and considerations relating to the importation of goods into the U.S. Unfortunately, the CPSC has not taken this step.

While the CPSC did recently help facilitate the formation of Product Safety Work Group under the COAC to advise primarily the CPSC on the pending product safety certificate e-filing mandate, the CPSC's non-statutory Open Meetings Policy precluded agency staff from even participating in several of the key meetings of that Work Group. We appreciate Chairman Kaye stepping-in to help to facilitate this Work Group, which has led to the creation of the current e-filing Alpha Pilot to help ensure the system will work prior to mandating it for all importers. Having an official advisory committee in place, which the agency has had in the past, to tackle these and other complex supply chain related issues will undoubtedly help the CPSC in the future.

These issues include the initial e-filing mandate I just mentioned as set forth in the agency's proposed new Certification, or "1110" Rule. That Rule, first proposed by the agency in 2013 with virtually no prior public input, contained many troubling provisions in addition to the sweeping new e-filing mandate, including possibly changing who is required to issue CPSC product safety certificates and also a dramatic expansion of the information required to be on certificates. In total, these requirements could add millions in compliance costs for many retailers and significantly impede the importation of many safe products. In addition to being under-informed, none of these potential new requirements have, to NRF's knowledge, been demonstrated or even credibly argued by the agency to improve the actual safety of consumer products sold in the U.S.

Pending CPSC proposals, however, do have the very real potential to severely interrupt the complex and real-time process of importing products into the U.S. According to the CPSC, during FY 2015, more than 192,000 importers brought into the United States imports of consumer products under the CPSC's jurisdiction having a total estimated value of

approximately \$754 billion. That amounts to more than \$2 billion worth of consumer product imports per day. Even seemingly small changes to what may be required for the entry of imports can cause enormous burdens and disruptions in this vital trade.

NRF believes two other prominent examples of proposed new regulations may have little benefit to consumer safety but enormous burdens on regulated industry. These regulations, the proposed Voluntary Recall Rule and the so-called 6(b) Rule, were notably developed without the benefit of prior stakeholder engagement. NRF strongly questions these proposals' necessity let alone enhancement of product safety, especially in light of their troubling new mandates and burdens on companies that voluntarily report information to, and that offer to voluntarily recall products in conjunction with, the CPSC.

Rather than expedite the process of undertaking voluntary product safety recalls, which are the vast majority of such recalls, NRF believes the proposed Voluntary Recall Rule would actually inhibit not only the initial willingness of companies to approach the CPSC with proposals to recall questionable products, but would likely drag-out the process of negotiating such recalls, neither of which would benefit consumers and may in fact keep hazardous products on the market for longer periods of time.

Likewise, the proposed new 6(b) Rule would significantly erode the protection from public disclosure of confidential business information that in most cases is voluntarily provided to the agency. Companies would therefore be even further discouraged from approaching the CPSC with information about products that may pose a safety concern, and about which retailers and other firms may be seeking CPSC input and guidance as to whether a recall may be necessary or appropriate.

Regarding both the proposed Voluntary Recall and 6(b) Rules, while Chairman Kaye has publicly stated that these two proposed rules are not, in his words, "his priorities," they nevertheless remain pending regulations before the Commission and have the potential to be finalized at any time. NRF would therefore again urge the Commission to formally withdraw

both proposed rules and initiate formal stakeholder discussions about how such rules, if they are to be promulgated, can best serve and benefit consumers.

Another, related CPSC proposal that is currently pending before the Congress is the renewed request by the agency for authority to impose so-called “user fees” for imported products under its jurisdiction, purportedly to expand the agency’s Risk Assessment Methodology, or RAM system, for screening imports for possible product safety violations and risks. This sweeping new authority of the agency, which was again proposed without any public input, let alone any formal engagement of the trade or other agency stakeholders, is also largely a mystery to NRF and other stakeholders.

There are many questions about the proposal that the agency has yet to address. What will be the level of user fees assessed and against which consumer products? Only those subject to mandatory safety standards or all products under CPSC’s latent jurisdiction? How will these fees be assessed and, more importantly, how in fact will they be used to expand RAM and to what end? Indeed, the RAM itself remains largely a mystery to the trade and all parties could well benefit from the input and suggestions of U.S. importers, the vast majority of whom have just as strong an interest in seeing unsafe and violative products from being imported into the U.S. as does the CPSC.

Mr. Chairman, we believe that programs such as the Retailer Reporting Program could continue to provide valuable information to the agency. The program is in limbo right now as the agency continues to conduct an apparent multi-year, non-public review, but we believe this program should be strengthened and expanded. NRF believes a robust Retailer Reporting Program will accrue to the benefit of the CPSC, program participants and most importantly, consumers, by alerting the agency to product safety issues as the very earliest possible stage.

As the CPSC moves towards regulating in the enormously complex and fast-changing world of international supply chains, not to mention the even more complex and uncertain world of the chemical safety of consumer products, NRF believes strongly that the agency needs to further collaborate with all stakeholders to ensure that regulations not only meet their stated goal,

but do so in a way that does not overly burden the regulated industry. We need to make sure that regulations will not only work, but also that they will be able to be implemented in a seamless manner.

I will note that, with much of what Chairman Kaye has observed as the “heavy lifting” of CPSIA implementation behind the agency, there does appear to be a new spirit of bipartisanship among the commissioners themselves, which NRF is pleased to see. Chairman Kaye and all the commissioners and senior agency staff do seem to be more willing to listen to the views and concerns of agency stakeholders. These are very welcome trends and ones which we, again, hope will materialize into more permanent efforts to engage the public and those most impacted by what the agency does and how it does it.

Finally, Mr. Chairman, I would like to briefly raise an issue that has not often been discussed before this Subcommittee or indeed generally to date: that is the real and growing trend of the CPSC to look primarily to retailers for recalls and other corrective and punitive actions, rather than other participants in the supply chain that may be better positioned to both identify and respond to product safety issues.

Not so many years ago, the CPSC looked primarily to product manufacturers to identify and report product safety issues to the agency, as well as to undertake product safety recalls. This is only logical, since it is product manufactures, and not the retailers, who are typically in the best position to identify, understand and respond to product design, manufacturing or other problems that may lead to a consumer hazard. Today, that presumption seems to have been reversed, and more and more recalls are being sought first and, in many cases, solely of product retailers – companies that in most cases have no involvement with the actual manufacture of those products.

To some degree, this is a result of the fact that a growing percentage of products under CPSC’s jurisdiction are imports, often directly imported by retailers, and that, under the CPSC’s statutes, a U.S. importer effectively steps into the shoes of an overseas manufacturer. However, where such is not the case, there seems to nevertheless be an inordinate focus on retailers,

especially those financially able to undertake a recall or to pay a penalty for failing to report an issue to the agency, even if there is another U.S. company against which it would be more appropriate to seek such actions.

Indeed, it is not just in the compliance arena where the CPSC is increasingly looking exclusively to retailers for action on potential product safety issues. Chairman Kaye has very publicly encouraged, for example, retailers to act on several issues where he has personally declared there to be a potential hazard but where there may not be either a mandatory safety standard or a finding of a product defect by the agency. This “ready, fire, aim” approach to the CPSC’s mission is troubling to say the least.

This is by no means to say that retailers do not understand and take very seriously their obligations under the law. Indeed, in many cases, it is retailers that take the initiative to report potential safety issues to the CPSC and that volunteer to undertake the recall in order to remove potentially hazardous products from the market as soon as possible. But for the CPSC to, in effect, capitalize on this general spirit of cooperativeness and to then expect retailers to always be left holding the bag for flaws that occur further up in the supply chain is often simply unfair, and may not create the proper incentives for manufacturers to prevent or correct product safety issues before the products reach consumers. At the very least, this trend or policy, if indeed it is a new agency policy, should be thoroughly explained and openly discussed at the CPSC.

Mr. Chairman, the years of adjustment immediately following enactment of the CPSIA were difficult and, at times, even chaotic. Things seemed to have regularized somewhat in recent years, and NRF and its members recognize and appreciate the recent efforts of this Commission and the dedicated CPSC staff to try bring additional clarity and stakeholder engagement to the agency’s still-changing policies and practices; but much more remains to be done on this front.

The traditional agency model of “everything invented here” no longer works in the real-time world of supply chain dynamics. And several of the agency’s pending and possible future regulatory actions, including in the incredibly complex and resource-intensive arena of chemical regulation of products, may indicate that more unnecessary chaos is yet to come. NRF and its

members are dedicated to product safety and the mission of the CPSC, and we are dedicated to continued, positive engagement with the agency and its leaders to ensure that the safety of American families continues to be our mutual and primary objective.

Thank you again Mr. Chairman and Members of the Subcommittee for the opportunity to appear before you. I would be happy to address any questions you have.