



Graham Owens
Director, Legal & Regulatory Policy

April 9, 2019

The Honorable Janice D. Schakowsky
Chairman
Subcommittee on Consumer Protection & Commerce
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515

The Honorable Cathy McMorris Rodgers
Ranking Member
Subcommittee on Consumer Protection & Commerce
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Schakowsky and Ranking Member McMorris Rodgers,

On behalf of the National Association of Manufacturers (NAM), the largest industrial trade association and the voice for the almost 13 million men and women who make things in America, I submit these comments for the record for the April 9, 2019 hearing entitled “Protecting Americans from Dangerous Products: Is the Consumer Product Safety Commission Fulfilling Its Mission?”

Manufacturers of consumer products are committed to providing safe products and ensuring a well-functioning and credible product safety regime — one that gives all stakeholders the necessary confidence that products meet all applicable safety standards and regulations. To support this commitment, the NAM has long been a leader in the fight to improve the Consumer Product Safety Act and the Consumer Product Safety Improvement Act to ensure the laws works for consumers, manufacturers, and importers. In developing and maintaining such a credible product safety regime, the NAM understands and supports the need for effective regulation and oversight by Congress and federal agencies such as the Consumer Product Safety Commission (“CPSC” or “Commission”) because it complements manufacturers’ long-time commitment to safety and excellence.

To this end, we applaud the subcommittee for holding this hearing and your ongoing leadership in improving the safety of consumer products while seeking to minimize unnecessary burdens imposed on stakeholders. The subcommittee’s attention to the effectiveness of agency regulations, as well as their impact on manufacturers in the United States, is immensely important, and the NAM particularly appreciates that special attention has been focused on the CPSC. As an independent regulatory agency, the CPSC is not beholden to various laws and executive orders that direct executive branch agencies to employ sound regulatory principles or subject the data and science used by the CPSC to justify policy decisions to review by an objective third party. For these reasons, congressional oversight of the CPSC is particularly important in order to ensure the Commission works in collaboration with industry in advancing the CPSC’s congressionally-mandated mission of protecting the public from unreasonable risks of harm.

Leading Innovation. Creating Opportunity. Pursuing Progress.

Manufacturing in the United States

Manufacturing is enjoying a resurgence in the U.S., with renewed growth occurring after years of dwindling output and a diminishing percentage of the labor force. According to the NAM's most recent quarterly outlook survey, from Q1 of 2019, today's manufacturing sector is strong, confident, and optimistic.¹ For the ninth quarter in a row, manufacturers reported record optimism — with an average of 91.8 percent saying they were positive about their own company's outlook, compared to an average of 68.6 percent across 2015 and 2016.² Thanks to this optimism, manufacturers are growing, investing, and creating jobs.

In the most recent data, manufacturers contributed \$2.33 trillion to the U.S. economy in the first quarter of 2018.³ This figure has risen since the second quarter of 2009, when manufacturers contributed \$1.70 trillion.⁴ Over that same time frame, value-added output from durable goods manufacturing grew from \$0.86 trillion to \$1.26 trillion, with nondurable goods output up from \$0.84 trillion to \$1.07 trillion.⁵ In 2017, manufacturing accounted for 11.6 percent of GDP in the economy.⁶ Manufacturing also has the highest multiplier effect of any economic sector. For every \$1.00 spent in manufacturing, another \$1.89 is added to the economy.⁷ In addition, for every individual working in manufacturing, there are another four employees hired elsewhere.

Improving the Effectiveness of the CPSC

A. Congress Should Promote, Not Discourage, Open Communications Between Manufacturers and the CPSC

Congress plays a critical role in ensuring a well-functioning product safety regime for many reasons, but one of the most important aspects of this role is fostering a system that encourages industry and the CPSC to work as partners rather than combatants. Indeed, Congress made it clear in the Consumer Product Safety Act (CPSA) that the CPSC must work closely with industry when it mandated that the Commission first rely on voluntary standards created by industry where the standards would eliminate or adequately reduce the risk of injury addressed and there is likely to be compliance with the voluntary standards.⁸ In other words, the CPSC has no authority to act unilaterally to impose mandatory standards unless it first works with industry to create and utilize voluntary standards.

The CPSA also requires industry to work closely and communicate regularly with the CPSC. Section 15(b) of the CPSA requires every manufacturer, importer, distributor, and retailer of consumer products to report immediately to the Commission when the firm obtains information which reasonably supports the conclusion that such product distributed in

¹ NAT'L ASS'N OF MFRS., NAM MANUFACTURERS' OUTLOOK SURVEY: FIRST QUARTER 2019 (March 5, 2019), <https://www.nam.org/outlook/>.

² *Id.*

³ NAT'L ASS'N OF MFRS., TOP FACTS ABOUT MANUFACTURING (last visited April 8, 2019), <https://www.nam.org/Newsroom/Facts-About-Manufacturing/>.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ 15 U.S.C. § 2056(b)(1).

commerce contains a defect which could create a substantial product hazard or that such product creates an unreasonable risk of serious injury or death.⁹

Indeed, Congress felt so strongly about the need for consumer product manufacturers to openly communicate with the CPSC—particularly in reporting potential problems with their products without fear that the reputation and brand of a manufacturer is not irreparably harmed unless the CPSC first ensures that the information reported is accurate and fair—that it included multiple sections in the CPSA prohibiting the Commission from disclosing certain information about manufacturers. Section 6(b) “prohibits the Commission from disclosing information about a consumer product that identifies a manufacturer unless the Commission has taken “reasonable steps” to assure (1) that the information is accurate, 2) that disclosure of the information is fair in the circumstances, and 3) that disclosure of the information is reasonably related to effectuating the purposes of the CPSA and of the other laws administered by the Commission.”¹⁰ Similarly, Section 6(a) of the CPSA prohibits the Commission from disclosing confidential business information.

Legal obligations aside, however, it is simply in the best interest of consumers’ safety for the CPSC and industry to work collaboratively. This collaborative relationship includes the need for there to be an open and direct line of communication between manufacturers and the CPSC. As such, Congress should use its oversight authority to continue encouraging an open and cooperative relationship between industry and the CPSC to ensure that the Commission is the first organization manufacturers turn to for guidance when they have questions or concerns regarding a product’s safety.

B. Make Fast-Track Fast Again

Instituted by the CPSC in August 1995, the fast-track program provides companies who are willing and able the ability to move quickly with a voluntary recall of their product. The fast-track program eliminates procedural steps from the traditional recall process, which includes CPSC staff’s technical evaluation of a product to determine if a defect exists that could harm consumers. This procedure, called a preliminary determination, can take several months. Shortly after its introduction, the fast-track program garnered immense praise for its effectiveness, being named a 1998 winner of Harvard University and the Ford Foundation’s prestigious Innovations in American Government award, an awards program of the Ford Foundation and Harvard bestowed upon ten programs that “have taken a fresh approach to a problem in government.”¹¹

The issue, however, is that the program’s signature quality—that of being fast—seems to have been recalled itself. Often, this fast track program is slowed down not by any substantive reviews by either the agency or the manufacturer whose product is being voluntarily recalled, but rather by the Commission disagreeing with the wording of a press release. This bureaucratic hold up is not good for consumers, the Commission, or manufacturers. Congress should therefore use its oversight authority to ensure the Commission works to get the fast track program fast again to ensure that unsafe consumer products can be recalled voluntarily as quickly and efficiently as possible.

⁹ 15 U.S.C. § 2064(b).

¹⁰ 15 U.S.C. § 2055(b).

¹¹ <https://www.cpsc.gov/Business--Manufacturing/Recall-Guidance/Innovations-in-American-Government-Award-Fast-Track-Recall-Program>.

Improving Regulations Issued by the CPSC

The president does not exercise similar authority over independent regulatory agencies like the CPSC as he does over other agencies within the executive branch. Independent agencies are not required to comply with the same regulatory principles outlined in executive orders and OMB guidance as executive branch agencies and often fail to conduct meaningful analysis to determine expected benefits and costs.

Congress should require independent regulatory agencies to conduct robust cost-benefit analyses of their significant rules and subject their analysis to third-party review through the Office of Information and Regulatory Affairs (OIRA) or a similar office. Congress should also confirm the president's authority over these agencies. Consistency across the government in regulatory procedures and analysis would only improve certainty and transparency of the process.

Independent regulatory agencies are required to comply with the Regulatory Flexibility Act (RFA), but agencies are adept at utilizing loopholes in current law to escape many of the substantive requirements as Congress intended. Independent regulatory agencies are not accountable to the OIRA, however, nor does OIRA participate in interagency review of their rules, accountability mechanisms to ensure executive branch agency compliance with the RFA are even less meaningful for them.

Issuing more efficient and effective regulations not only requires oversight, but also the collection and utilization of data to ensure policy is based on evidence rather than anecdotes. For modern manufacturers, data-driven decisions are central to 21st-century business operations. Federal agencies, on the other hand, often employ 20th-century technologies, struggling to collect data—and share that data—among agencies. As noted above, independent agencies are even less likely to participate in interagency coordination and review, thus perpetuating this problem. As a result, agencies go about the regulatory process without an understanding of what other agencies are doing in the same space. Manufacturers bear the burden of this process, often sending the same information to multiple agencies or even multiple departments within the same agency.

Manufacturers stand ready to work with Congress and the CPSC to ensure that the agency discharges its critical mission in a responsible, collaborative, and effective manner. We all share the Commission's goal of ensuring that products on the market are safe, and that consumers can trust the products they purchase.

Sincerely,

A handwritten signature in black ink, appearing to read 'Graham Owens', written in a cursive style.

Graham Owens

cc: Members of the U.S. House of Representatives' Committee on Energy and Commerce