



April 15, 2021

Commissioners
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

Re: Proposed Agenda and Priorities of the CPSC for FY 2021 and 2022.

Dear Acting Chairman Adler and Commissioners:

The National Retail Federation (NRF) appreciates the opportunity to submit these written comments in conjunction with the Commission's recent hearing regarding its agenda and priorities for the remainder of FY 2021 and FY 2022.

NRF, the world's largest retail trade association, passionately advocates for the people, brands, policies and ideas that help retail thrive. From its headquarters in Washington, D.C., NRF empowers the industry that powers the economy. Retail is the nation's largest private-sector employer, contributing \$3.9 trillion to annual GDP and supporting one in four U.S. jobs — 52 million working Americans. For over a century, NRF has been a voice for every retailer and every retail job, educating, inspiring and communicating the powerful impact retail has on local communities and global economies.

NRF has appreciated its close relationship over the years with the Commission and individual commissioners. We have many times outlined our priorities and concerns about the agency and its activities, but always in a positive way and always with a view toward making consumer products as safe for American families as possible. Toward that end, let me reiterate some of our ongoing suggestions and concerns as well as highlight those over emerging safety issues.

Therefore briefly, here are NRF's key recommendations for the CPSC:

1. **Recalls and Civil Penalties.** First, it continues to unfortunately be the case that, all too often, if the agency finds it difficult to identify and engage in a recall with a (US) manufacturer/importer of a particular product, their first inclination is to seek the recall from the retailer or retailers that have sold the product. As the commissioners and all agency staff know, where the retailer is not the manufacturer or importer of record for a particular product, it is difficult if not impossible for the retailer to even be aware of let alone understand a particular safety issue, especially if that issue is complex and latent (hidden). Therefore, we urge greater efforts, where possible, to try and identify and engage with the actual manufacturer/importer of the product to undertake the recall, of course in cooperation with relevant retailers.

As we have stated for the record in the past, we also believe it is generally abusive and extra-statutory for the Chairman of the agency to issue unilateral product safety “warnings” to consumers, especially if the retailer is not the intended party to undertake any necessary recalls. In such cases, retailers are often deluged with consumer inquiries and/or complaints about products that, at the time of the unilateral release, are perfectly legal to sell. There are several prominent examples of these occurrences, but to the extent they will continue to exist, we urge that policy to be halted. Relatedly, as we have noted in the past, there have been a number of instances cited by our members where the CPSC has demanded issuance of a recall press release even before the mechanisms are in place at various retailers (whether for bricks-and-mortar or online sales). This is unfair (and often unsafe) to both consumers and retailers where they are the recalling entity.

As many commentators (and members of Congress) have noted in recent years, the CPSC’s award-winning Fast Track Program has appeared to have increasingly become bogged down in more and more bureaucracy (generally relating to internal reviews and “sign-offs” by various offices within the agency), therefore often taking the “fast” out of Fast Track. This is to the detriment of consumers, since the primary intent of the program was to get recall information to consumers as quickly as possible, since the “traditional” recall process can take several weeks or even months. This continues to be a concern among our members.

Finally, as many in the industry and the media have noted, the recent spate of record high civil penalty settlements has many among all industry groups very concerned. If the notion is that, with the new Administration, there is a “no limit” attitude among CPSC staff with regard to civil penalties, such may look good for certain commissioners or in the eyes of some advocacy groups, but it will only serve in the long run to quell the general desire to fully report to and cooperate with the CPSC among companies—particularly smaller companies—worried that a \$20+ million civil penalty will literally put them out of business. That does not serve either the interests over time of consumers or the CPSC and of course in many instances is flatly overreaction by the agency.

2. **Imports.** Inspections and potential enforcement action by the CPSC are a very high concern for our members where they are in fact are the importers of record for consumer products. Overall, we think the CPSC is doing an efficient and effective job in this regard, but there have been instances reported by our members that inspections and/or sample testing by the CPSC have taken an inordinate amount of time, particularly where testing may be complex or not governed by clear product safety standards. It should absolutely be a priority of the agency to eliminate such instances of delay, which of course often costs the importer dearly, both in terms of expense and customer relations and engagement.

Also, regarding imports, we urge the CPSC to move expeditiously (as have several other agencies) to fully adopt a “Trusted Trader Program,” whereby known responsible companies are not treated the same at port as less reputable firms. NRF understands that there are many factors for the CPSC to carefully consider when fully implanting such a program, and it has the experience and expertise, both among its members and staff, to engage with the agency to implement this in a way that benefits both importers and consumers going forward.

3. **Patchwork State Standards.** As the Commission is well aware, states continue to adopt all types of varying laws, regulations and requirements for the safety of consumer products, especially in the area of the chemical content of children’s and other consumer products. This of course is making it increasingly difficult (and sometimes impossible) for sellers of consumer products to comply with all of these laws and standards simultaneously. This has been and increasingly is an untenable position for importers and retailers. While we fully understand that it is not within the power or jurisdiction of the agency to stop such state laws and regulations from being enacted, where there is a proper jurisdictional role for the CPSC to adopt a uniform national standard (as the agency has just done—under congressional mandate of course—with regard to upholstered furniture flammability) may be both necessary and appropriate, with adequate stakeholder input of course and with due consideration to the preemptive effect of such actions. This should absolutely be a priority for the agency going forward.
4. **Permanent Stakeholder Advisory Group.** As NRF has urged for a number of years, the CPSC should establish a permanent stakeholder advisory group, whereby key staff (and of course commissioners) could engage learned industry and other stakeholders on the issues outlined above and many other current and emerging issues of importance to both the agency and relevant stakeholders. While NRF has appreciated the various webinars and other discussions that the CPSC has hosted in recent years, such discussions are typically ad hoc. NRF believes that a permanent group that regularly engages with the agency on all issues of mutual concern would benefit both sides of the equation.
5. **Prioritization of Hazards.** It has also been a long-standing desire of the CPSC to finally begin to prioritize product hazards (which it generally does for internal use) but then to translate that prioritization into different types and levels of product safety recalls and/or alerts. This not only makes common sense, but it helps avoid consumers simply tuning out recall releases since many if not most do not reflect any imminent and/or relevant danger to the consumer. “Recall fatigue” is a real phenomenon, as the agency well knows, and it is high time the agency moves to fully address it in the general ways we have suggested.
6. **Technology/Emerging Issues.** There are a number of emerging technology issues that we know the CPSC is attempting to put its arms around, which in many cases are very technical and complex. These include artificial intelligence, the internet of things (IoT), privacy and ecommerce-related issues. While there may be a role for CPSC with respect to these and other technology issues, we would encourage CPSC to engage with other technology-focused agencies that have long-standing expertise on these issues, including CISA, FTC and NIST. For example, with respect to IoT issues, NIST is currently developing standards for IoT security pursuant to the IoT Cybersecurity Improvement Act of 2020. If CPSC looks at options to more actively address IoT issues, it should coordinate closely with NIST and other federal stakeholders to avoid redundancy and conflicting guidance. We would also reiterate our desire for a permanent stakeholder advisory group to help the agency on a routine and predictable schedule, and to ensure that compliance and/or regulatory actions are thoughtfully developed and vetted, and do not inadvertently stifle innovation and investment in these areas.

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Thank you very much for the opportunity to submit these comments, and I would be happy to address any of the issues I have raised on behalf of our NRF members (or other issues as desired) with commissioners or staff at any time.

Sincerely,

A handwritten signature in black ink, appearing to read "David French".

David French
Senior Vice President
Government Relations

Cc: Alberta Mills, Secretary, U.S. Consumer Product Safety Commission