

October 18, 2016

The Honorable Elliot F. Kaye, Chairman
The Honorable Robert S. Adler, Commissioner
The Honorable Ann Marie Buerkle, Commissioner
The Honorable Marietta S. Robinson, Commissioner
The Honorable Joseph P. Mohorovic, Commissioner

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

Dear Chairman Kaye and Commissioners:

The undersigned organizations write to express concern with the announcement at the U.S. Consumer Product Safety Commission's August 31, 2016, decisional meeting that the Commission expects to begin consideration in November 2016 of final rules on *Voluntary Remedial Actions and Guidelines for Voluntary Recall Notices* and *Disclosure Under Section 6(b) of the Consumer Product Safety Act*. We represent manufacturers of consumer products, their suppliers, retailers and other key stakeholders that would be greatly impacted by these rulemakings. Our collective members are committed to providing safe products and assert that the most effective product safety regime must be based on a cooperative relationship between the Commission and stakeholders in the private sector.

1 CPSC Docket No. CPSC-2013-0040
2 CPSC Docket No. CPSC-2014-0005

For roughly four decades, the private sector has worked hand-in-hand with the CPSC in protecting consumers. Our members and the Commission have a shared commitment to product safety, and we firmly believe that any significant changes to policies and processes should be developed cooperatively. Therefore, we urge the Commission to withdraw these two proposed rules and work cooperatively with interested parties to develop strategies that will improve the effectiveness of recalls and accomplish the desired policy objectives outlined by the Commission in its notices of proposed rulemaking. We further ask the Commission to formalize stakeholder engagement on these and other important issues. Through formal engagement with manufacturers, retailers, consumer advocacy organizations and others, the Commission can better maximize the effectiveness of product safety programs and minimize unnecessary burdens on both regulated entities and the CPSC staff. It will also provide the CPSC with additional resources for responding to emerging issues, whether they be product-focused or a newly identified need to modify Commission policies and processes.

I. Impacted Stakeholders Have Significant Concerns with the Proposed Rules

A variety of industry stakeholders, many of whom are signatories to this letter, strongly objected to both of these proposed rules when they were issued in 2013 and 2014, respectively, including on

grounds that the proposals exceeded the Commission's statutory authority. We have continued to voice our concerns with the agency and Congress since the proposed rules were published. From a policy standpoint, our paramount concern with both proposed rules is that they will harm the CPSC's and industry's efforts to work collaboratively to effectively protect consumers. Nearly all public comments to the proposal on voluntary recalls expressed this concern. The public also discussed significant concerns over the proposed rule on Section 6(b). If the Commission moves forward with consideration of final rules on these proposals, which appears to be the case after the August 31 meeting, the Commission could advance rules without engaging in an important stakeholder dialogue so critical to the development of useful and legally sound rules by any agency and could in fact impede consumer protection activities.

Industry has repeatedly requested that the Commission formalize stakeholder engagement on these two proposals and other key policy issues so that we can work together to improve the processes. We believe that industry and the CPSC share a common goal to improve the effectiveness of recalls using real-world and practical measures and lessen the burdens associated with the Section 6(b) process on the CPSC staff, while ensuring the Commission complies with the statutory requirements that information it releases is fair and accurate. Without stakeholder engagement, the Commission's advancement of these rules could chill the strong and cooperative relationship it has with industry—a relationship that is a fundamental element of the CPSC's and industry's success in protecting consumers from potentially hazardous products.

II. The Commission Should Withdraw the Rules and Work Cooperatively with Stakeholders to Identify Solutions to Key Process and Policy Issues

We support a collaborative effort between the agency and industry to promote product safety for consumers, improve the effectiveness of recalls and reduce the unnecessary burdens imposed on both regulated entities, the Commission and its staff. We provide our commitment to actively engage Commissioners and the staff on ways to achieve those goals. Unfortunately, the proposed rules establish a baseline that hinders efforts to efficiently and effectively identify innovative reforms. The response from the public to the proposed rule on voluntary recalls was overwhelmingly negative, with many stakeholders urging the Commission to withdraw the proposed rule for legal and policy reasons. Among other points, the proposed rule would create unnecessary barriers to the use of both Fact Track and other voluntary recall processes. Comments by regulated entities in response to the proposed rule on Section 6(b) highlighted numerous provisions that if finalized would either violate the statute or seriously impede the Commission's compliance with its statutory requirements.

By withdrawing the proposed rules, the Commission and stakeholders can focus on solutions for advancing safety and not miscellaneous provisions of regulatory proposals that industry unanimously asserts harms our collective ability to protect consumers. Any proposal to reform key policy issues that involve industry and retailers—as partners with the CPSC—in advancing product safety objectives should be developed cooperatively with all impacted parties—the Commission, industry and consumer groups. Therefore, the Commission should withdraw these unilaterally advanced proposed rules and work together as partners with stakeholders to craft reforms that truly improve our abilities to best protect consumers while minimizing burdens on both the CPSC staff and other impacted parties.

III. The Commission Should Formalize Proactive Engagement with External Stakeholders

As the Commission considers significant changes in its longstanding policies on voluntary recalls, corrective action plans and the public disclosure of information, we urge the Commission to engage

directly with stakeholders, including manufacturers, retailers and consumer advocacy organizations. Over the past three years, Congress and many organizations have requested that the Commission improve its engagement with interested parties on these proposed rules and their underlying policy issues, as well as other high profile issues like the CPSC's activities surrounding imports. We were therefore very concerned to learn that the Commission intends to consider "compromise" regulatory proposals and may move forward on two highly controversial rulemakings without having obtained any significant public engagement or input from stakeholders two years after the original public notice and comment periods ended. Stakeholders submitted detailed and thoughtful analyses of the proposals and the many complex policy and legal issues they raise. These responses addressed the core of the Commission's proposals, and any movement on the underlying proposals will necessarily require a rethinking, and thus new proposals. The Commission's failure to acknowledge stakeholders' concerns, or to hear directly from stakeholders about alternatives that could achieve the objectives within the existing statutory framework, indicates an unwillingness to have the type of cooperative dialogue it encourages with the entire voluntary recall process. We strongly urge the Commission to formalize engagement with all interested parties to thoughtfully consider public input before proceeding with any further action on the voluntary recall and Section 6(b) proposed rules.

IV. The Commission Should Hold Public Workshops Before Advancing Proposals

At the March 2016 ICPHSO meeting, Chairman Kaye announced that the Commission would hold public workshops on recall effectiveness and ways to improve the Section 15(b) reporting process, respectively. The CPSC last formally examined recall effectiveness in 2003, when it held public meetings on (1) motivating consumers to respond to recalls; (2) employing new tools for recall effectiveness; and (3) measuring recall effectiveness. As data has improved and communication and consumer behavior have evolved, it would make sense to hold another workshop to reassess the conclusions that came out of the 2003 discussion. In addition, the workshop should examine the objectives outlined in the notice of proposed rulemaking for voluntary recalls—*prior* to developing further proposals or a final rule.

The findings from both public workshops announced by the Chairman would provide invaluable information that would improve recall effectiveness and the voluntary recall process, exchanges of information between the private sector and the Commission and processes employed by the CPSC in disclosing information that is fair and accurate as required by statute. As has been expressed many times by the Commission, Congress and industry, a strong cooperative relationship between the CPSC and industry is essential to protecting the public. To ensure that any changes to the agency's policies and processes surrounding voluntary recalls, corrective action plans and the public disclosure of information subject to Section 6(b) advance safety and are in accordance with statutory requirements, the Commission must honor its commitment that it engage stakeholders. At a minimum, public workshops must be held before new or additional proposals are developed and advanced.

V. Any Revised Proposals Should Be Issued for Public Comment

The Commission must provide the public an opportunity to review and provide feedback on any new proposals put forth on voluntary recalls, corrective action plans and Section 6(b). "Compromise" proposals would necessarily be "new," and thus require such additional public input. Further, the Commission must commit to thoughtfully consider this public input. These actions would align with the Commission's commitment to openness and transparency, as expressed publicly and in testimony before Congress. Most importantly, the success of the voluntary recall process is directly dependent upon the work of manufacturers, retailers, consumer advocacy organizations and others. Their input must be given thorough consideration and public comments must not be dismissed by the

Commission. As expressed, our members share the Commission’s commitment to protect consumers and are often the primary actors—working cooperatively with the Commission—on informing consumers and removing potential hazards from the marketplace. As such, the Commission should not unilaterally advance any new or revised proposals without issuing notices for public input.

VI. Conclusion

On behalf of our members, we request the CPSC withdraw the proposed rules on voluntary recalls and Section 6(b), respectively. The proposed rules establish significant challenges in meeting the consumer protection objectives we share with the Commission. The Commission should embrace the prospect of developing reform proposals cooperatively with impacted stakeholders, including manufacturers, retailers, consumer advocacy organizations and others. The Commission has committed to working with stakeholders in an open and transparent manner. We urge the Commission to formalize proactive engagement with interested parties so that the Commission’s commitment is realized in actions and not just words. We are committed to working together with the CPSC and other stakeholders to advance consumer protections and improve the Commission’s processes.

Sincerely,

Air-Conditioning, Heating, and Refrigeration Institute

American Apparel & Footwear Association

American Association of Exporters & Importers

American Cleaning Institute

American Fiber Manufacturers Association

American Pyrotechnics Association

American Sportfishing Association

Architectural Woodwork Institute

The Art and Creative Materials Institute, Inc.

Association of Home Appliance Manufacturers

Baby Carrier Industry Alliance

Bicycle Product Suppliers Association

The Carpet and Rug Institute

Connecticut Business & Industry Association

Consumer Specialty Products Association

Consumer Technology Association

Fashion Jewelry & Accessories Trade Association

Halloween Industry Association

Home Furnishings Association

Illinois Manufacturers' Association

International Sleep Products Association

Juvenile Products Manufacturers Association

Lighter Association, Inc.

Mississippi Manufacturers Association

Motorcycle Industry Council

National Association of Manufacturers

National Candle Association

National Council of Textile Organizations

National Retail Federation

North Carolina Chamber

Outdoor Industry Association
Outdoor Power Equipment Institute, Inc.
Power Tool Institute
Recreation Vehicle Industry Association
Recreational Off-Highway Vehicle Association
Resilient Floor Covering Institute
Retail Industry Leaders Association
Society of Glass and Ceramic Decorated Products
Society of the Plastics Industry, Inc.
Specialty Equipment Market Association
Specialty Vehicle Institute of America
Sports & Fitness Industry Association
Toy Industry Association
U.S. Chamber of Commerce
Upholstered Furniture Action Council