



1700 N. Moore Street, Suite 2250, Arlington, VA 22209
Phone: (703) 841-2300 Fax: (703) 841-1184
Email: info@rila.org Web: www.rila.org

September 16, 2009

Todd A. Stevenson, Secretary
Office of the Secretary
U.S. Consumer Product Safety Commission
Room 502
4330 East West Highway
Bethesda, MD 20814

**Re: Notice of Availability of a Statement of Policy: Testing of Component Parts With Respect to Section 108 of the Consumer Product Safety Improvement Act
74 FR 41400 (August 17, 2009)**

Dear Mr. Stevenson:

The Retail Industry Leaders Association (RILA) appreciates the opportunity to comment on the Consumer Product Safety Commission (“Commission” or “CPSC”) Statement of Policy: Testing of Component Parts With Respect to Section 108 of the Consumer Product Safety Improvement Act (74 FR 41400, August 17, 2009).

By way of background, 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 suppliers--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.

Component Testing

RILA agrees with the CPSC staff that component testing of children’s toys and child care articles is supported by the language in the Consumer Product Safety Improvement Act of 2008 (“CPSIA”). Testing the entire product (plastic and non-plastic components) does not effectively achieve the intent of the CPSIA to protect children from phthalate exposure, as phthalates by definition are plasticizers, and would not be found in non-plastic components during industry-accepted manufacturing practices. In addition, as noted by the staff, testing the plastic and non-plastic components together to get an aggregate phthalate total would dilute the actual concentration of the phthalate content in the plastic components. However, composite testing of plastic components should be permitted, similar to the compositing permitted for lead in coatings, because the risk of dilution is absent, but the cost-reduction benefits of limiting the number of tests conducted upon an individual component remain.

Component Samples Should Be Allowed to be Tested

RILA believes the staff should take an additional step to allow test labs to request components of the finished product from the finished product manufacturers rather than requiring the finished product manufacturer to submit enough finished product samples to grind up the components that will need to be tested. Because of the destructive nature of phthalate testing, many finished product manufacturers incur large expenses in sending samples that will be destroyed when the labs disassemble the product into its component parts for testing. In implementing the lead testing requirements of the CPSIA, test labs frequently have to request large numbers of samples from finished product manufacturers to obtain sufficient material to complete the requisite test, sometimes imposing huge cost burdens on suppliers with products that have small profit margins or low retail values.

As an example of the unnecessarily high testing costs associated with requiring components of finished products to be used for testing (rather than only the components themselves), in the case of lead, one test lab requested a high sample number of light sticks to test the white coating used for the date code for lead. These lightsticks were packaged in two different manners: single pack (retail value \$1) and 10-pack assortment (retail value \$4). In this particular example, the test lab wanted 5,000 samples of the 10-pack assortment, which would have cost the supplier approximately \$20,000 just in sample costs, not including the testing expenses or shipping costs.

Inaccessible Component Parts

The CPSC should address accessible versus inaccessible parts with regard to component testing for phthalates. RILA believes the CPSC should only require accessible component parts to be tested for phthalates. If a component is inaccessible to a child, then by definition, there is no risk that a child could be exposed to phthalates from such a component.

For the three phthalates that are under the interim prohibition under section 108(b) of the CPSIA (DINP, DIDP, and DnOP), the statute already contains an accessibility standard:

Section 108(b)(1)--“. . . any children’s toy that can be placed in a child’s mouth. . .”

Section 108(e)(2)(B)--“. . . a toy can be placed in a child’s mouth if any part of the toy can actually be brought to the mouth and kept in the mouth by a child so that it can be sucked and chewed. If the children’s product can only be licked , it is not regarded as able to be placed in the mouth. If a toy or part of a toy in one dimension is smaller than 5 centimeters, it can be placed in the mouth.”

For the three phthalates that are permanently prohibited (DEHP, DBP, and BBP) and for child care articles, the CPSC should develop and specify an accessibility standard.

Testing Method

The CPSC noted in its Statement of Policy that manufacturers may “use an alternative [testing] approach if the approach satisfies the requirements of the CPSIA.”¹ RILA believes the CPSC should either standardize the test method, or approve multiple industry-accepted test methods, such as those developed by the American Society for Testing and Materials (ASTM) or the U.S. Environmental Protection Agency.

RILA also believes the CPSC should approve reasonable screening methods, such as pyrolysis, because such screening methods will help make available much-needed laboratory time for other products, as well as provide a cost-benefit to manufacturers and ultimately the consumers.

RILA recommends that the CPSC should define which substrates should be tested (and should not be tested) for phthalates and should dictate which test method should be used when testing for phthalates in toy and child care article components. Allowing test labs to choose which components to test and which test method to employ when testing for phthalates may lead to inconsistent test results that will delay the test process and cause manufacturers to incur additional expenses.

Reasonable Implementation Period

Retailers have already individually developed their own testing protocols to ensure that products comply with the CPSIA phthalate requirement. RILA anticipates that this testing will continue until the new testing requirements go into effect. Once the CPSC issues its guidance for phthalate testing, sufficient time will be necessary to convert systems and processes and to educate the supply chain on the new testing standard. RILA respectfully requests that the CPSC require the new testing standard to apply on products manufactured one year after the final testing guidance is provided.

Conclusion

RILA members place the highest priority on ensuring the safety of their customers and the products sold to them. RILA appreciates this opportunity to comment on the Commission’s Statement of Policy: Testing of Component Parts With Respect to Section 108 of the CPSIA. Should you have any questions about the comments as submitted, please don’t hesitate to contact me by phone at (703) 600-2046 or by email at stephanie.lester@rila.org.

Sincerely,



Stephanie Lester
Vice President, International Trade

¹ Statement of Policy: Testing of Component Parts With Respect To Section 108 of the Consumer Product Safety Improvement Act.