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February 5, 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: **Section 102 Third-Party Testing of Component Parts**

Dear Mr. Stevenson:

Please accept the following comments from the Retail Industry Leaders Association (RILA) on behalf of our members in response to the Consumer Product Safety Commission's ("Commission" or "CPSC") Request for Comments and Information; Third-Party Testing of Component Parts; Section 102 of the Consumer Product Safety Improvement Act ("CPSIA" or "Act"). The issue of third-party testing of component parts is of the utmost importance to the retail industry and our suppliers. RILA believes that the language in the CPSIA allows certification of final children's products to be based on testing of either the finished children's product, or component samples that are identical in all material respects to the input material used on the finished product.

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.

Requirements Under CPSIA

Section 102(a)(1) provides that "every manufacturer of a product which is subject to a consumer product safety rule under this Act or similar, rule, ban, standard, or regulation under any other Act enforced by the Commission...shall issue a certificate which (A) shall certify, based on a test of each product or upon a reasonable testing program, that such product complies..."

Section 101(a)(2) requires that "every manufacturer of...children's products...shall (A) submit sufficient samples of the children's product, or samples that are identical in all material respects, to a third party conformity assessment body accredited under paragraph (3) to be tested for compliance..."

RILA has previously commented to the Commission in response to rulemakings and requests for comments and information on the need for the Commission to allow for component testing. Such component testing would have to be based upon a reasonable program that, when combined with other provisions of the CPSIA (i.e. general conformity certificates, tracking labels, independent third-party certification, etc.) and other laws, help build a multi-layered approach to product safety without adding redundant and costly testing associated with having to test each component after final assembly. The business community currently lacks the certainty and clarity needed to implement the CPSIA with respect to component testing.

In light of the guidance letter from the Chairmen of the House and Senate Committees of jurisdiction urging the Commission to promulgate a final rule on this matter before February 10, 2009, we urge the Commission to act expeditiously to allow the use of component testing to certify products.¹ RILA is not aware of any products for which component testing would be inappropriate or ineffective. Nevertheless, if the Commission determines that some products should not be eligible for component testing, RILA suggests that the Commission create a negative list of specific products for which it determines that component testing is not practicable, effective or desirable. Any negative list should be narrow in scope; products should be included in a negative list only when other safeguards, such as periodic confirmation testing of the finished product or supplier certifications, would not eliminate the risk of contamination.

Duplicative Testing is Costly and Unnecessary

In the case of apparel, a variety of components of apparel products, e.g. zippers, rivets, snaps, buttons, rhinestones, and dyes for screen prints, are used in many styles of apparel carried by different retailers. For example, a specific size of rivet from one of the major hardware manufacturers may be used in six styles of girls' jeans for seven different retailers. Using component testing, the rivet would only be tested once by the rivet manufacturer rather than being tested 42 separate times if testing of the final product is required. In this example, if the cost of lead testing is \$100 - \$200 per component, then the cost of final product testing would be \$4200 - \$8400 for just that component. Other examples of this duplicity were provided to the Commission during the January 22 public meeting with RILA and the American Apparel and Footwear Association to discuss apparel. By now, the Commission has undoubtedly received evidence from several sources that final product testing is extremely costly and duplicative.

Under component testing, each apparel supplier would base its certification of compliance for each of the styles it produces on the testing from the rivet manufacturer along with testing of all the other components used in that product. Similarly, a manufacturer of screened t-shirts for boys would be allowed to use testing of the fabric and tests of the inks used in each screen print as the basis for a compliance certification rather than requiring the retesting of the same inks multiple times if the inks are used in ten different screen designs.

¹ January 16, 2009 letter from Congressman Henry A. Waxman, Chairman, House Committee on Energy and Commerce, Congressman Bobby L. Rush, Chairman, House Subcommittee on Commerce, Trade, and Consumer Protection, Senator John D. Rockefeller, Chairman, Senate Committee on Commerce, Science, and Transportation, and Senator Mark L. Pryor to CPSC Commissioners Nancy A. Nord and Thomas Hill Moore (Jan. 16, 2009).

Meanwhile, maintaining the current requirement for final product testing effectively perpetuates a cost-prohibitive barrier that prevents smaller manufacturers and retailers from being able to comply with the new CPSIA requirements. For larger companies, duplicative testing requirements divert scarce resources from being spent more effectively and efficiently to truly advance product safety.

Component Testing is More Flexible, Effective, and Cost-Efficient

Component testing would help to alleviate the current backlog that retailers and manufacturers are experiencing with testing labs. Some RILA members report that testing lab capacity is insufficient to meet the significantly increased demand to test the plethora of products covered by the CPSIA and are backed up as a result. These delays, which are reported to average between three to six weeks, add unnecessary additional costs (both financial and non-monetary) for the retail and manufacturing community and exacerbate the already strained testing capacity. As one example, significant time and expense are incurred in testing surface coatings on finished products because labs must first remove the surface coating from the substrate. In some cases, hundreds of units must be destroyed to obtain a sufficient sample of the surface coating. Component testing would eliminate these additional expenses.

Component testing also provides the Commission with the flexibility to exclude certain components or materials from CPSIA testing requirements where those components are inherently lead free. Examples of such components or materials include fabric, paper, wood, and other natural materials. This flexibility is also suggested in the January 16 Congressional letter noted earlier.

Comprehensive Product Safety Programs—Voluntary Supplier Certifications

Reliance on component testing should be one element of a comprehensive quality management program. For example, industry should have the flexibility to incorporate a certification program for manufacturers that would greatly enhance product safety by ensuring consistent safety practices throughout a factory and its production. If a manufacturer can show that it has an adequate quality management program, a proven history of complying with applicable standards, and can certify to such, then third-party testing of the component parts should be allowed, as such methods minimize the risk of putting non-compliant finished products into commerce by identifying issues before the end product is manufactured. Toward this end, RILA is launching a new partnership with the British Retail Consortium to advance and expand a voluntary global supplier certification program for producers of consumer products.

Responses to Specific Items

In response to specific questions outlined by Commission staff in the request for comment and information, RILA offers the following comments:

Q: How the risk of introducing non-compliant product into the marketplace would be affected by permitting third-party testing of the component parts of a consumer product versus third-party testing of the finished consumer product.

A: Performing only unit (or end product) testing does not necessarily mean the product is safer than if the component parts are tested separately. The CPSIA requires testing to be performed on a sample of the children’s product, or a prototype that is “identical in all material respects to the product.” In modern times, the manufacturing process includes making component parts for multiple different products; if testing has to wait until the finished product is available, then it does not allow for correction at the most critical time – while the component part is being manufactured. If component testing were allowed, errors at the raw material or component level could be corrected, which is a more proactive approach than waiting until the end product is completed before testing is allowed to commence. Product safety cannot be guaranteed by final product testing alone, but must be embedded in the entire product development and manufacturing process. Component testing is a critical point in the life cycle of children’s products and is essential in mitigating risk within the supply chain.

Q: The conditions and/or circumstances, if any, that should be considered in allowing third-party testing of component parts.

A: Component testing should be one part of a more holistic product safety regime. Companies can also undertake other safeguards, such as periodic confirmation testing of finished products, supplier certifications, or chain-of-custody documentation.

There are also points in the manufacturing process where testing component parts would be preferable to testing the end product. The CPSIA requires test methods that take into account: “internal harm or injury hazards caused by the ingestion or inhalation of magnets in children’s products; toxic substances; toys with spherical ends; hemispheric-shaped objects; cords, straps, and elastics; and battery-operated toys.” Component testing would be better suited to testing for these potential hazards, as it would allow the manufacturer to find such hazards before building them into the final product, where such hazards may not be readily identifiable, even through a reasonable testing program designed for the finished product.

Q: The conditions, if any, under which supplier third-party testing of raw materials or components should be acceptable.

A: Third-party testing of raw materials or component parts by a supplier should be acceptable if there is some way to show that the raw material or component actually passed testing before it was put into the final product. The test reporting method outlined in the CPSIA hinges on compliance certification of the end product. However, this method could just as easily be applied to third-party testing of raw materials or components by suppliers, which in turn could be used to certify that multiple items in the supplier’s product offering that use the same components or raw materials. Taken together, these various component tests would be used to certify the compliance of the final product.

Chain-of-custody documentation and an audit program are important in a system that allows raw material or component testing. This way, the raw material or component test results could be passed along to the manufacturer that assembles the final product, which then could use this documentation to certify that the entire product conforms to the CPSIA requirements. This

would be especially efficient in situations where suppliers customize similar products for each of several customers. An auditing program would allow for inspection of the documentation for the raw material manufacturer, to make sure the materials or components it is passing along to the end-product manufacturer are what the raw material manufacturer certified as being compliant. Overall, using chain-of-custody documentation and a manufacturer auditing program would allow suppliers to potentially catch safety and compliance issues across multiple similar products before the finished products are assembled.

Q: Whether and how the use and control of subcontractors would be affected by allowing the third-party testing of component parts.

A: If the component testing requirements were based on international quality management standards, the risk of subcontractors who deviate from the requirements would be minimized, as they would be familiar with the applicable standards for the components they manufacture. Raw material control is the only way to centralize control of subcontractors, regardless of sourcing mechanism, because it puts the responsibility of compliance on the most elementary source and ensures consistency on a broader scale. Supplier audits would help build confidence that risk is being properly managed at the subcontractor level, and manufacturers could evaluate the quality of a product and compliance with applicable regulatory requirements through these audits. The result of third-party component testing would have a positive effect on the use and control of subcontractors, as it would provide uniformity and consistency across the board at the base level of the supply chain.

To summarize RILA's comments in response to specific points that CPSC is seeking comment on, a certification process that relies upon component testing, with strong chain of custody documentation requirements that demonstrate that the tested component was used in the final product, will provide at a minimum an equal assurance of the product's safety when compared with requiring the testing of a few samples of final products. Manufacturers already have similar documentation and record keeping requirements in place for any products claiming special customs treatment under a trade preference program. In those instances, upon request from U.S. Customs and Border Protection, manufacturers are required to provide production documentation including the records that support the claim that the required inputs were used in the specific products.

Guidance from Hill Supports Component Testing

RILA supports recent guidance from the Chairmen of the authorizing committees in both the House and Senate concluding that the Commission should provide timely guidance to the business community with respect to component testing. In a January 16, 2009 letter from Congressman Henry A. Waxman, Congressman Bobby L. Rush, Senator John D. Rockefeller and Senator Mark L. Pryor to CPSC Commissioners Nancy A. Nord and Thomas Hill Moore, the Chairmen express reservations that they "do not believe reaching a decision by August 2009 [on whether component testing can be sufficient for certification of products based on third-party testing] represents a sufficiently timely resolution of this issue." Indeed, the letter goes on to say that "the Commission should seek to provide guidance to consumers and manufacturers on this question before the February 10, 2009, deadline..." We agree with this assessment and welcome

immediate guidance from the Commission to allow component testing.

Negative List for Component Testing

Guidance from CPSC General Counsel Cheryl Falvey indicates that component testing may be sufficient to satisfy certification requirements for certain products, but not all products. Specifically, Ms. Falvey states in a letter to the Association of American Publishers that “Not all manufacturers would be able to rely on component testing to issue a general conformity certificate but, as the jewelry example illustrates, many could.”² RILA is not aware of any products for which component testing would be inappropriate or ineffective. Nevertheless, if the Commission determines that component testing may not be suitable for all products, RILA respectfully suggests that the Commission utilize a negative list approach whereby component testing is deemed acceptable for all products except a narrow list of specifically identified products. A negative list approach would still require products to meet all applicable standards, rules and bans, while creating a manageable process for retailers and manufacturers to know with certainty what products are excluded from component testing. A negative list would also allow the Commission to focus its finite resources on products it deems to require final product testing. Otherwise, significant Commission resources may likely be diverted toward evaluating numerous petitions to allow component testing for specific products.

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 Request for Comments and Information; Third-Party Testing of Component Parts; Section 102 of the Consumer Product Safety Improvement Act. We urge the Commission to allow the testing of product components to serve as the basis for final product certifications. Mandatory testing of finished goods does not allow sufficient flexibility and results in redundant and costly testing for products for which the same component is used in multiple products. 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

² Letter from Cheryl Falvey, General Counsel, to Allan Adler, Vice President for Legal and Government Affairs, Association of American Publishers (Jan. 15, 2009).