

August 2, 2010

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

Re: Proposed Drawstring Rule (Docket No. CPSC-2010-0043).

Dear Secretary Stevenson:

On behalf of the American Apparel & Footwear Association (AAFA) and the Retail Industry Leaders Association (RILA), we write you in response to Proposed Rule, “Determination That Children’s Upper Outerwear in Sizes 2T to 12 with Neck or Hood Drawstrings and Children’s Upper Outerwear in Sizes 2T to 16 with Certain Waist or Bottom Drawstrings are a Substantial Product Hazard” (Proposed Drawstring Rule). By way of background, the AAFA is the national trade association representing apparel, footwear and other sewn products companies and their suppliers. RILA’s 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.

Members of the AAFA and RILA support the proposed rulemaking and the proposed rulemaking’s stated objective to, “enhance understanding in the industry about how the Commission views such garments and...facilitate the process of obtaining the appropriate corrective action when such garments are found in commerce.” While the ASTM Drawstring Standard has resulted in substantial compliance, there remain sufficient numbers of non-compliant garments to warrant the classification of drawstrings as substantial product hazards as defined by Section 15(j) of the Consumer Product Safety Act (CPSA). However, we strongly believe that successful implementation of the proposed rule will require greater clarity from the CPSC about how they will enforce the Drawstring Standard.

While adopting the ASTM Drawstring Standard as a voluntary industry standard has been effective in dramatically decreasing the number of drawstring related injuries and fatalities, it has not completely eliminated the hazard as children’s upper outerwear with drawstrings remain on the market and the number of recalls due to drawstrings has increased every year since 2005. In fact, last year alone, the CPSC announced 23 drawstring recalls accounting for 54% of total apparel recalls. Already this year, the CPSC has announced 25 drawstring recalls. Furthermore, in February 2009, the CPSC announced the voluntary recall of boys’ hooded sweatshirts due to the death of a child who was strangled when the drawstring of a hooded sweatshirt he was wearing became stuck on play ground equipment. Clearly, although there is

generally a high level of conformity with the voluntary standard, it is not enough to ensure compliance and the CPSC must employ greater authority to enforce this standard.

STANDARD CLARIFICATION

However, greater enforcement of the standard is only one part of the solution. Clarity is crucial for industry compliance and the CPSC needs to expressly state how the agency intends to interpret and enforce drawstring-related hazards. In the past, the CPSC has taken corrective action on garments that are not clearly covered by the ASTM standard. For example, common industry understanding of a drawstring is a cord that passes through a channel. In June 2009, the CPSC announced the recall of children's hooded sweatshirts with non-functional ties *sewn in* at the base of the hood. These non-functional ties are not what the industry considers to be "drawstrings" and do not obviously fit in the drawstring definition presented in the ASTM standard that states, "*drawstring, n*—a non-retractable cord, ribbon, or tape of any material to pull together parts of upper outerwear to provide for closure" as they do not pass through a channel nor necessarily provide for closure.¹ Interpreting ties or tabs or other closures as a "drawstring" opens up the door for confusion for the apparel industry and undermines the ability to comply. If ties are covered by the standard, the CPSC will need to clarify which ties they consider to be hazardous (lengths, locations on the garment, etc.) and provide the industry with very specific compliance guidelines.

Other questions like the definition of "upper outerwear," also need clarification. Similarly, the CPSC needs to expressly state that this standard *only applies* to children's *upper outerwear*. Many are concerned that the standard could be applied to other apparel items like pants, pajamas or shirts that are not traditionally considered "outerwear." Just as the CPSC needs to clarify what type of garments standard does apply to, the CPSC needs to clarify what types of garments the standard does not apply to. No definition of "channel" is provided in the ASTM standard. Please confirm that belt loops, grommets and lacing are not subject to the standard. Lightweight garments worn on the upper body, but intended as an inner layer, or intended for warmer weather climates that do not use outerwear should be excluded. The standard needs to be clear enough that company designers and buyers, not just lawyers or quality control personnel, understand clearly what presents a strangulation or entrapment hazard and what does not.

AAFA, RILA and their members are committed to ensuring that only safe products are on the shelves and marketed for wear by children. If the CPSC determines that drawstring hazards exist outside the scope of the ASTM standard or of industry's understanding of the ASTM standard, this message needs to be conveyed to the industry and clearly incorporated in the rules so that manufacturers and importers can ensure that their products are safe. To that end,

¹ We also note that the New York State Drawstring Standard defines "drawstring" as "a non-retractable cord, string, ribbon, bungee, or tape of any material *inserted into a channel of the garment* to pull together parts of an article of clothing for the purpose of controlling closure or fullness" (emphasis added). Conflicting definitions between various drawstring standards only increase confusion within the industry.

we request that the CPSC conduct a meeting with interested stakeholders so that the CPSC can work with industry to better define and clarify where hazards exist and eliminate the hazards from children's apparel.

SIZING CONCERNS

We are also concerned with the way the CPSC will evaluate whether a children's garment falls within the size range stated within the standard. Apparel sizing varies between companies and, for example, what may be a size 14 in one company could be a size 12 in another. The rulemaking states that "A firm's statement of what sizes are equivalent to sizes 2T to 16 may not be used to show that the size of a garment is not equivalent to a size in the range of 2T to 16." We are extremely concerned with this language. Not only do companies have different sizing standards, the proposed language is inconsistent with the Consumer Product Safety Improvement Act's (CPSIA) definition of a children's product that lists "a statement by a manufacturer about the intended use of such product" as the first factor that the CPSC will consider in making a children's product determination. To minimize contradictory rulemakings and resulting industry confusion, the CPSC needs to consistently apply product safety regulations. As with determining whether a product falls within the definition of a children's product, a manufacturer's statement (provided it is reasonable) should be the primary consideration of whether a garment is covered by the Drawstring Standard.

Moreover, adult apparel sized small or extra small could easily pass for a larger sized child's garment. As the CPSC increases enforcement at U.S. ports of entry, determining the intended wearer will likely be more difficult. A generic adult's sized extra small hooded sweatshirt could easily be mistaken as a children's garment. Accepting a manufacturer's statement (like on a General Conformity Certificate) that this product is an adult's product or is not intended for children will be crucial to prevent delays that will be extremely costly to businesses.

We also recommend the CPSC consider providing guidance to industry on what age categories the Drawstring Standard correlates to. As the proposed rule references in the background section, "The Commission's staff has estimated that the age range of children who would be likely to wear garments in sizes 2T to 12 is from 18 months to 10 years [Ref. 4]. The age range of children who would be likely to wear garments in sizes 2T to 16 is 18 months to 14 years." Providing more concrete guidance to industry on what ages the standard is intended to cover would clear up ambiguities caused by correlating the standard to specific apparel sizes. Furthermore, as a matter of sound policy, product safety standards should refer to ages and not sizes. An 8 year old child who wears a much larger sized shirt faces the same risk of injury as an 8 year old child who wears a much smaller sized shirt.

Notwithstanding this need for clarification, however, we request that CPSC clearly state that adult apparel, marketed to adults, or merchandised in adult departments will not be subject to this rule.

Thank you for your consideration. If you have any questions, please contact Rebecca Mond at rmond@apparelandfootwear.org or Jim Neill at Jim.Neill@rila.org.

Sincerely,

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

Rebecca Mond
Government Relations Manager
American Apparel & Footwear Association

A handwritten signature in black ink, appearing to read 'Jim P. Neill', written in a cursive style.

Jim Neill
Vice President, Product Safety
Retail Industry Leaders Association