



1700 NORTH MOORE STREET  
SUITE 2250  
ARLINGTON, VA 22209  
T (703) 841-2300 F (703) 841-1184  
WWW.RILA.ORG

January 23, 2012

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

Re: Application of Third Party Testing Requirements; Reducing Third Party Testing Burdens, CPSC Docket No. CPSC-2011-0081 & CPSC-2011-0082

Dear Secretary Stevenson:

The Retail Leaders Industry Association (RILA) appreciates the opportunity to offer comment on opportunities to reduce the cost of third party testing requirements consistent with assuring compliance with any applicable consumer product safety rule, ban, standard, or regulation, pursuant to section 14(i)(3)(A) of the Consumer Product Safety Act ("CPSA"), as amended by H.R. 2715, Public Law 112-28.1.

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.

RILA members are committed to placing the highest priority on the safety and quality of the products they sell to their customers.

Please note: throughout this document, we will refer to the "Conditions and Requirements for Relying on Component Part Testing or Certification, or Another Party's Finished Product Testing or Certification, to Meet Testing and Certification Requirements" as the "Certifier Rule" and to the "Testing and Labeling Pertaining to Product Certification" as the "Periodic Testing Rule."

**Issue 1**

No comment to submit for this section.

**Issue 2:** *The extent to which modification of the certification requirements may have the effect of reducing redundant third party testing by or on behalf of 2 or more importers of a product that is substantially similar or identical in all material respects.*

We support the existing language in the Certifier Rule, as it is developed in the preamble to that rule, in which CPSC stated, “If the supplier providing a certificate is also a required certifier (a domestic manufacturer or importer), then the party receiving a certificate does not need to reissue a certificate.” 76 Federal Register 69548 This acknowledgement by the CPSC that a retailer importer can rely on the certificates of manufacturer importers and domestic distributor importers who are “required certifiers” without the retailer importer re-issuing its own certificate will help to reduce cost and testing burden by reducing redundant testing and record keeping. Furthermore, the Certifier Rule’s recognition that manufacturers can act as final product certifiers upon whose certification the retailer importer can rely (with due care) to issue their required certification is an important addition to the rule. This addition recognizes that both components and final products can be appropriately tested and certified by the manufacturer.

Overall, the Certifier Rule acts to reduce testing burdens by allowing retailer importers to rely upon the product experts – their manufacturers and suppliers – to develop the procedures for assuring compliance, and appropriately focuses the retailer importer’s efforts to exercise “due care” in selecting vendors who can effectively certify product compliance. This reasonable adjustment in the Rule fully preserves the verification of compliance and any further changes should focus on confirmation that certain activities constitute due care. For example, we believe that a thorough factory evaluation/audit such as one consistent with the BRC/RILA Global Standard for Consumer Products, Issue 3, or an equivalent evaluation or audit based on good manufacturing systems and process controls (such as the audits currently conducted by some retailer importers), can be used as a basis for due care, when paired with documentation support as outlined in Section 1109.5(g) of the Certifier Rule.

With respect to provisions in the Periodic Testing Rule that reflect the intent of HR 2715, Section 1107.21 affords greater flexibility to demonstrate compliance to safety rules. It permits such activities as management controls, measurements, and other alternatives to testing, provided the certifier has a Production Testing Plan. This attention to the benefits of good process control as a compliance strategy is consistent with RILA’s belief that safety cannot be tested into the product – and that instead, compliant product begins at the initiation of manufacture.

***Issue 3:*** *The extent to which products with a substantial number of different components subject to third party testing may be evaluated to show compliance with an applicable rule, ban, standard, or regulation by third party testing of a subset of such components selected by a third party conformity assessment body.*

Provisions in the Certifier Rule (Section 1109.5), coupled with greater flexibility in the Periodic Testing Rule (Section 1107.21), permit the testing and certification of components, and further permit a single component certification to underlie the certification of multiple products, so long as that single component certification represents the only certification needed for those products, or that single component certification is paired with other testing and certifications as necessary to issue a final product certificate for that particular product. We enthusiastically support these aspects of the Certifier Rule as a recognition of an accurate understanding of how components are used and incorporated in

final products, and the benefits of component certification. We believe that the challenges associated with maximizing the efficiency of this rule lie in the traceability requirements applicable to component certification, and we encourage Congress and CPSC to consider carefully whether the level of traceability that is currently required is necessary to assure compliance.

**Issue 4:** *The extent to which manufacturers with a substantial number of substantially similar products subject to third party testing may reasonably make use of sampling procedures that reduce the overall test burden without compromising the benefits of third party testing.*

RILA appreciates Congress's action to modify the word "random" in HR 2715 Section 2 (a) (1) to state that sampling must be "representative." For some manufacturers, particularly suppliers of raw materials or components, or manufacturers of simple products, substantially similar products may be representative of the whole body of product to be certified. Therefore, requiring representative sampling rather than statistically random sampling will reduce the testing burden, particularly for those manufacturers.

**Issue 5:** *The extent to which evidence of conformity with other national or international governmental standards may provide assurance of conformity to consumers product safety rules, bans, standards, or regulations applicable under [the CPSA].*

CPSC should continue and increase efforts to harmonize international *and state* laws and regulations applicable to consumer products. Examples of opportunities include authorizing alternate test methods as evidence of compliance with CPSC standards and accepting similar labeling and warnings. Serious consideration should be given to whether the U.S. standards and rules provide additional protection to children, or simply impose additional burden upon retailer importers, without measurable benefit. Subtle and substantial variations in laws throughout North America present complex challenges for suppliers and retailers alike and complicate compliance efforts and, at times, have negative economic impact on the consumer.

CPSC should consider participation in cross- functional regulatory discussions occurring between the U.S. and Canada such as Canadians on Regulatory Cooperation Council and the Beyond the Border Working Group.

**Issue 6:** *The extent to which technology, other than the technology already approved by the Commission, exists for third party conformity assessment bodies to test or to screen for testing consumer products subject to a third party testing requirement.*

The agency should continue to encourage private sector technological advancements to test and screen consumer products. Advancements in the last 5 years alone have dramatically increased the tools available for all stakeholders to evaluate products. However, the agency should take care not to mandate through regulation the use of particular technologies, tools or test methods and should allow the marketplace to continue its innovations.

***Issue 7:*** *Other techniques for lowering the cost of third party testing consistent with assuring compliance with the applicable consumer product safety rules, bans, standards, and regulations.*

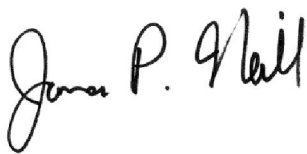
While testing of products is important to ensure compliance, the awareness of safety standards and regulations must exist throughout the supply chain. A commitment to safety and robust manufacturing processes to underscore this commitment is critical in the final assembly of any consumer product. Manufacturers consistently following respected and widely-used QMS standards may find that the need for final testing of products, where not required by law or regulation, will decline.

Congress recognized that some products have been over-regulated under CPSIA, and modified its expectations regarding exemptions in HR 2715. We believe that a robust, thoughtful process for granting exemptions from the CPSC standards for individual products, or for categories of products, and even for particular classes of materials, could lower the cost of third party testing, without reducing the safety of the products provided to U.S. consumers.

As noted above in Issue 5, we believe that recognition of alternate standards and testing methods could also reduce these burdens. In short, we are concerned that the laws, rules and standards resulting from CPSIA, particularly with respect to lead, are promulgated in a way that reduces the product selection and performance available to U.S. consumers, increases the cost of products available to consumers, and increases the burdens and cost for U.S. businesses, without materially enhancing the safety of those products. We encourage CPSC and Congress to carefully consider whether the exemption process can be applied in a manner that counteracts these unintentional consequences to U.S. consumers and U.S. businesses as rule making proceeds.

Thank you for allowing RILA the opportunity to comment on these questions. I would welcome the opportunity to discuss further, and can be reached at 703-600-2022 or [jim.neill@rila.org](mailto:jim.neill@rila.org).

Sincerely,

A handwritten signature in black ink that reads "Jim P. Neill". The signature is written in a cursive, flowing style.

Jim Neill  
Vice President, Product Safety