



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

January 6, 2011

The Retail Industry Leaders Association (RILA) welcomes the opportunity to discuss potential modifications to the Consumer Product Safety Improvement Act (CPSIA). RILA members place the highest priority on the safety and quality of the products they sell to their customers, particularly toys and other children's products. RILA also supported the sweeping CPSIA when it was enacted in 2008, and our members have worked aggressively to implement the law's many new requirements.

Nevertheless, while implementing the CPSIA, it has become apparent that there are some provisions in the law that do not coincide with best practices and have resulted in unintended consequences. As Congress begins to consider its agenda for 2011, RILA hopes the House Energy and Commerce Committee will make it a priority to advance legislation to facilitate better implementation of the CPSIA.

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 which together provide millions of jobs and operate more than 100,000 stores, manufacturing facilities and distribution centers domestically and abroad.

While RILA recognizes that the CPSIA has had a profound impact in reinvigorating the Consumer Product Safety Commission (CPSC) and enhancing consumer product safety, RILA also believes the 2008 law could be improved.

### **Prospective Application of 100ppm lead limit**

RILA strongly supports the unanimous preference of the CPSC Commissioners to prospectively apply the August 2011 100ppm lead limit. As currently interpreted by the CPSC, the CPSIA will make it unlawful to sell products that exceed a 100ppm limit after August 2011, regardless of when the products were manufactured, unless the CPSC determines that the lower limit is not technologically feasible.

Moreover, RILA notes that "feasible" does not equal "practical" when considering the 100 ppm limit. When discussing lead limits at these very low levels, RILA believes the CPSC should also have discretion to use risk as a factor.

The retroactive application of this provision creates substantial problems for manufacturers and retailers with large inventories of children's products, as well as for resellers such as charitable thrift stores, and leads to wasteful destruction of safe products because confirmation of compliance for products already on retail shelves often cannot be done in a cost effective manner. Retailers will incorporate new safety standards into their guidance to suppliers so as to ensure compliant products, but it is very difficult to implement new standards on the basis of a sell-by date, particularly when there is uncertainty on whether the CPSC could make a determination that 100ppm is not technologically feasible. There is significant historical precedent to implement new safety standards on a prospective basis, and RILA has urged the CPSC to implement the August 2011 lead limit on a

prospective basis. Nevertheless, Congressional action to clarify its intent for a prospective application would be very helpful for smooth implementation of the law.

### **Inaccessible Component Parts for Phthalates**

RILA also believes the CPSIA should be modified to clarify that inaccessible component parts are excluded from the law's phthalate restrictions. Section 101(b)(2)(A) of the CPSIA clarifies that the lead limits do not apply to any component part of a children's product that is not accessible to a child through normal and reasonably foreseeable use and abuse of such product. Section 108 of the CPSIA does not currently make a similar exception for inaccessibility for phthalates, and RILA understands this omission was inadvertent. RILA believes the prohibition on phthalates should only apply to accessible parts similar to the lead policy. As an example of the problem, phthalates are used in the plasticized coating of internal wiring in electronic toys, such as remote controlled helicopters. The phthalates help to keep the plastic coating soft and pliable to better encase and protect the wires, but does not present a risk of exposure to a child playing with the helicopter because the wires are inaccessible. An clarification that inaccessible component parts are excluded from the phthalates limits would prevent the need for costly and unnecessary testing, and confirm that the remote-controlled helicopter would be CPSIA compliant.

### **Increased Authority for CPSC to Exclude Products from CPSIA limits**

RILA also believes the CPSC should be granted expanded authority to except certain products or materials from the CPSIA's lead and phthalates limits based on functional purpose of the lead or phthalates in the product or component whenever the CPSC can also determine that the presence of lead or phthalates presents no significant risk of exposure or harm.

### **Modifications to Reasonable Testing Program Requirements**

The CPSC's proposed rule for reasonable testing programs (RTP) includes several burdensome and unnecessary provisions that RILA believes the Congress should consider. For example, under the CPSC's proposed rule, the burdens of record keeping for a RTP are enormous and costly. In particular, the requirement to have factory-based records in US and in English is burdensome and unnecessary because recordkeeping and the language and location of records do not meaningfully increase the safety of products.

In addition, Congress should clarify that the random sampling language in the statute does not necessarily mean statistical sampling but rather to show compliance and avoid the "golden sample."

Also, implementation of the RTP should be prospective to apply to products as they are developed. Companies should not be required to do retroactive testing, production test plans, specifications or record keeping for products already produced. The RTP requirements should apply only to products commencing production on the effective date.

### **Definition of Children's Products**

The CPSC has interpreted the definition of children's products in an overly broad and confusing manner. RILA believes it would be helpful for Congress to provide clarity and common sense on this issue.

For example, there should be a greater weight on the manufacturer's intent whether a product is designed primarily for children.

The four (evenly) weighted factors do not lend themselves to determining the manufacturer's intent. It is currently unclear how retailers should apply the rules, especially for general use products that are used in a child's room. Instead, the rules should take into account risk and exposure. For example, a ceiling fan does not pose a risk to a child, even if it has "cartoonish" features.

The CPSC's rule effectively negates the words "designed or intended primarily". The same fan that hangs in a living room or DVD player in the den could be miraculously transformed into a children's product by the addition of Spiderman and a Hello Kitty decal.

---

One possible solution is to qualify the definition with something like "decorative embellishments that do not affect the functionality of the product shall not be given substantial consideration in the determination of a product as a children's product unless there is no reasonably likely general usage of the product in its unembellished form."

The CPSC should also have authority to adopt a risk evaluation in determining whether a product should be considered a children's product. For example, the definition could include, "In adopting rules interpreting the definition of a children's product, the Commission shall take into account the risk of substantial injury to children 12 years of age or younger."

### **Public Database**

RILA believes that the veracity of information available on the CPSC's public database is critical. Thus, RILA believes that only those persons who have direct knowledge of an incident as either a victim, witness, or first responder should be eligible to provide information regarding the incident. This suggestion is to help to make sure there is sufficient information available to properly assess a report.

In addition, RILA believes that a 30 or 60 day period for manufacturers and retailers to object to complaints prior to publication on the database would be helpful.

### **Conclusion**

In conclusion, retailers work tirelessly to ensure the safety and quality of the products they sell, and to fully implement all the new requirements under the CPSIA. We also hope the Congress will advance legislation in early 2011 to improve the effectiveness of the CPSIA and reduce unnecessary costs for businesses that do not provide additional product safety benefits. We look forward to continuing to work with you on this and other important product safety issues. If you have any questions or concerns, please contact Stephanie Lester, Vice President, International Trade at [stephanie.lester@rila.org](mailto:stephanie.lester@rila.org) or 703.600.2046 or Jim Neill, Vice President, Product Safety at [jim.neill@rila.org](mailto:jim.neill@rila.org) or 703.600.2022.