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Testimony of the

Retail Industry Leaders Association (RILA)

before the

United States Senate

Committee on Commerce, Science, and Transportation

Subcommittee on

Consumer Affairs, Insurance, and Automotive Safety

Hearing on

S. 2045, the "CPSC Reform Act of 2007"

October 4, 2007

Good afternoon Chairman Pryor, Ranking Member Sununu and Members of the Committee. My name is Al Thompson, and I am the Vice President of Global Supply Chain Policy at the Retail Industry Leaders Association, or RILA.

RILA represents members including the largest and fastest growing companies in the retail industry, 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 and distribution centers domestically and abroad.

At RILA, I am responsible for representing the industry on all policies that impact our member companies' global supply chains. This includes issues involving transportation, logistics and security. In addition to my work at RILA, I also am the father of two young children, so the issue of product safety, and particularly toy safety, is one that carries both personal and professional importance for me.

RILA appreciates this opportunity to submit testimony on Chairman Pryor's legislation, S. 2045, the "CPSC Reform Act of 2007," and to showcase the steps that our members are taking to ensure product safety and integrity all along the supply chain. Our industry knows that it has no higher duty than assuring the safety and quality of the products it sells to its customers.

RILA believes that ensuring product safety is a shared responsibility between and among manufacturers, retailers, this government, and other governments. Through rulemaking and laws, Congress and the Administration can provide guidelines that are clear, uniform and national in scope, so that manufacturers can better-issue detailed specifications to their suppliers and enforce those specifications with tests, audits, and follow-up. We commend Chairman Pryor, his cosponsors, and this Congress for taking quick action to promote the safety consumer products.

But before I fully describe the processes and product safety procedures that our members have in place, I want to describe some of the steps that our individual member companies have taken to ensure greater accountability from manufacturers in light of several recent high-profile product recalls.

Because no two RILA members sell exactly the same merchandise, they each have slightly different protocols and procedures for evaluating the safety and integrity of supplier operations, as well as the safety of products on their shelves. In light of recent incidents, many of our members have:

- Enhanced product testing;
 - For example, some retailers are now requiring testing and verification of safety compliance for all toys, regardless of the manufacturer. Others are implementing more rigorous protocols to confirm the safety of toys through multi-layered testing and documentation.
- Reviewed their internal policies and procedures for product testing, supplier compliance and the sanctions for noncompliant suppliers and manufacturers; and

- Joined with other allies seeking better government standards and guidelines for product safety, with a particular focus on products manufactured for children.

Before I provide specific comments on S. 2045, I want to share with you some of the steps our Members take to assure the safety of the products on their store shelves

Retailer Efforts to Assure Safe Products

RILA members have a strong commitment to provide safe, effective, and affordable goods for their customers. We believe that ensuring product safety is a shared responsibility. As such, retailers have vigorous quality assurance requirements and enforcement mechanisms for their suppliers that manufacture goods for their stores.

In particular, RILA members are actively working to reassure consumers that products, including toys and children's products, sold in their stores are safe. RILA believes that the most effective way to ensure safe products is to focus on the design and production of products so that product safety is built into products as they are made.

To assure product safety, many RILA members require their suppliers and manufacturers – through contracts and product specifications – to:

- Understand and adhere to U.S. government standards and regulations for the particular products they produce. Many of our members' specifications actually exceed U.S. government standards;
- Operate secure factory environments, and rely on known and approved subcontractors to produce safe, quality products;
- Maintain and document production processes that conform to safety standards beginning at the design phase and continuing through completion of the finished product; and
- Open their factories and production processes to periodic unannounced quality and safety audits.

Retailer Actions in the Event of a Recall

When a product is recalled – either at the insistence of the government or a supplier – retailers take action:

- To immediately remove the product or products from the stream of commerce, and properly dispose of them so that they are not resold; and
- To notify purchasers, when possible, that they should return the product for a refund or replacement.

These prompt actions are the result of protocols that virtually every RILA member has in place to respond to a recall and protect consumers.

- RILA members proactively monitor and research recalls and U.S. regulatory agency alerts to keep apprised of product safety issues. Some retailers have an entire department devoted solely to this effort;
- As soon as a product recall is initiated, RILA members implement existing recovery plans to remove the subject merchandise;
- Retailer inventory systems produce an error message at the point of sale if such products reach check-out cash registers, preventing recalled product from being inadvertently sold to consumers; and
- After implementing a recall, RILA members review their suppliers' testing protocols to minimize the potential for future problems, and take appropriate action, or levy sanctions, as needed.

Comments on S. 2045, the "CPSC Reform Act of 2007"

RILA welcomes the opportunity to review and comment on S. 2045, the CPSC Reform Act of 2007. Retailers place the highest priority on the safety and quality of the products they sell to their customers, regardless of whether the products are produced domestically or abroad. Optimally, retailers seek to identify and remedy any product safety problems long before the product enters the supply chain or reaches U.S. stores. Therefore, RILA believes the critical point in the supply chain where product safety compliance efforts should be focused is at the point of design and manufacture.

Prior to the introduction of this legislation, RILA was on record supporting government reforms that could better ensure toy safety. We are pleased that this legislation contains many provisions that our members strongly support. We look forward to working with Chairman Pryor and Members of the Committee to support these important provisions

- RILA applauds the substantial increases in CPSC funding contained in this bill.
 - RILA would welcome provisions that ensure that increased resources are used to accelerate the recall timeline and to promise better dissemination of recall information to the public.
- RILA welcomes the proposal to reduce the lead limits in children's jewelry to 200 parts per million (ppm), in surface coatings to 90 ppm, and in children's products to 400 ppm.
- RILA supports the proposal to include tracking information on children's products so as to identify the source, date, and cohort of production of the product. In fact, some RILA members already provide this type of information on their products.
- RILA supports the proposals to eliminate the requirement for advanced notice of proposed rulemaking and to place the Federal Hazardous Substances Act (FHSA) almost exclusively under CPSC jurisdiction. These proposals will help to streamline product safety enforcement.

- RILA would support a requirement that safety testing laboratories be credentialed by the CPSC or an independent third party such as the American National Standards Institute (ANSI).
 - We are concerned, however, that the bill’s requirement that the labs themselves be independent is a step backward. At a time when the media reports that many independent labs are capacity constrained, RILA urges you to consider policy alternatives that will allow our member’s state of the art labs and their highly-trained employees to remain part of the product safety process.
- RILA welcomes the definition of “children’s products” in the bill because it is clear and workable, and helps companies to better understand the scope of products that would be subject to increased standards.

RILA is concerned, however, that some provisions in the bill may undermine the critical cooperation that currently occurs regularly between the private sector and the CPSC.

- We believe that Congress should exercise its authority under the Commerce Clause of the Constitution to create standards for toy safety that are uniform, consistent, and national in scope with a uniform enforcement mechanism.
 - The particular items that our members sell are virtually uniform nationwide. For example, an Elmo doll sold at one of our members’ stores in Arkansas is likely to be identical to an Elmo doll sold in the same company’s Texas store. These two products are manufactured from the same design, they often come from the same factory, and they may even come into our country on the same boat and in the same container. Yet, this legislation supports disparate civil enforcement mechanisms that would treat these two identical products differently.
- The remedies allowed through state enforcement include damages, restitution, compensation, or other relief, and would expose companies to unlimited liability.
- While we recognize that whistleblowers play an important role in ensuring corporate accountability, we urge Congress to carefully consider the implications of a whistleblower complaint adjudication process that would divert resources from the CPSC’s efforts to develop better standards and better enforcement mechanisms.
- Many of the issues that have been before Congress concerning product safety are the result of companies that stepped forward to self-identify problems, report them to the authorities, and work collaboratively with authorities to take corrective action. The proposal to impose criminal penalties and to substantially increase civil penalties would create a defensive posture in the private sector that could create disincentives for this type of self-disclosure rather than collaboration with government regulatory agencies.
- Similarly, the bill’s proposal to release confidential information disclosed by companies to the CPSC to other government agencies undermines the self-reporting protocol in place today. We believe this provision will create disincentives for companies to be forthcoming with information. The bill would eliminate the confidentiality between the CPSC and private industry. Disseminating confidential design, sourcing, sales, and

product information to any government agency, domestic or foreign, increases the likelihood that this information will be disclosed to competitors.

Conclusion

RILA appreciates the opportunity to provide comments to the Committee as it considers S. 2045 and other proposals to improve product safety. RILA stands ready to work with Congress and the Administration to enact policies that strengthen consumer confidence and advance the production of safe, high-quality products that are affordable and readily available for consumers.

Thank you for the opportunity to testify today.