August 3, 2010

Office of the Secretary
Consumer Product Safety Commission
Room 502
4330 East West Highway
Bethesda, Maryland, 20814

RE: REQUEST FOR COMMENTS DOCKET NO. CPSC-2010-0037 & CPSC-2010-0038

On behalf of the American Apparel & Footwear Association (AAFA) – the national trade association representing the apparel and footwear industry and its suppliers – I am writing in response to the request for comments by the Consumer Product Safety Commission (CPSC or "the Commission") regarding proposed rules, "Conditions and Requirements for Testing Component Parts of Consumer Products" (proposed Component Part rulemaking) and "Testing and Labeling Pertaining to Product Certification" (proposed Product Certification rulemaking). As the two proposed rulemakings are closely related, we will address both in the below comments.

Conditions and Requirements for Testing Component Parts of Consumer Products

In general, we are very supportive of the Commission's decision to bring testing and certification down the supply chain to the raw material and supplier level. As we have stated in previous comments, this is a crucial element to establishing both a reasonable and sustainable testing program. AAFA's members design product safety into the product. As part of this process, manufacturers must ensure the raw materials used in their products are compliant with the standard. Ensuring safe and compliant products from the beginning stages of product development is not only a cost-effective and efficient quality control program, but also results in the greatest assurance of product compliance. Furthermore, the earlier a manufacturer can spot an issue, the more effectively the manufacturer can correct the problem. By bringing testing and certification down the supply chain, the CPSC is encouraging manufacturers to implement more effective quality control systems. However, AAFA does have concerns with some of the requirements laid out in the proposed rulemaking and offers the following comments.

Proposed 1109.4(b) Definition of Component Part

We believe the definition of component part should be revised to say, "Component part means any part of a consumer product or the raw materials from which the component part is made..." Raw material testing is ***especially crucial*** for component part manufacturers. While the discussion of the proposed rulemaking alludes to raw material testing,[1] the final rulemaking must explicitly state that suppliers or manufacturers may test raw materials of components. Permitting raw material testing and certification would enable component part manufacturers to be much more efficient and cost effective in their compliance testing. Component part manufacturers often manufacture thousands of variations or styles of a component. Only permitting finished component part testing in effect shifts to the component manufacturer the duplicative and onerous testing burden previously placed on the finished product manufacturer. Raw material testing would reduce this burden as, oftentimes, various styles are made from different mixtures of the same raw materials. For example, a button manufacturer may use various combinations of five different colored dyes and one type of plastic to manufacture a hundred different colored buttons. Testing the raw material for chemical content would require six initial tests while testing

[1] The discussion of Proposed 1109.5(a)(2) reads, "The children's toy manufacturer may send samples of the plastic, either as pellets or in their finished state, to a third party conformity assessment body for testing."

the finished component would result in a hundred different tests. As chemical content limits are set as "parts per million" or percentage of total mass, mixing compliant materials will ***always*** result in a compliant mixture.

Proposed 1109.5(a)(2) Conditions, Requirements, and Effect Generally

We are concerned that the language in proposed section 1109.5(a)(2) inadvertently restricts manufacturers from raw material testing.[2] The language states that a manufacturer may rely on testing of component parts provided that the sample tested, "has the same content as the component part of the finished product." As we noted above, some components may be a mixture of various substances – substances that are combined in a variety of ways to create a large variety of finished components. For example, screen prints are often made of a handful of base colors that are mixed to create thousands of different colors. Thus, raw material testing is a crucial element to a sustainable testing program. However, the language above could be misconstrued to mean that raw material testing does not fulfill the children's product third party testing and certification requirements. To provide clarity to industry and limit confusion, the CPSC must not only clarify this sentence, but also specifically spell out that raw material testing is acceptable.

Proposed 1109.5(h)(3) Finished Product General Conformity Certification Requirements

We recommend the Commission revise the final product certification content requirements to expressly state that *only* components (not subcomponents of components or raw materials of components) need to be listed on the final product certification. As we have stated in previous comments, a "component" may be made of several different subcomponents. For example, a basic zipper may be made with fabric, glue, teeth, a zipper pull, a slide and a zipper stop. Furthermore, some of those zipper components may be made of multiple types of raw materials. Therefore, the zipper's component certification will list several subcomponents and have its own documentation. Requiring all these subcomponents and raw materials to be listed on the final product certification is burdensome and unnecessary. The proposed rulemaking states in section 1109.5(e) "finished product certifiers may not rely on component part testing conducted by another unless such component parts are traceable." Therefore, even if the final product certifier only lists the components and not subcomponents or raw materials of components on the final product certification, the subcomponent test reports and other documentation would still be easily traced. The final product manufacturer should only have to list the zipper on the final product and reference the zipper's certification.

Proposed 1109.10(i) Recordkeeping Requirements[3]

We are concerned that the CPSC's requirement that all records required by proposed section 1109.10(f) be maintained in the English language could be both burdensome for manufacturers and could very likely lead to inaccurate certification due to inadvertent translation errors. Proposed 16 CFR 1109 and proposed 16 CFR 1107 include *several* extremely detailed and specific record keeping requirements. Many of these records will originate in non-English speaking countries and include extremely technical information – information that is not easily translated. Moreover, these records will likely be handled by quality control and/or testing lab personnel who have technical knowledge about the product content, the standards that apply to the product and the production processes, but very likely will not be fluent in English. As the CPSC will only inspect a few records when necessary, we believe the CPSC should revise the language to state, "All records must be *available on request* in the English language."

[2] Similar language is found in proposed 1109.11(a)(2) with regards to component testing and lead paint.
[3] The following comments also apply to proposed 1107.10(b)(5)(iv) and 1107.26(c).

Testing and Labeling Pertaining to Product Certification

We are extremely disappointed that the Commission felt it necessary to take the discretion to regulate a manufacturer's "reasonable testing program." While proposed section 1107.10 has little application to the apparel and footwear industry as the reasonable testing requirements do not supersede the test requirements under the Flammable Fabrics Act (as they apply to adult products), we are fundamentally against the principle of the CPSC regulating a manufacturer's determination of "reasonable." As the CPSC continues to issue specific compliance requirements, manufacturers become increasingly wrapped up in ensuring compliance over ensuring product safety. All AAFA members have had long-standing quality control programs in place that have developed based on the product's, production of the product's and the manufacturer's unique circumstances. These programs ***are effective and do not need to be changed***. To demonstrate, only .0084% of all apparel and footwear sold in the U.S. in 2008 were involved in a recall. Moreover, most apparel and footwear recalls have been drawstring violations – a compliance issue that results from lack of information *not* lack of testing.

The requirements laid out in proposed 1107.10 further sends the message that the CPSC does not trust the manufacturer's determination of "what is reasonable" which is extremely disheartening. Particularly since the passage of the CPSIA, industry has shown a tremendous movement to work with the Commission, comply with a labyrinth of new regulations and scramble at *all* costs to ensure both product safety and regulatory compliance. Now manufacturers have to go through the checklist of requirements to make sure their determination of "reasonable" precisely matches the CPSC's determination. For example, proposed 1107.10(b)(2)(i)(B) states that a manufacturer may use component testing but "the manufacturer must *demonstrate* how the combination of testing of component part(s), portions of the finished product, and finished product samples demonstrate, with a high degree of assurance, compliance with all applicable rules, bans, standards, or regulations" (emphasis added).[4] Testing a product is done to demonstrate compliance. The proposed rulemaking is now requesting manufacturers to demonstrate that they are demonstrating compliance. The result is more paperwork, more questions (like how does a manufacturer prove that their testing program is "reasonable" enough?), and another requirement that requires manufacturers to prove that they are in compliance but does ***nothing*** to actually improve the underlying product's safety and overall quality control procedures.

Proposed 1107.10 Reasonable Testing Program for Nonchildren's Products

Section C of the proposed Product Certification rulemaking, Description of the Proposed Rule, includes a table of Existing Testing Programs That Would Not be Superseded by Proposed Section 1107.10 Regarding a Reasonable Testing Program. However, this table is not included in the actual proposed rulemaking. Some may not read the description of the proposed rule and some may think that because the table is not included in the actual rulemaking, the reasonable testing program requirements under proposed 1107.10 may still apply. In order to prevent this confusion, we encourage the CPSC to include this table in the actual rulemaking.

Proposed 1107.24 Undue Influence

The proposed rulemaking's approach to preventing undue influence imposes an unnecessary requirement on manufacturers. Third party testing facilities already have in place training requirements to prevent against undue influence from manufacturers. While we agree that manufacturers should take steps to ensure against undue influence on third party testing facilities, requiring statements of policy and annual training is excessive and would not amount to greater assurance of protection against undue influence. Furthermore, ensuring compliance with this section is impractical. The CPSC will not likely be able to enforce this requirement as it applies to foreign manufacturers and importers will also not likely be able to ensure that foreign manufacturers are in compliance with this undue influence provision therefore

[4] The proposed rulemaking has other examples of where manufacturers must similarly demonstrate compliance with the testing and certification requirements like proposed 1107.10(b)(3)(i) The Production Testing Plan that states manufacturers must include, "…the basis for determining that such tests provide a high degree of assurance of compliance if they are not the tests prescribed in the applicable rule, ban, standard, or regulation."

opening themselves up to liability issues. The easiest and most effective way to prevent undue influence is through the testing labs and third party accreditation procedures.

Proposed 1107.25 Remedial Action[5]

We first believe that the rulemaking's requirement that a manufacturer have an actual "remedial action *plan* that contains procedures the manufacturer must follow to investigate and address failing test results" (emphasis added) is unnecessary as remedial action will likely be different based on the situation that comes up. Furthermore, we strongly encourage the CPSC reorient the language in the remedial action section away from "failing tests" towards "a product that does not pass the applicable product safety standard." Some product safety standards (like the Flammable Fabrics Act and the standard for carpets) have provisions that make allowances for products that fail tests. As worded, the proposed rulemaking may conflict with these provisions. Furthermore, sometimes a "failure" may be a result of a faulty test and not a noncompliant product. In these cases, provided the manufacturer carefully documents and backs up any assertions relating to the faulty test and product's compliance, remedial action would not be necessary.

Conclusion

Thank you for your consideration of and the opportunity to submit these comments. If you have any additional questions, please contact Rebecca Mond at rmond@apparelandfootwear.org.

Sincerely,

Kevin M. Burke

Kevin M. Burke
President and CEO

[5] Comments on this section can also be applied to 1107.10(b)(4)