



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

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The Honorable Bobby Rush
United States House of Representatives
2416 Rayburn House Office Building
Washington, DC 20515

The Honorable Ed Whitfield
United States House of Representatives
2411 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Rush and Ranking Member Whitfield,

The Retail Industry Leaders Association (RILA) welcomes the opportunity to submit written comments on H.R. 5820, the “Toxic Chemicals Safety Act of 2010.” RILA members place the highest priority on the safety and quality of the products they sell to their customers, and we support a strong federal system for chemical management. We welcome Congressional efforts to modernize the 1976 Toxic Substances Control Act, and H.R. 5820 is a step forward in the process. Nevertheless, RILA has serious concerns with several aspects of the bill, in particular the unworkable burdens related to articles and mixtures, new authority to order recalls without a court action, and the impossible preemption standard.

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.

H.R. 5820 Would Impose Untenable Burdens on Importers

Retailers are often the importer of record of final consumer products for the simple reason that retailers have the most efficient and innovative global supply chains. Regardless of whether a retailer is the importer of record, they do not produce the imported product and are not in a position to know all the chemical substances and mixtures used to make the products they sell. That is why under TSCA today, retailers (even retailers as importers or private labelers) do not have chemical inventory/chemical content reporting obligations unless they are importing a chemical substance or mixture.

Section 13(a) of H.R. 5820 would dramatically change this model by imposing specific new requirements on importers. In doing so, the bill essentially treats importers as chemical manufacturers. Specifically, section 13 says:

The importer of any chemical substance, mixture, or article containing a chemical substance or mixture for distribution in commerce shall satisfy all requirements under sections 4, 5, 6, and 8 of this Act, without regard to whether the chemical substance or mixture has been formed into or contained in an article prior to importation.

In other words, the bill requires importers of or finished goods to satisfy all requirements of the Act for testing/minimum data set, notification, new chemicals and uses, control, safety standard determinations, and reporting and certification for chemicals and mixtures in those finished goods, even though exposure to those chemicals may be zero or virtually zero.

Retailers sell hundreds of thousands of final products to consumers, and their expertise is in distribution and retail sales, not manufacturing of products or chemicals that may be included in those products.

Importers of Record Are Not Manufacturers

Notwithstanding their expertise in global supply chains, retailers do not possess the expertise or have access to product information to conduct and perform the requirements in section 13—those are specific functions and responsibilities of product manufacturers. Retailers are not in a position to control what is in products, except to require their suppliers to know and comply with relevant standards for their products. Moreover, retailers are not in a position to report or undertake other risk management requirements related to chemical make-up for all the products they sell.

RILA also notes that many of the same reasons why retailers cannot meet the bill's requirements for chemicals in imported articles also applies to the bill's requirements for imported mixtures. Retailers import many consumer products that do not meet the TSCA definition of "article" but which do meet the definition of "mixture." Examples include dishwasher detergent, paints, lubricants, liquid soap, shoe polish, or saline solution.

RILA believes responsibility for compliance should be based on the amount of control each supply chain partner has over the product as it moves through the supply chain. For example, if retailers have new obligations in a modernized TSCA, they should be limited to reporting only certain levels of chemical content in products and providing information to consumers.

Articles Should Not Generally Be Subject to TSCA Requirements

Consumer products sold by retailers move through complex supply chains with several stakeholders –material manufacturers, formulators, fabricators, packagers, and distributors. Moreover, these finished products often consist of hundreds of components, each of which has its own supply chain. The difficulty of tracking the chemical substances or mixtures in a single consumer product increases exponentially depending on the complexity of the product and the level of quality management processes in the supply chain for a product category.

As an example, a single piece of upholstered furniture may have hundreds of components within the finished product. Each component may be sourced in full or partly fabricated from hundreds of global suppliers. A partial list of components in a piece of upholstered furniture includes: the wood or metal frame; composite wood backing; springs; filling material whether hair, fiber, flock, foam, foam rubber, down; coverings such as woven or knot fabrics, plastics, leather, synthetics; hardware and fastener accessories such as nails, screws, fasteners, glue, brads, brackets, braces, snaps, buttons, thread and hem tape, rivets, bolts, washers, nuts; functional and or decorative components such as leg glides, cups or pads, leg extensions, wheels, casters;

decorative hardware; surface finishings, such as printing, paint, varnish, dyeing, and yarns made into tassels and other trimmings.

Another example is brassieres. There are more than 30 components that go into a single bra, and the bra industry is based on offering multiple choices and the level of complexity increases with the variety of materials employed in an assortment. Bra components are sourced globally, either partially or fully assembled by the bra manufacturer, and include: non-stretch padded straps or elastic fabric straps; elastic gore that connects cups in the center; fabric covered inner sling under cups (instead of under wire), graduated padding and may also contain removable padding; plastic tip under wire; wings (stretch or non stretch fabric extending from outside bra cups to back closure); coated hook and eye closure; moisture wick components; a combination of dyed, printed natural and synthetic woven, knit, decorative textiles; elastic materials, dyed sewing thread, embroidery, and decorative trims.

These two disparate examples begin to show the breadth, complexity and impracticability of the new requirements for importers and subjecting finished articles to TSCA requirements.

TSCA Today Largely Exempts Imported Articles—For Good Reason

Under TSCA today, the Environmental Protection Agency (EPA) and U.S. Customs and Border Protection (CBP) can require importers of articles to meet testing, notification, control, and reporting requirements. Nevertheless, time and time again, the EPA has chosen to exempt importers of articles from those requirements. For example:

- CBP exempts chemicals in imported articles from TSCA import notification requirements (unless an EPA rule expressly requires reporting of a chemical imported in articles), 19 C.F.R. § 19.121(b).
- EPA exempts new chemicals in imported articles from Pre-Manufacture Notice requirements, 40 C.F.R. § 720.22(b)(1).
- EPA exempts chemicals in imported articles from Inventory Update Rule requirements, 40 C.F.R. § 710.50(b).
- EPA exempts chemicals in imported articles from significant new use rule requirements (unless it expressly requires notification of a chemical imported in articles), 40 C.F.R. § 721.45(g).

The EPA adopted these exemptions because it recognized the burden and potential impossibility of compliance for imported articles. Notwithstanding this precedent, H.R. 5820 takes the opposite approach and instead of exempting chemicals in imported articles unless there is a specific need for information, the bill would prohibit any exemptions for articles. This framework is unnecessarily burdensome and costly.

Recall Authority Without Court Action Is Inappropriate

One additional concern RILA has relates to the new authority that the EPA would have in section 7 to order recalls and replacement or repurchase of chemicals, mixtures, and articles that it considers to pose an imminent hazard. This authority goes well beyond that given to Consumer

Product Safety Commission (CPSC)(which is still required to go to court to get such an order). There are no requirements for notice or opportunity for comment before the EPA could issue such an order, and the bill would even delete the definition of what it means to be imminently hazardous. The ability to issue orders such as these should have the protections that come with a court proceeding. RILA believes that the bill should maintain the current recall authority that exists today.

Preemption

RILA supports a strong federal system for chemical management and as noted above, we support Congressional efforts to modernize TSCA. One reason retailers support this is because we need one consistent standard to apply across the country. Retailers operate in all 50 states and cannot modify their supply chains to accommodate different and conflicting state standards. When Congress adopts a new national chemical management system under TSCA, RILA believes that Congress should ensure it is consistently adopted throughout the country by including federal preemption unless states can show a compelling reason to deviate from the federal standard. A patchwork of different state standards would undermine industry's efforts to offer safe products across the country.

Conclusion

In conclusion, RILA members believe H.R. 5820 imposes unworkable burdens on importers and is not implementable in its current form. RILA urges the Committee to work with stakeholders to develop a more effective and workable alternative to modernize TSCA. We look forward to continuing to work with you throughout that process. If you have any questions or concerns, please contact Stephanie Lester, Vice President, International Trade at (stephanie.lester@rila.org) or 703.600.2046.

Sincerely,



Stephanie Lester
Vice President, International Trade