RETAIL INDUSTRY LEADERS ASSOCIATION

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*Via Electronic Filing*

Alberta E. Mills
U.S. Consumer Product Safety Commission
Office of the Secretary
4330 East-West Highway
Bethesda, MD 20814

**Re: Safety Standard and Notification Requirements for Button Cell or Coin Batteries and Consumer Products Containing Such Batteries; 88 Fed. Register 8962 (February 9, 2022); Docket No. CPSC–2023–0004**

Dear Secretary Mills:

The Retail Industry Leaders Association (RILA or the Association) appreciates the opportunity to submit written comments on the U.S. Consumer Product Safety Commission's (CPSC or Commission) proposed rule on Safety Standard and Notification Requirements for Button Cell or Coin Batteries and Consumer Products Containing Such Batteries (Proposed Standard). RILA and its members support the Commission's critical consumer safety mission and appreciate the CPSC's leadership on product safety matters, including consumer education campaigns, and stakeholder outreach. RILA supports Reese's Law and appreciates the Commission's leadership in addressing its implementation to protect children.

By way of background, RILA is the U.S. trade association for leading retailers. We convene decision-makers, advocate for the industry, and promote operational excellence and innovation. RILA members include more than 200 retailers, product manufacturers, and service suppliers, which together account for more than $1.5 trillion in annual sales, millions of American jobs, and more than 100,000 stores, manufacturing facilities, and distribution centers domestically and abroad. Several of RILA's members sell batteries and/or consumer products containing batteries that are within the scope of the Proposed Standard.

RILA members take very seriously the compliance and safety of all products they sell, especially with regard to safety for their most vulnerable customers, and support. RILA members typically do not manufacture products and instead work with trusted suppliers to ensure all products they sell meet or exceed applicable safety requirements. RILA and its members also have a long history of collaborating with the CPSC to address consumer product safety issues, including regularly cooperating to implement product

recalls, actively participating in the Commission's industry partnership programs, and promoting CPSC's consumer awareness initiatives.

Although RILA's comments will touch on some of the technical requirements of the Proposed Standard, we encourage the Commission to consider comments submitted by the industry stakeholders upstream of retailers, including manufacturers and their representatives, who have more detailed familiarity and experience working directly on the nuances of product engineering and design.

RILA takes this opportunity to comment on the practical implications of aspects of the implementation period in the Proposed Standard, and highlights some key challenges with applying new performance testing and warning label requirements across the depth and breadth of battery-containing products that are within the scope of the proposed Standard.

**Comments**

1. **A 180-Day Effective Date is Inadequate and Not Aligned with Supply Chain Realities**

The Commission has proposed to have a forthcoming mandatory standard take effect 180 days following promulgation of its final standard and has requested comment on whether a later or an earlier effective date would be appropriate to comply with the proposed requirements.

For the many reasons outlined below, a 180-day implementation timeline is grossly inadequate and will not provide sufficient time for the industry to respond to the likely changes needed to product design, and testing to ensure the redesign will meet the final standard's requirements. Such a short timeframe also does not provide adequate time for the production and transport steps that would follow once batteries and battery-containing products are tested to the new standard.

a. **Timing to Redesign**
As part of any redesign of battery-containing products, retailers' manufacturing partners will need sufficient time to update and modify molds prior to submitting for testing and certification. According to a supplier of at least one RILA member, the process to update and modify a mold in preparation for testing can take 30 to 45 days depending on the product. A redesign process will naturally involve trial-and-error, and potentially several rounds of mold changes will occur and undergo subsequent testing before gaining certification. Therefore 30 to 45 days is likely the bare minimum timeframe to complete this step in the transition process, and in many cases this timeframe would double or triple if more than one mold change is necessary to pass testing requirements and achieve certification.

b. **Time Required to Implement and Execute New Test Protocols**
Standing up any new testing regime will also add to the overall implementation timeline. Discussions between suppliers and testing labs have been underway since the CPSC released the briefing package for the Proposed Standard. However, establishing final test

methods is predicated on a final standard being available. Simply put – labs cannot proceed with standing up testing until they have a final standard to test to.

Preliminarily, based on the Proposed Standard, the testing contemplated will take longer than current testing based on existing standards for battery-containing products. The proposed standard requires testing to address the aging of materials (preconditioning). Preconditioning is not conducted as part of testing on battery-containing products currently and it will add additional time and cost to testing products in scope of the final standard. According to on RILA members' supplier, as proposed, certification testing to confirm compliance with the new standard would take a lab approximately 8 to 10 weeks based on using typical timeframes for electrical safety certification as a benchmark. Some of that total time is due to preconditioning the materials, which will add approximately 7 hours to every test.

c. **Anticipated Lab Backlogs and Capacity Issues to Accommodate Wave of Product Testing**
Testing and certification timing will be compounded by the breadth of battery-containing products implicated by the Proposed Standard and the capacity for labs to accommodate the influx of products needing testing. Therefore an 8 to 10 week timeframe is likely the bare minimum time required, and in many cases several weeks could be added to this timeline for any particular product as a queue forms and lab backlogs increase due to a strain on equipment and resource availability.

d. **Shipping and Purchase Order Fulfillment Processes Vary and May Add Months to the Timeline**
Retailers' purchase order (PO) fulfillment times and related shipping processes vary depending on the product. Depending on the PO, a supplier may manufacture all of the products fulfilling the PO at one time or over several weeks. Additionally, shipping times vary, and depending on the delivery schedule indicated by a PO, a product may ship over the course of several months. To illustrate the variation in this step, here are two examples:

    i. Example 1: A product is manufactured in May and then ships out from a factory from June through September.
    ii. Example 2: A product is manufactured from May to July, and ships on a continuous basis from the factory through September.

In either of the above examples a supplier would take 4 to 5 months to fulfill a PO and the manufacture dates in Example 2 would vary greatly.

e. **A One Year "Manufactured After" Effective Date and a One-Year Sell Through Provision are Appropriate and Necessary**

The implementation steps outlined above include a bare minimum "best case scenario" that already exceeds a 180-day implementation time. In reality, multiple rounds of mold changes during a redesign, limits on lab capacities to manage the significant influx of products to test to the Proposed Standard, and highly variable fulfillment processes, will mean that many products in scope will likely require several months beyond the 180-day timeframe to complete the arc from redesign to reaching retail shelves. Therefore, RILA recommends that the Commission include a one year (365 day) "manufactured after" effective date requirement and allow a one-year sell through provision on all products in scope. This additional time will help to accommodate products that may already be produced but may not ship for several months, which may not meet the packaging and other requirements (i.e., testing that includes preconditioning) contemplated in the Proposed Standard.

2. **Performance Testing Required to Meet the Proposed Standard Diverges Significantly from Current Testing and Poses Significant Challenges**

The Proposed Standard includes new, top-tier and extensive compliance requirements for abuse and performance testing derived from combing four different standards, and in some cases goes above and beyond these standards. These stringent performance standards will be difficult to meet for many battery-containing products in scope of the Proposed Standard. RILA recommends a few key modifications below to include in the final standard to mitigate these challenges.

The Proposed Standard includes in a 39.4 inch 10-point drop test on hardwood surface, as well as increased compression and force requirements that are more stringent than the current rigor that many products in scope are tested to. These include fragile and/or seasonal items that are not likely to be subject to frequent handling conditions (e.g., fireplace mantle décor, holiday tree ornaments). Redesigning these products to meet these increased performance standards will require complete retooling and materials substitutions that will add significant time and costs.

With this level of rigor, the Proposed Standard's performance requirements are more stringent than those of ASTM F963-17, the standard for toy safety that is long regarded as the "gold standard." Many non-toy products are already manufactured to meet this standard voluntarily. There is no data to support that ASTM F963-17 creates an accessibility hazard for products manufactured and complying with the 2017 revision of this standard.

To mitigate the challenges with meeting the Proposed Standard's novel performance requirements, RILA recommends the Commission incorporate the following measures in the final standard:

a. Align with performance requirements of the toy standard (ASTM 5963-17) for the reasons cited above;
b. Exempt products that will not be repeatedly handled during normal and foreseeable use from meeting more stringent performance metrics. Examples of products that will not be repeatedly handled during normal and foreseeable use include: scales, garage door openers, holiday tree ornaments, mantelpiece décor and other seasonal décor that is meant for

display only, glass/ceramic items, flameless candles, seasonal string lights, musical greeting cards, try-me button/disposable packaging containing button cell batteries, collectibles intended for display only, and large and heavy items;

c. Allow alternative test methods to demonstrate that the button/coin battery will not be released during foreseeable use and misuse of the product when specified standard test is not appropriate for the product type (e.g., glass/ceramic and other fragile items);

d. Issue best practice guidelines to assist designers of battery-containing products with gaining familiarity and achieving compliance with performance requirements.

### 3. Acceptable Alternatives Are Needed for Battery Enclosure Accessibility Requirements

There is no existing voluntary standard that currently meets the new battery compartment accessibility in the Proposed Standard, which incorporates and expands upon four different standards. Manufacturers will need significant time to comply with the novel enclosure requirements in order to retool compartments to the new standards and conduct testing to ensure compliance. Additionally, for certain products, it may not be feasible to secure battery compartments with an enclosure that requires a tool, such as a screwdriver or coin, to open the battery compartment.

To mitigate the challenges with meeting these novel enclosure requirements, RILA recommends the Commission:

a. Adopt an existing battery enclosure accessibility standard(s), rather than creating and adopting a completely new standard;

b. As with the above performance requirements, align with battery accessibility requirements of ASTM F963-17 as there is no data to support its accessibility requirements standard creates a hazard for toys manufactured, tested, and certified to the 2017 standard; and

c. Include the option of securing the battery compartment enclosure by requiring a minimum of two independent and simultaneous hand movements to open as an alternative for products where it is infeasible to include enclosures requiring a tool or coin to open the compartment. The alternative manner of requiring a minimum of two independent and simultaneous hand movements to open will provide adequate security against the ingestion hazard posed by button cell or coin cell batteries.

### 4. Considerations for Labeling Requirements

In addition to the implementation timing and performance requirement challenges discussed, RILA also wishes to raise for the Commission's awareness a number of specific nuances and challenges for meeting the Proposed Standard's labeling requirements. In the final standard, the Commission should address these challenges and areas needing clarity for warning labeling requirements for packaging, products, and e-commerce product listings.

a. **On Packaging Labeling**

All battery-containing products within scope of the Proposed Standard will require some amount of packaging adjustment to fit the increased size and coloration of the warning label requirements as proposed. Some packaging and labeling are currently black and white only and there are not "turnkey" options for readily adding additional colors to the existing labeling and packaging process. The new on package warning requirements will also require larger packaging and increased cost, especially for smaller products. In practice the Proposed Standard's abbreviated labeling options for packaging are not abbreviated as applied across the many different products within scope and their respective packaging characteristics, including principal display panel (PDP) sizes.

The Proposed Standard's lettering size for warnings also appears to deviate from established UL/ANSI standards to label size requirements within 16 CFR 1500.19 (Misbranded Toys and other articles intended for use by children). Additionally, as drafted, the Proposed Standards minimum letter size requirements for packaging warnings may have the unintended effect of reducing the prominence of other warnings on product packaging. As an example, the PDP of generator packaging includes warnings regarding the hazards of carbon monoxide. The Proposed Standard's current minimum letter size requirements, if implemented, will reduce the visibility of such warnings.

To mitigate the above-identified challenges with on package labeling, RILA recommends incorporating the following measures into the final standard:

i) An option to follow existing toy standard (ASTM F963-17) warning label requirements (e.g., contrast color and blocking);
ii) Permit smaller labels based on quantifiable metrics (e.g., if the full warning label is over 10 percent of the PDP then smaller labels can be used); and
iii) For the packaging marking, the sizing requirement should have a maximum letter size as used by the ANSI/UL standards as the minimum letter height which are:
    a) a height of 2.1 mm (1/12") for letters that are uppercase;
    b) a height of 1.6 mm(1/16") for letters that are lowercase; and
    c) a height of 4.8 mm for all letters of any signal words which include "WARNING" and "CAUTION."

b. **On-Product Labeling**

Like packaging labeling, the on-product warning label color and sizing requirements present challenges for some products. For example, it may be impractical for a manufacturer to add a process using yellow ink and/or the yellow ink would otherwise blend into the color of the product (i.e., a yellow product). To mitigate these challenges, RILA recommends that Commission incorporate the following measured into the final standard:

i) Remove color requirements and exempt when practicable and provide a black-and-white alternative;[1]
ii) Do not require warning icons on 6mm or smaller button cell batteries as it is more important to list the type and polarity information on the battery itself; and
iii) Permit the warning/labeling of products with a "permanent sticker" (i.e., that meets specific adhesive and adherence requirements to prevent removal) or similar alternative to requiring embossed/engraved/molded warnings.

c. **E-commerce/online warning labels**

Updating online product listings with requisite warning language for potentially tens of thousands of SKUs for products listed online will require significant time for retailers to implement and ensure compliance with its technical aspects. Additionally, it is unclear how much additive value the online warnings will provide from a cost-benefit standpoint when warnings will be included on the actual packages and products the consumer receives. RILA recommends the Commission incorporate the following measures in its final standard to mitigate the costs and time required to implement these updates to online products listings:

i) Remove the requirement for online warning labels or at a minimum extend the timeline for compliance; and
ii) Designate manufacturers as the primary responsible party to provide retailers written notice of the warning label on their product.

**d. Product-specific labeling challenges and areas for clarity in the final standard**

In addition to the labeling issues and challenges discussed above, RILA wishes to raise the following clarifying questions and areas for the Commission to address and consider when finalizing the standard:

i) Clarify whether products regulated by other federal agencies, such as medical devices, are required to meet all of the warning label requirements;
ii) How should manufacturers approach products such as footwear (e.g., lightup shoes) where attaching a permanent warning that is not detrimental to the aesthetic may wear off on the sole or the footpad?;
iii) What are the guidelines around "permanent markings" on products? Clarity is needed in the final rule on whether and how a sticker can meet the requirements;'

[1] *See e.g.*, California Proposition 65, Warning Symbol, "The symbol consists of a black exclamation point in a yellow equilateral triangle with a bold, black outline. The symbol must be placed to the left of the text of the warning in a size no smaller than the height of the word "WARNING". *If the sign, label, or shelf tag for the product is not printed using the color yellow, the symbol may be provided in black and white.* (emphasis added)" *available at* https://www.p65warnings.ca.gov/warning-symbol.

iv) How do the requirements apply to "try-me" buttons that utilize button or coin cell batteries that are part of packaging that is intended for disposal, where the product itself utilizes alkaline batteries not in scope; and
v) How do the requirements apply to items without any packaging, such as musical greeting cards, where the application of warnings would create significant aesthetic issues?

### 5. IEC Testing Should be Adequate for Demonstrating PPPA Compliance

The test protocol provided by 16 CFR § 1700.20 is expensive, burdensome, and will lead to delays in complying with a final standard. IEC Test IEC 60086-5:2021 is sufficient to determine compliance with the Poison Prevention Packaging Act (PPPA) requirements while also being less expensive, less burdensome, and less time-consuming than the test protocol in 16 CFR § 1700.20.

RILA recommends that CPSC include language in the final standard a provision that permits IEC testing to demonstrate conformity with PPPA requirements of Reese's Law.

### 6. Harmonization with Accepted Global Standards

Many RILA members raised Australia's related standards as a model that the Commission should review and increase harmonization with in its final standard. It's RILA understanding that manufacturing stakeholders, including battery manufacturers, will provide more detailed comments on alignment with Australia's standards. RILA encourages review and consideration of those comments.

## Closing

In closing, RILA and its members strongly support the CPSC's consumer safety mission and share the Commission's commitment to protecting consumers and ensuring that all products sold to U.S. consumers are in stringent compliance with all applicable safety standards and legal requirements. We appreciate CPSC's leadership and meaningful engagement with stakeholders.

If you have any questions or need any additional information, please contact me at susan.kirsch@rila.org or (202) 866-7477.

Sincerely,

Susan Kirsch

Susan Kirsch
Vice President, Regulatory Affairs