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1 {York Stenographic Services, Inc.}

2 HIF021.020

3 HEARING ON ``CRIB SAFETY: ASSESSING THE NEED FOR BETTER

4 OVERSIGHT''

5 THURSDAY, JANUARY 21, 2010

6 House of Representatives,

7 Subcommittee on Oversight and Investigation

8 Committee on Energy and Commerce

9 Washington, D.C.

10 The Subcommittee met, pursuant to call, at 10:03 a.m.,
11 in Room 2322 of the Rayburn House Office Building, Hon. Bart
12 Stupak [Chairman of the Subcommittee] presiding.

13 Members present: Representatives Stupak, Braley,
14 Schakowsky, Christensen, Green, Sutton, Walden and Burgess.

15 Staff present: Bruce Wolpe, Senior Advisor; Alison
16 Cassady, Professional Staff Member; Michelle Ash, Chief
17 Counsel, Commerce, Trade, and Consumer Protection; Will
18 Cusey, Special Assistant; Dave Leviss, Chief Oversight

19 Counsel; Ali Golden, Professional Staff Member; Erika Smith,
20 Professional Staff Member; Ali Neubauer, Special Assistant;
21 David Kohn, Press Secretary; Elizabeth Letter, Special
22 Assistant; Alan Slobodin, Chief Counsel for Oversight; Krista
23 Rosenthal, Minority Counsel; Kevin Kohn, Minority
24 Professional Staff Member; and Brian McCullough, Minority
25 Professional Staff Member.

|
26 Mr. {Stupak.} Good morning. We are going to begin this
27 hearing, the Subcommittee on Oversight and Investigations.

28 Our hearing today is entitled ``Assessing the Need for
29 Better Oversight on Crib Safety.'' Members will be
30 recognized for opening statements. I will begin.

31 Today we are here to answer a painful and difficult
32 question: Are we doing enough to protect infants and
33 toddlers from injuries and death in their cribs? Most
34 experts agree that the safest place for an infant to sleep is
35 in a properly made crib that meets the highest safety
36 standards. Babies sleeping on their backs in the crib with a
37 firm mattress and without soft bedding are less likely to die
38 from SIDS or accidentally suffocate. Our work today is
39 critical because of the unique nature of a baby crib. As we
40 will hear from our witnesses, a baby crib is the only product
41 designed expressly so parents can leave their child
42 unattended for a long period of time and be confident that
43 their child will be safe. It is reasonable for parents to
44 expect that the crib they purchase meets safety standards
45 enforced by a strong regulator. Unfortunately, this
46 Subcommittee has learned that those reasonable expectations
47 of crib safety have not been met.

48 The Consumer Product Safety Commission, CPSC, the

49 government agency tasked with keeping consumer products safe
50 for Americans, has recalled millions of cribs in recent years
51 after investigating reports of broken and defective crib
52 hardware, dropped sides that detach and poor wood quality.
53 What is most shocking is that all these recalled cribs were
54 certified as meeting the industry's voluntary safety
55 standards. The crib recalls raise questions about the
56 effectiveness of the current regulations and leave some
57 parents who doubt whether any crib on the market is safe.

58 In November of 2009, the CPSC announced the recall of
59 more than 2 million Stork Craft drop-side cribs, the largest
60 crib recall in U.S. history, and just this Tuesday, the CPSC
61 announced yet another voluntary recall involving 635,000
62 drop-side and fixed-rail cribs manufactured by Dorel Asia
63 Corporation. Congress instructed the CPSC to revisit its
64 safety standards for cribs under the Consumer Product Safety
65 Improvement Act of 2008. CPSC is prepared to meet that
66 obligation. Our hearing will detail the recent crib recalls
67 and consider how CPSC plans to prevent cribs with significant
68 defects from entering the market. We will also examine
69 industry's role in ensuring that their products are safe and
70 if crib standards are designed to keep consumers safe.

71 Today we will hear specifically about the safety
72 concerns of drop-side cribs. A drop-side crib allows a

73 parent to raise and lower the front of the crib for easy
74 access to their baby as opposed to a fixed-rail crib, which
75 has four sides that do not move up or down. According to the
76 Juvenile Products Manufacturers Association, retailers sold
77 approximately 500,000 full-sized cribs in 2008, of which 15
78 to 20 percent had drop sides. Since 2005, the CPSC has
79 announced more than 30 recalls of 7 million cribs for a
80 variety of safety problems, many of them involved drop sides.
81 CPSC experts have found that mattress support brackets and
82 drop-side hardware can break, deform or are lost. Design
83 flaws permit consumers to intentionally or unintentionally
84 install the drop-side railing upside down, putting unintended
85 stress on the crib hardware. Many different problems can
86 cause the drop side to detach, creating a dangerous gap
87 between the crib railing and the crib mattress. As this
88 simulated picture from the CPSC shows--it should be up here
89 on our screen--in some cases the body of an infant or toddler
90 can become trapped in the space and a child can suffocate.

91 Since 2007, the CPSC has issued recalls involving
92 millions of drop-side cribs sold by different manufacturers.
93 The CPSC has issued four recalls of drop-side cribs
94 manufactured by Simplicity after receiving reports of dozens
95 of incidents involving several deaths. In October 2008, the
96 CPSC recalled nearly 1 million Delta brand drop-side cribs.

97 The CPSC issued two recalls in 2009 of Stork Craft drop-side
98 cribs for problems associated with the brackets that hold the
99 mattress in place and problems with the cribs' plastic
100 hardware. The CPSC linked four deaths associated with Stork
101 Craft faulty cribs. In November 2009, a recall involved more
102 than 2 million cribs, the largest crib recall in U.S.
103 history.

104 The fact that most recalls have involved cribs that were
105 built in compliance with current voluntary safety standards
106 shows that our system for measuring and ensuring and
107 enforcing crib safety is not working. The Juvenile Products
108 Manufacturers Association, a national trade association
109 representing more than 250 companies, certified that
110 Simplicity, Delta and Stork Craft cribs involved in each of
111 these recalls met all U.S. standards and voluntary industry
112 standards. The JPMA gave these cribs their seal of approval.
113 Unfortunately, neither the mandatory nor the voluntary
114 standards were or are strict enough. JPMA will be testifying
115 at today's hearing, and I look forward to learning more about
116 what the crib industry must do to improve its safety record.

117 In November 2008, the CPSC acknowledged that the
118 mandatory and voluntary standards do not include adequate
119 performance requirements for durability of drop-side crib
120 hardware, the strength and quality of the wood used to make

121 the cribs, and the utility and clarity of crib assembly
122 instructions. I look forward to the CPSC chairperson's
123 testimony today about what the Commission can do to develop
124 and enforce stronger crib safety standards.

125 Today we will also examine the November recall of 2
126 million Stork Craft drop-side cribs as a case study on the
127 need for better regulation and oversight of crib safety.
128 First, what can Congress, the CPSC and crib manufacturers
129 learn from these massive recalls? And second, how does the
130 CPSC plan to address the ongoing safety problems with drop-
131 side cribs under its rulemaking authority? The CPSC has the
132 legal authority to tackle this problem and restore American
133 consumers' confidence in the safety of cribs. Because of the
134 work of some of the members of this Subcommittee,
135 particularly Congresswoman Schakowsky, the Consumer Products
136 Safety Improvement Act requires the CPSC to study and develop
137 safety standards for durable nursery products including full-
138 sized cribs. The Act directs the CPSC either to accept the
139 existing voluntary safety standards for these products and
140 make them mandatory or provide a stricter federal safety
141 standard.

142 Our hearing today consists of three panels of witnesses.
143 First we will hear from Mrs. Susan Cirigliano, who lost her
144 son Bobby in 2004 when the drop side of Bobby's crib detached

145 and he suffocated. Mrs. Cirigliano and her husband have been
146 working to ban drop-side cribs in New York State. Second, we
147 will hear from Michael Dwyer of the Juvenile Products
148 Manufacturers Association, and Nancy Cowles of Kids in
149 Danger, a consumer organization founded in 1998 by the
150 parents of a toddler who died when a portable crib collapsed
151 around his neck. These witnesses will be able to share their
152 perspectives on crib safety, consumer protection, and comment
153 on CPSC's rulemaking authority. And finally, we will hear
154 from the chairperson of the Consumer Product Safety
155 Commission, Inez Moore Tenenbaum.

156 I want to thank all of our witnesses for participating
157 in today's hearing. Particularly, I want to thank the
158 Ciriglianos for their time, their testimony, traveling from
159 New York to share their personal tragedy with us and the
160 American people.

161 In preparation for this hearing, the Subcommittee
162 requested and received documents from the Consumer Product
163 Safety Commission and the Juvenile Products Manufacturers
164 Association. The CPSC and the JPMA have been very
165 cooperative with the Subcommittee document request and
166 produced ten of thousands of pages of documents over the
167 holidays. I appreciate their cooperation with this important
168 inquiry. In addition, the Subcommittee requested documents

169 from Stork Craft, a Canadian-based crib manufacturer whose
170 drop-side cribs were the subject of the largest recall in
171 CPSC history. Stork Craft has pledged its cooperation, and
172 just yesterday provided the Subcommittee with its first
173 submission of some responsive e-mails. I urge Stork Craft to
174 cooperate fully and complete its production of documents
175 promptly. Stork Craft will not be testifying here today but
176 we look forward to reviewing their submissions, the documents
177 they submitted yesterday, and reserve the right to schedule
178 an additional hearing if necessary to bring Stork Craft here
179 and to explain their role in the recall process and its
180 responsibility to ensure the safe manufacture of cribs.

181 With that, I will yield back the balance of my time.

182 [The prepared statement of Mr. Stupak follows:]

183 ***** COMMITTEE INSERT *****

|
184 Mr. {Stupak.} I would next like to turn to the ranking
185 member of this Subcommittee, Mr. Walden of Oregon, and they
186 have been very cooperative. We have worked well on this one
187 and I think we may have future hearings, but Greg, thanks for
188 your efforts on this issue.

189 Mr. {Walden.} Thank you, Bart, and I appreciate your
190 holding this hearing and the work that both sides have done
191 on this issue. I first want to mention that I am also
192 scheduled to be in a Telecommunications Subcommittee markup
193 session that is going on right now. We are actually voting
194 on a couple of bills, so I may have to step out and go down
195 to that committee and then I will return.

196 I want to extend a warm welcome to the Ciriglianos. We
197 really feel awful about the loss that you have suffered. It
198 is unthinkable and it is the last thing any parent wants to
199 go through, and so you have our deepest condolences and
200 sympathy. Thank you for traveling here. Thank you for
201 telling us your story. We look forward to your testimony,
202 admire your courage and your willingness to speak up and make
203 a difference in public policy.

204 The U.S. Consumer Product Safety Commission is charged,
205 as you have heard from my colleague, with protecting the
206 public from unreasonable risk of serious injury or death from

207 thousands of products. Infant cribs are one of the products
208 under CPSC's jurisdiction and a major focus of that agency.
209 The Commission has acted in the past several months to recall
210 millions of drop-side cribs. Today we have an opportunity to
211 examine the recall process and product integrity questions
212 raised by the latest Stork Craft brand crib recall and
213 understand the roles of the company, the agency and the
214 consumer play in ensuring the effectiveness of the recall and
215 keeping children safe. Our goals here today are first to
216 identify the strengths and weaknesses of the current system,
217 and second, to discuss possible solutions to improve safety
218 and oversight while still allowing access to a wide range of
219 products with the assurance of the public's safety. We will
220 also consider the ASTM international standards specifically
221 for crib manufacturers that were released in December of last
222 year. ASTM is an entity that develops technical product
223 standards that guide the CPSC's evaluation of products. We
224 will want an assessment from our witnesses of whether the new
225 ASTM standards will eliminate or significantly reduce the
226 risk of serious injury.

227 I welcome CPSC Chairman Tenenbaum and look forward to
228 her statement and the opportunity to ask questions. I am
229 anxious to hear if and when the Commission will adopt the
230 ASTM standard, and if not, why not. I am also interested in

231 learning about the complex matrix the agency uses to
232 determine when a certain number of isolated consumer
233 complaints and incidents evolve into a full-blown
234 investigation and lead to an ultimate product recall.

235 Congress has not been inactive when it comes to
236 increasing federal regulation of juvenile products and
237 increasing the effectiveness of product recalls. The
238 Consumer Product Safety Improvement Act of 2008 addresses
239 several of these issues that bring us here today. Ms.
240 Tenenbaum will be able to talk about the new authorities of
241 the Commission that they have under CPSIA including new
242 rulemaking procedures that allow the agency to revise its
243 mandatory product standards more easily, new product
244 registration programs and increases in the agency's budget.
245 With the implementation in the last Administration of the
246 early warning system, the CPSC staff and previous Commission
247 leadership were already increasing their surveillance of
248 cribs, bassinets and play yards. This system helped trigger
249 the recalls of millions of cribs since that time. I hope the
250 chairwoman will talk about this system and how it can be
251 expanded, strengthened, improved under the new leadership of
252 the Commission.

253 Since medical experts agree the safest place for an
254 infant to sleep is in a crib, I want to know what we can do

255 to increase consumer confidence in these products to ensure
256 that parents are not discouraged from purchasing a crib at
257 all. The consumer, the companies that manufacture these
258 products, CPSC and Congress must work together to improve
259 communications and quickly yet thoroughly respond to products
260 that may pose a threat. I do hope that as we move forward,
261 the CPSC will be able to maintain a strong level of
262 collegiality amongst its five commissioners and that both
263 Republicans and Democrats will work together to ensure that
264 the CPSC effectively and wisely uses its new and additional
265 resources and authorities to improve crib and product safety.

266 Thank you, Mr. Chairman. I look forward to the
267 witnesses, and again at some point I will have to step out
268 for this other markup.

269 [The prepared statement of Mr. Walden follows:]

270 ***** COMMITTEE INSERT *****

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271 Mr. {Stupak.} Well, thank you, Mr. Walden. You make a
272 good point. There is another hearing going on on the first
273 floor and members will probably be bouncing in and out. It
274 is a markup. By markup, it just means we might have a vote
275 in committee so we may have to leave. I will stay and keep
276 the hearing moving on.

277 Next, Mr. Braley for an opening statement, 3 minutes,
278 please, sir.

279 Mr. {Braley.} Thank you, Mr. Chairman and Ranking
280 Member Walden. I can't imagine a more important hearing for
281 this Committee to hold than the one we are having today.

282 As a child growing up in the late 1950s, my parents had
283 a drop-side crib. As a parent whose children were born in
284 the late 1980s, I purchased, assembled and my kids all spent
285 time in a drop-side crib, and to the Ciriglianos, I want to
286 extend to you our sympathy and also our appreciation for your
287 courage in using this tragedy to teach others about this
288 danger, and I can't thank you enough for coming down and
289 spending your time to help educate us on this important
290 issue.

291 I am very, very concerned about the recall, not just of
292 these recent cribs but of the millions of cribs that have
293 been recalled in the last several months, and I believe we

294 need to act immediately to ensure that all cribs sold in the
295 United States meet the highest safety standards possible.
296 You have heard the number, 635,000 cribs made in China and
297 Vietnam by Dorel Asia recalled, this right on the heels of
298 the largest crib recall in U.S. history two months ago, and
299 this has been something that hits home for me personally
300 because the most recent recall has been linked to the October
301 2008 death of a 6-month-old infant in my State of Iowa who
302 strangled after getting trapped in a Dorel Asia crib when the
303 drop-side hardware broke. In addition to that tragedy, the
304 CPSC received 31 reports of incidents involving Dorel Asia
305 drop-side cribs including six reports of children being
306 trapped between the mattress and the drop side and also
307 received 36 reports of broken slats on the Dorel Asia crib,
308 and this gets back to my point earlier. I can tell you
309 having purchased and assembled a drop-side crib 30 years
310 after I was in one, that the quality of materials being used
311 in these cribs is much less than it used to be in terms of
312 the wood products, and that is why we need to have a strong
313 response to deal with this clear pattern of problems.

314 In their statement, Dorel Asia said that the recalled
315 cribs meet and exceed all applicable safety standards. If
316 that is true, then this is just one more clear indication
317 that we need to act as quickly as possible to strengthen and

318 enforce any standards.

319 These deaths are inexcusable. They involve the most
320 vulnerable members of our population and we have no excuse
321 for not fixing this problem immediately. I am glad to hear
322 that CPSC has taken initial steps to address these safety
323 concerns for cribs as mandated by the Consumer Product Safety
324 Improvement Act, which we passed here in 2008 and which this
325 Committee addressed in hearings, but I am concerned about the
326 length of time this is taking and I look forward to hearing
327 from Chairwoman Tenenbaum about the additional steps the
328 Commission is taking to improve and upgrade crib safety
329 standards.

330 Unfortunately, these crib recalls also illustrate the
331 dangers of free and unrestricted trade with companies that
332 don't have the same safety standards for manufacturing that
333 we do in the United States. To ensure the safety of American
334 families, we need to ensure that the countries we import
335 products from are on a level playing field with those that
336 are manufactured here in this country regarding product
337 safety regulations. That is why as chairman of the Populous
338 Caucus, I am working to make sure that future trade
339 agreements including strong product safety standards and that
340 products imported into the United States meet or exceed U.S.
341 health and safety standards, and I believe that the enactment

342 of those provisions contained in the trade act would go a
343 long way toward ensuring the safety of imported products
344 including cribs.

345 So I want to thank you, Chairman Stupak, for holding
346 this timely and important hearing. I look forward to the
347 testimony of all of our witnesses and I hope that this
348 hearing will be an important step forward toward the prompt
349 implementation and strong enforcement of the highest crib
350 safety standards possible. I yield back.

351 [The prepared statement of Mr. Braley follows:]

352 ***** COMMITTEE INSERT *****

|
353 Mr. {Stupak.} Thank you, Mr. Braley. Mr. Burgess,
354 opening statement, 3 minutes, please, sir.

355 Dr. {Burgess.} Thank you, Mr. Chairman.

356 Mr. Chairman, of course we are here today because of a
357 tragedy. It is a tragedy that we cannot reverse. Maybe we
358 can prevent future tragedies. I am profoundly regretful that
359 for so long the standards as they relate to crib safety have
360 been voluntary and not mandatory despite more than 7 million
361 cribs being recalled in the last 5 years.

362 We have a new commissioner at the Consumer Product
363 Safety Commission, Inez Tenenbaum. One of her first speeches
364 was last August and she correctly noted that a great deal of
365 product safety occurs by relying on consensus standards
366 coupled with regulatory authority to intervene quickly, and
367 she prefaced this by saying that they should be voluntary
368 consensus standards. This makes sense for a new commissioner
369 who has witnessed the aftermaths of some of the mandates that
370 were issued from the Congress through H.R. 4040, the Consumer
371 Product Safety Improvement Act, because we in the Congress
372 have yet to go back and fix some of the unintended
373 consequences that we visited upon parents and consumers with
374 that Act.

375 However, that being said, the Consumer Product Safety

376 Improvement Act has beleaguered the Consumer Product Safety
377 Commission. Yes, we have improved their funding. Yes, we
378 have improved their staffing, but I will tell you, as one of
379 the few Members of Congress who has been to the Consumer
380 Product Safety Commission and watched the good men and women
381 out there do their work, I will tell you that it is startling
382 with the amount of work that the amount of safety which they
383 are asked to assure the small staff and the rather primitive
384 working conditions that they face on a daily basis. They
385 don't have the manpower to implement the law and they don't
386 have the finances and they are vainly trying to meet the
387 deadlines imposed, and they issue stays and enforcement, stay
388 after stay after stay and enforcement, while trying to come
389 up with solutions and the only real solution is Congress
390 going back and fine-tuning some aspects of that legislation
391 and fixing the mistakes that we made when that legislation
392 was drafted. Section 104 of the Consumer Product Safety
393 Improvement Act specifically requires the Consumer Product
394 Safety Commission to study and develop safety standards for
395 durable nursery products such as infant bath seats, infant
396 walkers and cribs. The Consumer Product Safety Commission
397 could have either made mandatory existing voluntary safety
398 standards or provided a stricter federal safety standard, and
399 the Consumer Product Safety Commission worked to initiate two

400 rulemakings by August 2009 and two more rules every 6 months
401 until all durable nursery products have a mandatory safety
402 standard. But to date, the Consumer Product Safety
403 Commission has only proposed safety standards for infant bath
404 seats and infant walkers but not cribs, the course of 30
405 recalls.

406 The crib issue is an issue of failure of those trusted
407 by the American public to act. During the last
408 Administration, the rule regarding crib safety was being
409 advanced but a new Administration came in and this rule has
410 never been finalized. Here we are a year later, we see the
411 same problems as we have seen before, and really, Mr.
412 Chairman, we have no one to blame but ourselves for not
413 regulating not one single product, and especially cribs.

414 I yield back the balance of my time.

415 [The prepared statement of Dr. Burgess follows:]

416 ***** COMMITTEE INSERT *****

|
417 Mr. {Stupak.} Thank you, Mr. Burgess.

418 Mr. Green for an opening statement, please, 3 minutes.

419 Mr. {Green.} Thank you, Mr. Chairman, for holding this
420 hearing, our oversight hearing on this important issue.

421 There have been 30 recalls since 2005. The largest such
422 recall happened just 2 months ago when more than 2 million
423 cribs were recalled in November of 2009. Again on Tuesday,
424 there was a recall of more than 600,000 cribs. These major
425 recalls demonstrate what we need to do in setting safety
426 standards for cribs and testing and enforcement of those
427 standards.

428 As a grandfather of four under 5, I want to thank all
429 our witnesses today but particularly the Cirigliano family
430 for the loss of their child. It leaves a hole in your heart
431 for your whole life.

432 I also want to thank our Consumer Product Safety
433 Commission Chair Tenenbaum for being here today. I look
434 forward to hearing what actions the Commission plans to take
435 as it reviews safety standards for cribs that are required by
436 the Consumer Product Safety Act of 2008.

437 ASTM International, which provides voluntary technical
438 standards manufacturers can follow, amended their standards
439 last month and removed standards for what had been one of the

440 most dangerous types of cribs, a drop-side crib, especially
441 making any drop-side crib noncompliant with the ASTM
442 standards. There is a serious problem in that these types of
443 cribs are not addressed sooner either by ASTM or the CPSC
444 when it was the drop-side crib that led to so many recalls
445 because of the safety hazards they pose to infants and
446 children.

447 In 2007, a 7-month-old in my hometown of Houston died
448 due to a malfunctioning drop-side crib made by Simplicity.
449 The CPSC recalled cribs made by that manufacturer but the
450 overall issue of dangers posed by drop-side cribs is not
451 addressed. Without knowing it, the family of the 7-month-old
452 put the drop-side crib on upside down, the rail, and because
453 of that the hinge on the rail broke. That allowed a gap
454 between the mattress and the rail and the gap is where the
455 child suffocated to death with their head against the
456 mattress. This is not a unique problem on drop-side cribs
457 but is one that was not specifically addressed until December
458 2009 when ASTM removed standards for this type of crib. CPSC
459 now has the authority provided by the Consumer Product Safety
460 Improvement Act to move forward with strengthening
461 regulations relating to crib safety, and I hope it is not
462 just setting standards but enforcing testing to ensure unsafe
463 cribs never make it into consumer homes in the first place.

464 I am also concerned about the secondary market for
465 cribs, whether it be through garage sales or resales, similar
466 to car seats. You can buy a car seat on the side of the road
467 in Houston. It may be 20 years old but it doesn't meet the
468 safety standards of today.

469 Again, I want to thank the chairman for holding this
470 hearing and look forward to the testimony from all our
471 witnesses on what Congress can do to help protect infants
472 from these terrible accidents. I yield back my time.

473 [The prepared statement of Mr. Green follows:]

474 ***** COMMITTEE INSERT *****

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475 Mr. {Stupak.} Thank you, Mr. Green.

476 Ms. Christensen, opening statement, please.

477 Mrs. {Christensen.} Thank you, Mr. Chairman, and I want
478 to also thank you, Chairman Stupak and Ranking Member Walden,
479 for holding this important hearing.

480 Becoming a parent marks the most important event in
481 someone's life, and as parents and consumers, we trust that
482 the products that we buy are safe for our children and we
483 need to have that reassurance. However, we are here this
484 morning because some of those products are not safe, in
485 particular, faulty cribs that have resulted in injuries and
486 even death, and I would like to also add my word of welcome
487 to the Cirigliano family and extend my sympathy to them as
488 well, and also commend them for being here today and turning
489 their tragedy into a crusade to save lives and preventing
490 other parents from experiencing the same misfortune.

491 We can all agree that we need to work diligently to
492 strengthen crib standards and standards for every child
493 entity and to ensure that they are meeting the highest of
494 safety measures and providing protection to children in a
495 manner that they are supposed to be designed to do, and I
496 would also like to extend a thank you to all of the other
497 witnesses for being here today and look forward to their

498 testimonies.

499 [The prepared statement of Mrs. Christensen follows:]

500 ***** COMMITTEE INSERT *****

|
501 Mr. {Stupak.} Thank you.

502 Ms. Schakowsky, opening statement. I know you are
503 probably at the other hearing but I mentioned your leading
504 role in the Act that we just passed in 2008 and your interest
505 in this area, so thanks for being here and thanks again for
506 your diligence on this.

507 Ms. {Schakowsky.} Thank you, Mr. Chairman. I am happy
508 that we are holding this hearing.

509 This is a life-of-death issue, the safety of cribs.
510 Attending hearings where we hear testimony from families of
511 children who have died in preventable accidents is one of the
512 hardest things I do as a Member of Congress but of course
513 nothing compared to what it means to the families like the
514 Ciriglianos who mustered the incredible courage to come here
515 and tell us their story so that they can prevent these
516 accidents from happening to other children.

517 The Consumer Product Safety Improvement Act has taken a
518 lot of heat over the last year or so, and it is true that
519 under previous leadership the CPSC's implementation of the
520 law as problematic and produced widespread confusion,
521 particularly among small business owners, but we can't lose
522 sight of why this legislation was passed: to protect
523 children, children like Danny Keysar, for whom the bill is

524 named, and Bobby Cirigliano, whose parents are brave enough
525 to share their son's story today.

526 For years we have heard stories of the horrible injuries
527 and deaths of children in cribs and it has been mentioned
528 many times how literally millions of cribs have been recalled
529 in the last few years. No need to go through that again.
530 But I authored the provision in the CPSIA that requires the
531 Consumer Product Safety Commission to develop the strongest
532 possible mandatory standards for durable infant and toddler
533 products including cribs. It is my understanding that the
534 CPSC has proposed rules for the first two products, infant
535 bath seats and infant walkers. I am concerned that a year
536 and a half after the bill became law, there is still no rule
537 for cribs, and I am eager to hear from Chairman Tenenbaum,
538 who I welcome today, about how we are moving forward on such
539 a rule, and I also want to welcome other witnesses including
540 Nancy Cowles, a leader with whom I have worked for years on
541 children's product safety issues, and again, I thank you, Mr.
542 Chairman, and yield back the balance of my time.

543 [The prepared statement of Ms. Schakowsky follows:]

544 ***** COMMITTEE INSERT *****

|
545 Mr. {Stupak.} Thank you. That concludes all the
546 opening statements of members.

547 I would like to call our first panel of witnesses now.
548 Robert and Susan Cirigliano, if you would please come
549 forward? I have a chair there. As you know, the Ciriglianos
550 are from New York, and unfortunately and tragically they lost
551 their son Bobby.

552 It is the policy of this subcommittee to take all
553 testimony under oath. Please be advised that you have the
554 right under the rules of the House to be advised by counsel
555 during your testimony. Do you wish to be represented by
556 counsel?

557 Mrs. {Susan Cirigliano.} No, thank you.

558 Mr. {Stupak.} The witnesses indicated they did not.
559 Therefore, I am going to ask you to raise your right hand to
560 take the oath.

561 [Witnesses sworn.]

562 Mr. {Stupak.} Let the record reflect that the witnesses
563 have replied in the affirmative. They are under oath. I
564 would now ask for an opening statement, 5-minute opening
565 statements. It will be part of the record, so if you want to
566 submit a longer statement, you may, and it is my
567 understanding, Susan, you are going to testify?

568 Mrs. {Susan Cirigliano.} Yes.

569 Mr. {Stupak.} Would you pull that mic up a little
570 further and press the button. A light should go on there.

|
571 ^TESTIMONY OF SUSAN CIRIGLIANO, MOTHER OF BOBBY CIRIGLIANO,
572 ACCOMPANIED BY ROBERT CIRIGLIANO

573 } Mrs. {Susan Cirigliano.} Good morning. We are Robert
574 and Susan Cirigliano, also known as Daddy and Mommy, but we
575 have only heard three of our four children call us that
576 because our son Bobby never had the chance.

577 On September 15, 2004, Bobby was 6 months and 3 days old
578 when his head and neck were caught in the detached side rail
579 of his crib. After the drop-side detached, Bobby's head was
580 caught between the side rail and the mattress. With his face
581 pressed against the mattress, he suffocated. Bobby was taken
582 from his crib, put into an ambulance, arrived at the hospital
583 and never came home.

584 We miss Bobby every day, but what is most important is
585 what Bobby misses. Bobby has an older sister who never had
586 the chance to teach him how to get in and out of trouble.
587 Bobby has a younger brother and sister that he has never met.
588 Bobby has two grandfathers that he never played catch with,
589 two grandmothers whose cookies he was never able to taste.
590 Bobby never had a chance to wear his first Halloween costume.
591 He didn't get to sit on Santa's lap, and never blew out a
592 birthday candle.

593 Our smiles have dulled and our family will never be
594 complete again. Other than Mommy's and Daddy's arms, Bobby
595 was in one of the safest places, his crib. The reality is,
596 his crib was not safe and our lives will never be the same.
597 We refuse to allow any other families to suffer the pain we
598 have.

599 While we are happy to hear about the millions of crib
600 recalls, we are convinced that the only answer is a complete
601 ban on drop-side cribs. We do not believe that parents
602 realize the severity of placing their children to sleep in a
603 drop-side crib. The one place that you would leave your
604 child alone has become a threat. If they cannot purchase a
605 drop-side crib, they would have no option but to purchase a
606 stationary crib. We do not believe a repair kit is the
607 answer. If a crib has the ability to kill a child, it should
608 not be manufactured. The recalls are downplaying the number
609 of children that have been suffocated in a drop-side crib.
610 Our son Bobby was not included in the CPSC's reports. Their
611 reason for this is the location his drop-side rail detached
612 was not the same as the other infants. Our problem with this
613 is the investigator's report stated the bottom left rail was
614 not secure while Bobby's rail detached on the lower right
615 side. The point is, bottom left, bottom right, Bobby was
616 asphyxiated and died when his drop-side rail detached and he

617 was trapped between the mattress and the side just like
618 infants before him and just like infants after him. The
619 number of infants reported should not be determined where the
620 rail detaches but by the end result.

621 We have in the last 5 months worked with Legislation in
622 Suffolk County having a bill passed banning the sale of drop-
623 side cribs. We have worked with Nassau County Legislation
624 banning the sale of drop-side cribs and are waiting the
625 bill's signing. We are currently working with Rockland
626 County Legislation to have the ban passed there also, which
627 by the way, it passed on Tuesday night.

628 We appreciate Congress inviting us to be here today to
629 share our story. We hope you think of Bobby while you
630 determine how to keep our babies safe. We are all they have.
631 Their lives depend on it. Thank you.

632 [The prepared statement of Mrs. Cirigliano follows:]

633 ***** INSERT 1 *****

|
634 Mr. {Stupak.} Mr. Cirigliano, would you like to say
635 anything at this time? Okay. That is no. Thank you again
636 for being here and thank you for sharing your story.

637 Mrs. {Susan Cirigliano.} You are welcome. Thank you
638 for inviting us.

639 Mr. {Stupak.} We are going to have members ask you
640 questions, okay?

641 Mrs. {Susan Cirigliano.} Okay.

642 Mr. {Stupak.} Let me ask you this. In your statement,
643 you said, ``Our son Bobby was not included in CPSC's reports.
644 Their reason for this is the location of the drop-side rail
645 detached was not the same as other infants.''
646 Can you explain that?

647 Mrs. {Susan Cirigliano.} When we saw an interview on
648 television regarding the manufacture of our crib's recall,
649 the chairperson at the time was asked why Bobby's death
650 wasn't included in the recall, and her response was because
651 of the location of where his drop-side rail detached.

652 Mr. {Stupak.} There was no doubt that the rail
653 detaching was the cause of his suffocation, it is just the
654 location of it for--

655 Mrs. {Susan Cirigliano.} Yeah.

656 Mr. {Stupak.} --their rules and regulations? Is that

657 your understanding?

658 Mrs. {Susan Cirigliano.} Yes.

659 Mr. {Robert Cirigliano.} The recalled crib, the
660 manufacturer highlighted the piece that malfunctioned on my
661 son's crib, and that was one of the two pieces for the
662 recall, and we would still like an explanation for it
663 actually. We never got one. You know, the manufacturer put
664 a picture on their website of the same exact piece that
665 malfunctioned on my son's crib also.

666 Mr. {Stupak.} Did you report your son's death to the
667 CPSC, Consumer Product Safety Commission?

668 Mr. {Robert Cirigliano.} They came down to the medical
669 examiner's office and they inspected the crib.

670 Mr. {Stupak.} But do you have any personal knowledge--I
671 don't mean to push you on this. I am just trying to figure
672 out, because it is my understanding, there is really no
673 requirement to report it, so we really don't know how many
674 deaths have been caused or even the number of injuries. Was
675 there a requirement that you know of to report to the CPSC
676 the injury to your son?

677 Mrs. {Susan Cirigliano.} Well, I don't understand. I
678 am sorry. Were we required to report it?

679 Mr. {Stupak.} Right.

680 Mrs. {Susan Cirigliano.} I don't know.

681 Mr. {Stupak.} I mean, your son went to the hospital and
682 unfortunately died.

683 Mrs. {Susan Cirigliano.} Right.

684 Mr. {Stupak.} Then who has the responsibility then to
685 report it so we have accurate information of the information
686 the--

687 Mr. {Robert Cirigliano.} The last thing you are
688 thinking about is reporting it to the CPSC.

689 Mr. {Stupak.} I agree.

690 Mr. {Robert Cirigliano.} But after a couple of weeks,
691 we realized that they came down and inspected the crib,
692 because at that point we didn't know what had happened.

693 Mr. {Stupak.} When you say they came down and inspected
694 the crib, ``they'' would be local officials or--

695 Mr. {Robert Cirigliano.} I am not sure, but there was a
696 report and actually there was some parts of the report that
697 didn't make sense. The bottom right drop side was the
698 malfunctioning side. They reported the bottom left, so that
699 was wrong also, and also they said that they asked the
700 medical examiner if they could come and interview us and they
701 said the medical examiner said no, don't bother the family,
702 and that turned out not to be true.

703 Mr. {Stupak.} Okay.

704 Mr. {Robert Cirigliano.} So I don't know. There is

705 just a lot of in there that--

706 Mr. {Stupak.} Well, that is what we are trying to--

707 Mr. {Robert Cirigliano.} Right, and we would like some
708 answers. That would be nice.

709 Mrs. {Susan Cirigliano.} I am curious too because when
710 you are in a situation like that. The last thing that goes
711 through your mind is to contact anybody, you know what I
712 mean? And I understand your question and it is a great
713 question. From what I have on our CPSC report, they received
714 their information from one of the newspaper articles, but
715 that is a wonderful question. You know, as a parent when you
716 are in that position, the last thing you are thinking about--

717 Mr. {Stupak.} Nor should the burden be on you.

718 Mrs. {Susan Cirigliano.} Right, and I am wondering,
719 maybe the local police department, you know, somebody has to
720 contact.

721 Mr. {Stupak.} What we are looking for is a way to make
722 sure that the Consumer Product Safety Commission and public
723 authorities have the most complete information on this
724 product or any product. I mean, just listening to the
725 opening statements, Mr. Braley mentioned one in his area, Mr.
726 Green mentioned one. We have you. We have at least four
727 deaths reported in 2009. I will bet you there are many more
728 in 2009 but no one knows because how do you get the

729 information there, who is required to give it, in what timely
730 manner, and then there is always the escape clause, if you
731 will, that you have to have reason to believe whoever is
732 doing the reporting that the crib is the one that was
733 actually the cause of death, and there is always a way to
734 see, well, it really wasn't the product, it was something
735 else.

736 Mrs. {Susan Cirigliano.} Right.

737 Mr. {Stupak.} And in many of these cases, it looks like
738 a lot of times they say well, the parents did this wrong. So
739 that is why, and I don't mean to push you. I won't expect
740 you to know who to report it to. I am just trying to--

741 Mrs. {Susan Cirigliano.} No, I understand. We are
742 trying to figure out the chain of, you know, how is supposed
743 to get to where it should be.

744 Mr. {Stupak.} Correct. That concludes my questions.

745 Mr. Walden, questions, please.

746 Mr. {Walden.} Yes, I think you have covered most of it,
747 Mr. Chairman, very well.

748 I guess the question I would have is, do you think that
749 the new system for reporting, the early warning system and
750 all, can be effective, as effective? I realize it wasn't in
751 place in your situation, the tragedy, but it looks like
752 perhaps out of your situation and that of others. They have

753 said, okay, we have to fix how we collect these data and how
754 we evaluate them and how we spread that out so somebody
755 catches these problems quicker. Are you familiar with the
756 new early warning system? Do you think it would have made a
757 different in your situation?

758 Mr. {Robert Cirigliano.} Well, yeah, there has been a
759 lot of recalls from the early warning system, and, you know,
760 basically the problem was that one agency wouldn't know what
761 the other agency reported, and they couldn't get their data
762 together and put the similarities together, and I think that
763 is a big step that the CPSC has taken. I think it is
764 working. I think they need--I think the big thing is to make
765 it a mandatory. Every single crib needs to be tested and it
766 shouldn't be voluntary. And we all know that. You know, and
767 the other big problem is these countries that are importing
768 these cribs into the United States and, you know, they are
769 making them a lot flimsier. You can just tell. I mean, the
770 plastic spring pegs have been a big issue and it is a little
771 three-quarter-inch piece of plastic that is supposed to hold
772 a whole side rail up, and, you know, back in the day they
773 used to make them out of metal, and you know, they are just
774 trying to make a cheap--they are making a cheaper product and
775 that needs to be tested. Every single crib needs to be
776 tested.

777 Mr. {Walden.} And the new standards that are coming
778 out, and came out, I guess, the recommendations in December
779 of last year, have you had a chance to review those, the ASTM
780 standards?

781 Mrs. {Susan Cirigliano.} No, I haven't seen them.

782 Mr. {Walden.} I would be curious to--and I realize you
783 probably have other things going on in your life too than
784 this, but I can certainly understand why this is such an
785 important issue for you, but I would be curious to get your
786 feedback at some point on the ASTM standards, because I think
787 they address some of these issues.

788 Thank you, Mr. Chairman. That is all I have.

789 Mr. {Stupak.} Thank you, Mr. Walden.

790 Mr. Braley for questions, please.

791 Mr. {Braley.} Mr. Cirigliano, I want to follow up on
792 that point you just made because my recollection of the crib
793 that was in our family for years is exactly as you described.
794 The quality of the wood itself, you could probably run a tank
795 into and it wouldn't have collapsed. I took 4 years of high
796 school shop classes and I have assembled a lot of consumer
797 products and I apply a lot of torque to make sure that they
798 are properly tightened and yet I remember the one that I
799 assembled. Even though it was on wheels and on a hardwood
800 floor, there was a flimsiness to it just in the way that it

801 stood there that I don't remember on the one that my parents
802 owned. As a parent, can you just share with us where Bobby
803 was in the number of children you had? Was this the first
804 child you had this crib for, the second, the third? Tell us
805 a little bit about that.

806 Mr. {Robert Cirigliano.} No, we had the crib for my
807 daughter, and at the time she was--

808 Mrs. {Susan Cirigliano.} Well, we bought it for her
809 when she was born.

810 Mr. {Robert Cirigliano.} And when my son started using
811 it, I guess 3 years later, and we never took the crib apart.
812 I remember putting it together. You know, you try and
813 tighten everything down as tight as you can, and, you know,
814 when you go and buy a crib, they have got all these safety
815 labels on it. Maybe you have a false sense of security, and
816 at that point we never realized that there were all these
817 problems with these cribs. You just--it just wasn't out
818 there. If it was, we would have never bought one. And I
819 think that is a very important piece here, and Congress's
820 voice is going to be huge in this. Getting the word out to
821 everybody that has these cribs, they could be in the garage,
822 up in the attic, and they go to bring it back out for a
823 newborn in the family, they need to throw those out. They
824 are no good. And I think the voice of Congress is going to

825 be huge in this.

826 Mr. {Braley.} Mrs. Cirigliano, I want to talk to you
827 about the safety certification on cribs in the marketplace
828 because a lot of parents, a lot of young parents are
829 constantly trying to educate themselves about product safety.
830 They want to buy products that are going to take care of
831 their children. We have seen information in preparation for
832 this hearing that the thing that makes a crib unique, it is
833 one of the few devices that an infant uses where you expect
834 that child to be safe absent the constant attention of a
835 parent. That is the whole underlying premise for having a
836 crib so that you can go to sleep yourself at night with the
837 confidence that child is going to wake up healthy and alive
838 in the morning.

839 Mrs. {Susan Cirigliano.} Right.

840 Mr. {Braley.} So one of the things we know is that most
841 manufacturers who sell cribs in this country use this
842 certification, meeting voluntary safety standards through the
843 Juvenile Products Manufacturing Association and they certify
844 with a seal on the product that it has been tested by
845 independent labs and meets all current mandatory and
846 voluntary safety requirements, and if you look up here on the
847 screen, I believe this is the seal that is used. Is that
848 your understanding?

849 Mrs. {Susan Cirigliano.} Yes.

850 Mr. {Robert Cirigliano.} Yes.

851 Mr. {Braley.} So was this crib that you bought for your
852 daughter originally and that was used by Bobby, did that bear
853 this seal?

854 Mr. {Robert Cirigliano.} It looks very familiar. I am
855 not sure exactly but I know it did have two seals on it, and
856 that was one of the things that we were looking for when we
857 went to go purchase a crib.

858 Mr. {Braley.} And when you look for that and see it on
859 there, as parents, what does that say to you?

860 Mr. {Robert Cirigliano.} It is safe, it has been
861 tested.

862 Mrs. {Susan Cirigliano.} It gives you a sense of
863 security.

864 Mr. {Braley.} Would it surprise you to learn that the
865 cribs involved in these latest CPSC recalls were certified by
866 JPMA as meeting all applicable safety standards?

867 Mr. {Robert Cirigliano.} It wouldn't surprise me, no.

868 Mr. {Braley.} In your opinion as parents who have
869 purchased this product, what value does that certification
870 seal have to parents?

871 Mrs. {Susan Cirigliano.} Now or when we purchased the
872 crib?

873 Mr. {Braley.} Now.

874 Mr. {Robert Cirigliano.} It has no value right now.

875 Mr. {Braley.} And why is that?

876 Mr. {Robert Cirigliano.} Because we've been doing a lot
877 of research and it seems like, I mean, you are looking at
878 millions and millions and millions of cribs that have been
879 recalled, and the reasons for the recalls, you know, just
880 little pieces of plastic that--and springs. You know, how
881 long is a spring reliable?

882 Mrs. {Susan Cirigliano.} You are talking about a spring
883 and a plastic piece that are exactly what you use in a Bic
884 pen. It's basically the size of what it is, and how long
885 does a Bic pen last? I would think a majority of families do
886 not go out and buy a new crib every time a new child is born.
887 Most families buy one crib and they, you know, use it for the
888 length of all of their children.

889 Mr. {Braley.} Well, I couldn't agree more, and Mr.
890 Chairman, I hope that we will use this hearing as a way to
891 identify ways to improve the safety certification process to
892 protect the rights of consumers and the safety of infants,
893 and I yield back.

894 Mr. {Stupak.} Thank you, Mr. Braley.

895 Mr. Burgess for questions.

896 Dr. {Burgess.} Thank you, Mr. Chairman, and thank you

897 both for being here. I think you have already answered this
898 with Mr. Braley, but this was a crib that you had purchased
899 new yourselves?

900 Mrs. {Susan Cirigliano.} Yes.

901 Dr. {Burgess.} So this was not a hand-me-down, it was
902 one that you had. Was this crib, did it end up on a recall
903 list?

904 Mrs. {Susan Cirigliano.} Yes.

905 Mr. {Robert Cirigliano.} Yes.

906 Dr. {Burgess.} How did you receive the notice of the
907 recall?

908 Mrs. {Susan Cirigliano.} By watching television.

909 Dr. {Burgess.} So it was after the fact?

910 Mrs. {Susan Cirigliano.} Yes.

911 Mr. {Robert Cirigliano.} Right.

912 Ms. {Burgess.} Now, I think, Mr. Cirigliano, you
913 referenced this, the way the data is managed, the way the
914 data is collected is obviously critical and the CPSC is
915 trying to build a registry, so clearly that would be
916 something that would be helpful and yet I get the impression
917 from listening to your testimony that with the drop-side
918 design, that even the registry is really insufficient, it is
919 the design itself of the drop side. Is that correct?

920 Mrs. {Susan Cirigliano.} That is my belief, yes.

921 Dr. {Burgess.} And yet the drop side presumably
922 developed at some point because someone thought it would be
923 worthwhile to save wear and tear on mom's back as baby gets
924 bigger and bigger and bigger to be able to change him, attend
925 him and move him in and out. So there may be a tradeoff
926 there but at the same time safety ought not to be the thing
927 that we trade off, and I agree with Mr. Braley, consumers
928 need to be informed about the potential dangers of the drop
929 side if that indeed is what they are going to purchase.
930 There are advantages but there are disadvantages as well. Do
931 you think if CPSC had had registry when your crib was
932 recalled, would that have been helpful to you all? I am
933 worried that we don't get the word out. Now, you bought your
934 crib new so if there was a warranty card that you returned or
935 a website that you registered, that is one of the things that
936 we struggled with when we did 4040, the big improvement act
937 on consumer product safety that we did a year or two ago, but
938 I will tell you, I am not good about those warranty cards
939 myself, and as I remember cribs from my kids were little, my
940 wife's dad got a crib down from the attic in Arkansas and
941 brought it down to Texas and that was a crib for a couple of
942 years, and then it went on to its next life in her sister's
943 home for a while, and I don't know where that crib is today
944 but I think it is still probably in circulation out there. I

945 don't know how, you know, if that crib were on a recall list,
946 I don't know how folks would ever know. Where that becomes
947 important in the resale industry, the Goodwills, the
948 Christian Community Action stores in my district that do good
949 work for providing low-cost products to young families who
950 don't have the wherewithal to go out and buy new products,
951 how do you get that information to them, and that is one of
952 the things that we struggled with when we did 4040, and I
953 guess listening to you today, sir, it would just be if a
954 resale shop has a drop-side crib, they need to be very, very
955 circumspect about whether or not they go ahead with resale to
956 another family because at least the more recent product
957 manufacturer has left you feeling that there is going to be
958 some danger involved in that product. Am I overstating that?

959 Mrs. {Susan Cirigliano.} No, I agree. I definitely
960 think there's going to be danger. That is why we feel like
961 the ban is very important, and we have been doing a lot of
962 media and word of mouth. I am small but I have a large mouth
963 when it comes to this and I make sure that every person I
964 talk to, and sometimes I feel I am being a little hurtful to
965 the pregnant mom that I am walking up to by explaining my
966 story to her but I think that the is only way to get it out
967 there.

968 Dr. {Burgess.} Well, let me just ask you, and you heard

969 my opening statement about whether or not these safety
970 standards be voluntary or mandatory. Do you have a feeling
971 about that? Should the standards be voluntary?

972 Mrs. {Susan Cirigliano.} I think they should be
973 mandatory.

974 Dr. {Burgess.} And the last question I have, again, you
975 already answered it. What would you fix about the drop-side
976 crib? Well, you would fix it by not having it. Probably fix
977 it with an ax.

978 Mrs. {Susan Cirigliano.} We say we would break them,
979 burn them and throw them away.

980 Dr. {Burgess.} I can't even tell you the crib that my
981 kids were in. It was probably manufactured in the 1930s, and
982 like Mr. Braley's experience, I mean, I tried hard, I think,
983 to destroy it trying to fit it in the back of U-Hauls over
984 several moves, and that thing was--I mean, you just couldn't
985 destroy it.

986 I think we have to be careful how we proceed, Mr.
987 Chairman. We got into a lot of difficulty with the
988 unintended consequences when we did that big 4040 bill. I
989 got motorcycle dealers in my district who sell used
990 motorcycles and they are banned from selling them in case the
991 kid eats the battery, he could get lead poisoning. I mean,
992 that is ridiculous. And we haven't gone back and fixed that.

993 So I do want us to be careful at the same time. I mean, here
994 is a problem, I have got a list of crib recalls going back to
995 the 1970s, 2 million in 2009, 1 million in 2007, 104,000 in
996 2005, 6,000 in 1997, 1,600,000 in 1986, 400,000 in 1979,
997 70,000 in 1978. I mean, clearly there is a problem here that
998 we need to solve.

999 All right. I will yield back the balance of my time.

1000 Mr. {Stupak.} Thanks, Mr. Burgess. Most people don't
1001 eat batteries so I don't think it is really necessarily the
1002 law but maybe the way we apply it, and that is the reason why
1003 the testimony of the Ciriglianos and others are very helpful.
1004 I agree with you, some of the applications of the law as it
1005 was passed have not been the best by any Administration, and
1006 that is part of our job, to make sure they are done properly.

1007 Mr. Green for questions, please.

1008 Mr. {Green.} Thank you, Mr. Chairman, and hearing both
1009 from Congressman Braley and Congressman Burgess. When my
1010 daughter was expecting, I went up to the attic and got our
1011 crib from our children, which is the 1970s. My wife
1012 explained to me very quickly that, you know, they were too
1013 far apart, and instead of putting it out on the curb, I
1014 actually took a sledgehammer to it so nobody else could use
1015 it, and that is what bothers me, I guess, because, you know,
1016 I was going to try and use it from generation to generation.

1017 It doesn't work. Our grandchildren actually stay in a Pack
1018 and Play when they come to our house.

1019 But I want to go to the instructions that you all
1020 received, because the child, the 7-month-old in Houston who
1021 passed away, the parents actually put the rail upside down,
1022 and did you have problems with the instructions? Having put
1023 together lots of stuff, it sometimes is real difficult, and
1024 don't torque it too much because you might have to take it
1025 off and put it back together again. Did you all have
1026 problems with the instructions?

1027 Mr. {Robert Cirigliano.} I don't remember having
1028 problems with the instructions, but the one thing I found odd
1029 was, our instructions were on the mattress board. That is
1030 the board that is put under the mattress. So you are
1031 actually putting the instructions in place, and I just
1032 remember, I mean, it was just the oddest thing and I to this
1033 day can't believe that that was done. It wasn't a piece of
1034 paper. It was on a mattress board.

1035 Mr. {Green.} The least they could do is make it on the
1036 upside so you can read it.

1037 Mr. {Robert Cirigliano.} It was pretty bizarre.

1038 Mr. {Green.} And I think that is something that I--

1039 Mr. {Robert Cirigliano.} That is another problem.

1040 Mr. {Green.} They need to make sure that, one, they are

1041 easily readable, but they are also common sense-wise that you
1042 have it. And again, for the loss of your child, like I said,
1043 we have had three in the Houston area over the last few
1044 years. What a tragedy.

1045 I yield back my time, Mr. Chairman.

1046 Mr. {Stupak.} Thank you, Mr. Green.

1047 Ms. Schakowsky for questions, please.

1048 Ms. {Schakowsky.} I will pass on questions but I just
1049 really, really want to thank you for informing us with what
1050 is probably the most compelling testimony of all, and that is
1051 your personal experiences and your advice. I think right now
1052 there is some voluntary standards about not having any drop-
1053 side cribs. We want to make sure that they are eliminated
1054 from the marketplace so no one else has your experience, and
1055 I admire you for going up to pregnant women. It may be the
1056 most important piece of advice that they get during their
1057 pregnancy, and, you know, being pushy in that sense is a
1058 really good thing. So thank you very much for being here
1059 today.

1060 Mrs. {Susan Cirigliano.} Thank you.

1061 Mr. {Stupak.} Ms. Sutton for questions, please.

1062 Ms. {Sutton.} Thank you, Mr. Chairman, and thank you
1063 very much for your testimony, for coming forward today. We
1064 are so sorry for your loss.

1065 Mr. Chairman, I want to thank you very much for holding
1066 this hearing because, you know, it is clear with millions of
1067 cribs being recalled because of problems with drop sides, it
1068 is time for the CPSC to take action, to protect the infants
1069 and address millions of parents' concerns. You know, we have
1070 the responsibility to act to ensure that parents can lay
1071 their infant down without fear in their crib, and I am deeply
1072 concerned also that when we hear about problems, oftentimes
1073 products that recalled were manufactured in other countries,
1074 and it is unconscionable when companies and importers pay
1075 more attention to cost than to our safety. Product safety
1076 has to always be the primary focus, and so parents, as I
1077 said, should not have to worry about laying their infant
1078 child in a crib and being exposed to grave danger. And so
1079 while we are happy that recalls advise parents but it is
1080 after the danger, you know, is present and identified. The
1081 products need to be safe when they are manufactured and put
1082 on a store shelf.

1083 Now, Mr. Chairman, one of the reasons why I appreciate
1084 this hearing and your testimony also is that it sort of draws
1085 attention to this problem where we have products coming in
1086 that consumers assume are living up to our safety standards,
1087 and they may not even know--it is impossible to subject
1088 foreign manufacturers to U.S. law, and I am going to be

1089 introducing soon a bill called the Foreign Manufacturers
1090 Legal Accountability Act to protect American consumers and
1091 businesses from defective products manufactured abroad
1092 because we need to make sure that the products being consumed
1093 in this country are safe for consumption.

1094 So thank you again for your testimony. We are very,
1095 very sorry for your loss. But thank you for being here.

1096 Mrs. {Susan Cirigliano.} Thank you.

1097 Mr. {Stupak.} I thank you both for being here, and
1098 thanks for your testimony and really helping us understand
1099 the issue more, and we are going to continue with this
1100 hearing. You are welcome to stay if you like but we will
1101 dismiss you now, and thanks again and thanks for working with
1102 us.

1103 Mrs. {Susan Cirigliano.} Thank you.

1104 Mr. {Robert Cirigliano.} Thank you.

1105 Mr. {Stupak.} I will call our next panel of witnesses.
1106 On our second panel we have Nancy A. Cowles, executive
1107 director, Kids in Danger, and Michael Dwyer, executive
1108 director, Juvenile Products Manufacturers Association, if
1109 they would come forward?

1110 It is the policy of this subcommittee to take all
1111 testimony under oath. Please be advised that you have the
1112 right under the rules of the House to be advised by counsel

1113 during your testimony. Do you wish to be represented by
1114 counsel? Both indicated not. Then I am going to ask you to
1115 raise your right hand to take the oath.

1116 [Witnesses sworn.]

1117 Mr. {Stupak.} Let the record reflect both our witnesses
1118 answered in the affirmative. They are under oath. We would
1119 ask for an opening statement of 5 minutes. If you have a
1120 longer statement and supporting documents, we will be happy
1121 to make it part of the record. Ms. Cowles, would you like to
1122 go first?

1123 Ms. {Cowles.} Sure.

1124 Mr. {Stupak.} Just pull that mic up and press the
1125 button. Thank you, and good morning.

|
1126 ^TESTIMONY OF NANCY A. COWLES, EXECUTIVE DIRECTOR, KIDS IN
1127 DANGER; AND MICHAEL DWYER, EXECUTIVE DIRECTOR, JUVENILE
1128 PRODUCTS MANUFACTURERS ASSOCIATION

|
1129 ^TESTIMONY OF NANCY A. COWLES

1130 } Ms. {Cowles.} Good morning, Chairman Stupak, Ranking
1131 Member Walden and committee members. First let me thank the
1132 House Subcommittee on Oversight and Investigation for holding
1133 this very important hearing on crib safety and for giving us
1134 the opportunity to participate. I do have a much lengthier
1135 statement, which I believe I have already submitted, so I
1136 will read very briefly through a shorter statement for this
1137 purpose.

1138 Kids in Danger is a nonprofit organization--we are based
1139 in Chicago--dedicated to protecting children by improving
1140 children's product safety. As Congresswoman Schakowsky
1141 mentioned, we were founded in 1998 by the parents of Danny
1142 Keysar, who was killed in a portable child at his childcare
1143 location. Even though the home had just been inspected days
1144 before, the crib had been recalled 5 years earlier, had
1145 already killed four children, and yet there was no publicity.
1146 No one knew that it was recalled in that home. And our

1147 mission is to prevent this from happening to other children,
1148 to promote the development of safer children's products,
1149 advocate for children, and educate the public about these
1150 important issues.

1151 And I think it has been said, the crib is first and
1152 foremost a safety device. Cribs are the only children's
1153 product that is made to leave a child unattended so that
1154 someone so aptly said, you can get a few hours sleep
1155 yourself. But concerns about this issue are not new. Crib
1156 durability, more strenuous testing, hardware failures,
1157 assembly problems have been raised at almost every one of the
1158 voluntary standard-setting meetings that I have attended
1159 since I joined that body in 2001 and yet there has been until
1160 very recently little or no change to the standard for years.
1161 And the mandatory standard has been stuck even farther back
1162 in time. Any new changes at all were made to the voluntary
1163 standard. Even the vital safety measure of banning corner
1164 posts on cribs, which led to many deaths, does not appear in
1165 the current federal standard.

1166 The failure of the voluntary system to adequately
1167 protect children is what led Congresswoman Jan Schakowsky to
1168 first introduce the legislation that is now in the CPSIA
1169 calling for stronger mandatory standards and third-party
1170 testing back in 2001. Had we done it then, we may have a

1171 different outcome to Susan and Rob's story here. So it isn't
1172 that the problem wasn't known, rather it is that CPSC lacked
1173 the resources and authority and manufacturers lacked the will
1174 to strengthen the standards. Now with the statutory
1175 requirement in the CPSIA, we will be seeing a strong
1176 standard.

1177 As has been mentioned, since September 2007, over 7
1178 million cribs have been recalled by the CPSC. Most were
1179 tested to the voluntary standard and certified by the
1180 Juvenile Products Manufacturers Association. Many were
1181 recalled for hardware failures, drop-side failures, but some
1182 were recalled for clear violations of the mandatory standard.
1183 They were painted with lead paint or they simply did not meet
1184 the required dimensions. If manufacturers are making cribs
1185 that don't meet standards that can be confirmed with a tape
1186 measurer and a lead test swab, then how can we expect that
1187 they can be safe in terms of design to keep babies safe
1188 unattended?

1189 This current situation leaves parents in a horrible
1190 position. We often get calls from parents asking for advice,
1191 what to do, especially as they hear about all these new
1192 recalls. We can be of limited help. We can't say to look
1193 for the JPMA label, even though it does indicate some minimum
1194 testing, since all of the recalled cribs primarily were

1195 certified to that standard. We can say to stay away from
1196 drop-side cribs but there is also incidents with mattress
1197 supports, hardware failure and breaking crib slats, and the
1198 last thing any of us want is for parents to get the idea that
1199 other places are safer for their baby than a crib. Babies
1200 are safest in a safe crib, and that is why this is so urgent
1201 that we solve this problem now.

1202 Let me briefly talk about consumer use of cribs.
1203 Parents will use a crib for more than one child. They will
1204 pass them on to their sister or friends and sell them
1205 secondhand. It doesn't mean it is a 20-year-old crib they
1206 are passing on, it could be a 2- or a 3-year-old crib. I
1207 think we can assume that if someone spends, you know, up to
1208 \$1,000 on a product, they aren't going to use it for 2 years
1209 and then throw it out. It is not consumer misuse when a crib
1210 is assembled, taken apart and reassembled more than once. In
1211 addition to military families--I was an Air Force brat myself
1212 who moved frequently--other families move and many parents on
1213 the advice of their doctors start with the crib in their
1214 bedroom and then need to move it to the child's bedroom later
1215 on. In these tough economic times and in the midst of a
1216 growing green mindset, manufacturers should expect that this
1217 is what will happen to their products. They will be used for
1218 more than one child or even more than just two children in a

1219 row.

1220 So if a crib can't handle being reassembled, it should
1221 not be sold. If the crib falls apart, losing screws or the
1222 little safety plugs or has a drop side that won't stay up,
1223 parents are going to try to fix it. They aren't engineers
1224 and they do not clearly understand the risk of that action.
1225 We need to give parents a crib that lasts, hardware that
1226 doesn't fall out and clear instructions on how to use that
1227 product. We are glad that CPSC is finally moving to a strong
1228 mandatory standard. In our written statement, we have a lot
1229 of suggestions for that. But I would just like to again talk
1230 about the misassembly. Far from seeing misassembly as solely
1231 a consumer use problem, I would assert that products designed
1232 in such a way that parts can be assembled in more than one
1233 way including ways that lead to death is a design problem and
1234 not a consumer misuse problem. As I said, I have specific
1235 things, but I would also like to just mention the public
1236 consumer incident database that the CPSC is working on
1237 because I think that will also be very important for safety.
1238 That way parents can get the information themselves. If they
1239 are about to buy a crib or have a problem with their crib,
1240 they can find other people who have the same problem. So I
1241 applaud CPSC for moving ahead with that.

1242 And secondly, I have something I would suggest for this

1243 committee, and that is, the big problem is recall
1244 effectiveness. These cribs remain out there once they are
1245 recalled. So of the 7 million cribs recalled, more than half
1246 of them are probably still in use. We need to improve recall
1247 effectiveness. One way you could help do that is to require
1248 CPSC to report to you annually on their recall effectiveness
1249 for each of these recalls. Each manufacturer is required to
1250 file a monthly corrective action report that says how many
1251 consumers have contacted them, how many products they have
1252 replaced or fixed. If that information was public--right now
1253 it is a very difficult FOIA process to get it--I think that
1254 alone would make manufacturers work much harder to get those
1255 products out of use.

1256 So again, thank you so much today. I appreciate it, and
1257 I would be happy to answer any questions.

1258 [The prepared statement of Ms. Cowles follows:]

1259 ***** INSERT 2 *****

|

1260 Mr. {Stupak.} Thank you.

1261 Mr. Dwyer, your opening statement, please, sir.

|
1262 ^TESTIMONY OF MICHAEL DWYER

1263 } Mr. {Dwyer.} Thank you. Good morning, Chairman Stupak,
1264 Ranking Member Walden and members of the committee. I
1265 appreciate the opportunity to testify today about crib
1266 safety. The timing of this hearing is fortuitous since my
1267 fellow witness, Nancy Cowles, and I just spent two very
1268 productive days at the CPSC developing the new voluntary
1269 standard for full-sized cribs which the CPSC is hoping to
1270 promulgate later this year as a new federal standard. JPMA
1271 has long advocated the adoption of the more expensive ASTM F-
1272 1169 as a mandatory federal standard. At the behest of
1273 Chairman Tenenbaum, juvenile products manufacturers, ASTM and
1274 consumer advocacy groups have worked with CPSC technical staff
1275 to update CPSC crib regulations. This rulemaking comes on
1276 the heels of similar rulemakings for infant walkers, bath
1277 seats and upcoming rulemakings on toddler beds and bassinets
1278 and cradles. These rulemakings are all occurring pursuant to
1279 section 104 of the CPSIA passed by Congress in 2008 with
1280 extensive input from the full committee.

1281 JPMA has been working and will continue to work
1282 collaboratively with all stakeholders towards our common goal
1283 of promoting the safest and most effective juvenile product

1284 safety standards in the world. Our members produce products
1285 that help prevent injuries to our children. While tragic
1286 accidents often occur or may occur, these products save many
1287 lives. As an example, child restraint seats or car seats
1288 save an untold number of children's lives in motor vehicle
1289 accidents. Similarly, cribs have helped assure that children
1290 are placed safely to sleep.

1291 JPMA offers a certification program to manufacturers who
1292 are willing to have their products tested to ASTM standards
1293 by independent third-party CPSC-accredited laboratories. The
1294 certification program was created in 1976 when manufacturers
1295 approached ASTM through the association about setting a
1296 voluntary safety standard for high chairs. That standard has
1297 evolved but it is still in effect today. Since then, JPMA
1298 has expanded the certification program to cover 19 additional
1299 products with two more pending. ASTM is one of the largest
1300 voluntary standard-setting organizations in the world with
1301 over 22,000 members worldwide. ASTM standards are developed
1302 on a consensus basis by all interested parties. Any
1303 reputable stakeholder can join a standards development
1304 committee and vote on all aspects of the standard. Every
1305 standards development committee member with a vote can
1306 influence this process.

1307 For years, JPMA has worked alongside consumer advocacy

1308 organizations such as Consumers Union, the Consumer
1309 Federation of America, Keeping Babies Safe and Kids in Danger
1310 on the development of a variety of juvenile products
1311 standards including the full-size crib standard. The first
1312 federal full-sized crib standard was promulgated in 1973, as
1313 we heard earlier, and ASTM developed its first full-size crib
1314 standard in 1988. The voluntary standard fully incorporated
1315 the federal standard and added numerous performance testing
1316 requirements including corner posts, height restrictions and
1317 additional warning labels and instructional requirements.
1318 Since then it has been modified multiple times to address
1319 emerging hazards including last December's modifications
1320 which eliminated traditional drop sides and established crib
1321 slat integrity criteria and testing procedures.

1322 F-1169 has been extremely effective. During a 2007
1323 hearing on the CPSIA, the CPSC testified to an 89 percent
1324 reduction in crib-related fatalities due to the establishment
1325 and effectiveness of the voluntary standard. The federal
1326 standard has been updated once since its inception 37 years
1327 ago. The CPSC has relied on the ASTM voluntary standard as
1328 the best tool for promoting crib safety in the marketplace.
1329 The JPMA certification program provides consumers the best
1330 way to know that their crib meets both the mandatory and the
1331 voluntary standards.

1332 Here is how the program works. A manufacturer must
1333 apply to participate in the program and agree to have all of
1334 its models and product category tested to the applicable ASTM
1335 standard. We do not test products ourselves nor do we
1336 maintain our own standards. JPMA relies on the experts at
1337 independent third-party CPSC-accredited labs to verify
1338 compliance to the applicable ASTM standard. JPMA has never
1339 used or promoted its own safety standards. All products
1340 including full-size cribs bearing the JPMA certification logo
1341 must meet all parts of the applicable ASTM standard.

1342 Achieving compliance, however, is just the beginning of
1343 a manufacturer's obligation under the program. Manufacturers
1344 must also submit to ongoing testing. This testing occurs
1345 quarterly for at least 25 percent of their models so that all
1346 models are tested at least once per year. In addition, an
1347 independent third-party CPSC-accredited laboratory pulls
1348 JPMA-certified products at random from retail shelves and
1349 tests those products for compliance. JPMA is proud of our
1350 role in promoting safe sleep for the most vulnerable segment
1351 of our population.

1352 According to First Candle, one of the Nation's leading
1353 nonprofit organizations dedicated to safe pregnancy and the
1354 survival of babies through the first years of life, there are
1355 about 4,700 incidents each year involving infant sleep

1356 environments. At least 80 percent involve parents and
1357 caregivers putting their children in an unsafe place outside
1358 the crib. A properly assembled, fully functional ASTM-
1359 compliant crib remains the safest place for our babies to
1360 sleep. Unfortunately, tragic accidents can occur with
1361 improperly assembled, second use or heirloom cribs. We
1362 believe that better information and education can help reduce
1363 these rare fatalities involving missing hardware or
1364 improperly assembled or reassembled cribs. That is why JPMA
1365 has designated safe sleep as the theme for this year's Baby
1366 Safety Month, which takes place in the ninth month of each
1367 year. JPMA is working with the CPSC, our retail partners and
1368 any interested consumer safety advocacy groups to promote
1369 safe crib assembly and safe sleep practices. JPMA welcomes
1370 all efforts in this regard.

1371 Again, I thank you for the opportunity to appear today.

1372 [The prepared statement of Mr. Dwyer follows:]

1373 ***** INSERT 3 *****

|
1374 Mr. {Stupak.} Thank you. We will go to questions from
1375 members.

1376 Ms. Cowles, let me ask you, in your statement, and
1377 explains a little bit more on page 2 and going on the top of
1378 page 3, you talk about the corner post of the crib. In fact,
1379 both of you mentioned the corner post of the crib, and then
1380 you go on to say at the top of page 3, ``At the same time,
1381 the mandatory standard has been struck in time as well. All
1382 new changes have been to the voluntary standard. Even the
1383 vital safety measure of banning corner posts on cribs was
1384 integrated into ASTM voluntary standard does not appear in
1385 the federal standard.'' So it was mandatory and now it is
1386 voluntary?

1387 Ms. {Cowles.} No, it was never mandatory. It has
1388 always been in the voluntary standard. They first--as Mr.
1389 Dwyer mentioned, that standard was passed in 1988 but they
1390 first started working on it in 1984 after unfortunately
1391 another child named Danny died when he strangled on his
1392 corner post of his bed. So it has always been in the
1393 voluntary standard.

1394 Mr. {Stupak.} So right now I could make a crib. I
1395 could have this post here. It is a voluntary standard not to
1396 do it?

1397 Ms. {Cowles.} You could have it. You would probably
1398 have difficulty if you wanted to sell it through traditional
1399 retailers, who probably wouldn't take it, but certainly with
1400 the extent of the Internet and CPSC would probably recall it
1401 if they got it, but you could certainly try and sell it. It
1402 does not violate the mandatory standard.

1403 Mr. {Stupak.} Does not violate the mandatory standard?

1404 Ms. {Cowles.} Right.

1405 Mr. {Stupak.} Mr. Dwyer, let me ask you this. The
1406 Consumer Products Manufacturers Association--we will just
1407 call it JPMA--is a trade association that represents the
1408 manufacturers of children's products, of course. You offer
1409 your members a certification, as you testified, and there is
1410 a fee that certifies a product such as a crib meets all
1411 applicable mandatory standards as well as voluntary standards
1412 of the ASTM, correct?

1413 Mr. {Dwyer.} That is correct, sir.

1414 Mr. {Stupak.} The JPMA encourages its members to use
1415 your seal of approval. I think we had it on the board there
1416 at one time. And then they are advertising to show consumers
1417 that they are JPMA certified. I want to show you this ad. I
1418 think it is in tab 11 there, if you want to look at it right
1419 there in the book in front of you. In this ad the JPMA ran
1420 in several magazines for new parents, this ad says, and I

1421 quote, ``Be confident that juvenile products you purchase are
1422 designed and built with safety in mind.'' What does safety
1423 in mind mean in the ad?

1424 Mr. {Dwyer.} That parents can be assured that the
1425 products that we certify meet the applicable voluntary and
1426 mandatory standards for those products.

1427 Mr. {Stupak.} In a way, would it be safe to say you are
1428 certifying the cribs as being safe then?

1429 Mr. {Dwyer.} We are verifying that the manufacturers
1430 who meet at ASTM along with all other stakeholders to discuss
1431 incident data, and Ms. Cowles mentioned the data, that is
1432 used to drive the activity of the committee, and if there are
1433 issues related to a product concern, that they address those
1434 and incorporate those into the standard and that the
1435 manufacturers meet those standards.

1436 Mr. {Stupak.} So what you are really saying is, we met
1437 all the standards, this product meets the standards, whether
1438 voluntary or mandatory, not verifying safety, just that the
1439 standards are met. Is that what we are saying?

1440 Mr. {Dwyer.} We believe that by meeting all of the
1441 standards that the products are safe and that manufacturers
1442 take into account certainly the safety of their ultimate
1443 customers, our babies, when they build these products.

1444 Mr. {Stupak.} The ad goes on, and again I want to quote

1445 from the ad. It says, ``Buying a JPMA-certified product in
1446 any of the below categories ensures that the product has gone
1447 through an extra set of rigorous testing.'' Over the past
1448 several years, and we have heard testimony today, cribs
1449 involved in some of the largest recalls are Simplicity,
1450 Delta, Stork Crafts, all earned the JPMA seal of safety
1451 certification. So my question, Mr. Dwyer, would be, has JPMA
1452 changed the requirements for the certification program in
1453 light of the recalls we have seen? In fact, even Tuesday we
1454 had one of 635,000 cribs. Have you changed the certification
1455 that would be found in this ad?

1456 Mr. {Dwyer.} Well, just to make sure everybody is
1457 clear, the certification is a verification that they meet the
1458 standard.

1459 Mr. {Stupak.} Correct.

1460 Mr. {Dwyer.} The standard--as the standard changes, the
1461 certification changes inasmuch as that is what it is, it is a
1462 verification to the change in the standard. I am not quite
1463 sure I understand the question.

1464 Mr. {Stupak.} Since the recalls in 2008 and 2009, Stork
1465 Craft had two big recalls, have those standards changed at
1466 all?

1467 Mr. {Dwyer.} The ASTM standards?

1468 Mr. {Stupak.} Yes.

1469 Mr. {Dwyer.} The standard changed with a recent change
1470 in December that would ban the drop sides and also added a
1471 slat integrity test and requirements to the crib standard as
1472 well--

1473 Mr. {Stupak.} So--

1474 Mr. {Dwyer.} --in December of 2009.

1475 Mr. {Stupak.} So when you certify now, so when you run
1476 this ad, that means the slat has been changed and no more
1477 drop side, right?

1478 Mr. {Dwyer.} It verifies that the cribs meet the
1479 standards. However, the certification program does allow for
1480 180-day sell-through period, so we will certify to the new
1481 version of the standard 6 months after it has been
1482 implemented.

1483 Mr. {Stupak.} When is the 6 months up?

1484 Mr. {Dwyer.} It will be in June. I don't know the
1485 exact date.

1486 Mr. {Stupak.} Right.

1487 Mr. {Dwyer.} But I do know that manufacturers at this
1488 point to move product out of the marketplace, they are no
1489 longer manufacturing drop-side products.

1490 Mr. {Stupak.} Right, but just so we are clear, we have
1491 until June. So there still could be drop-side cribs out
1492 there right now for sale with the JPMA certification because

1493 they have until June, 180 days, right?

1494 Mr. {Dwyer.} That is correct.

1495 Mr. {Stupak.} I guess my time is up. Mr. Walden,
1496 questions?

1497 Mr. {Walden.} And that would be unless CPSC recalls
1498 that?

1499 Mr. {Dwyer.} That is correct.

1500 Mr. {Walden.} So that would be the only check then, is
1501 if there is an identified problem, and CPSC could step in,
1502 issue a recall and take those out of the marketplace but
1503 parents may still have those cribs, legacy cribs, if you
1504 will?

1505 Mr. {Dwyer.} That is correct.

1506 Mr. {Walden.} Ms. Cowles, you were recently quoted in
1507 the press as saying the same problems have existed for 10
1508 years and nothing has been done and we are glad to see that
1509 it is now a crisis and people are acting. Do you want to
1510 talk about that quote?

1511 Ms. {Cowles.} Sure.

1512 Mr. {Walden.} So nothing has been in 10 years?

1513 Ms. {Cowles.} Well, I have sat on the ASTM committee
1514 since 2001 and there have been other consumers who have been
1515 on those committees before that, and in those committee
1516 meetings the same issues that we are talking about here

1517 today, the same issues we talked about the last 2 days where
1518 we actually finally made real progress such as putting in a
1519 test that has been in Canada during all that time. It is
1520 called a racking test. It subjects the crib to much more
1521 rigorous shaking and testing, much more similar to--

1522 Mr. {Walden.} Like a child would do.

1523 Ms. {Cowles.} Like a child might do, and we have asked
1524 repeatedly since 2001 to add that test to the ASTM standard
1525 and it was never added.

1526 Mr. {Walden.} So on the ASTM standards, and your
1527 committee, I am not familiar with how that operates. How
1528 many members are on that committee?

1529 Ms. {Cowles.} Mike might know better than I do. I
1530 would say around 50 but I am--

1531 Mr. {Walden.} Mr. Dwyer?

1532 Mr. {Dwyer.} I would say actively participated in F-15,
1533 it is at least 50.

1534 Mr. {Walden.} So 50 members, 15 that actually
1535 participate?

1536 Ms. {Cowles.} Fifty.

1537 Mr. {Walden.} Fifty, five zero?

1538 Ms. {Cowles.} Correct.

1539 Mr. {Walden.} And during that 9-year period that you
1540 have been on it and this has been an issue floating around,

1541 have there been recommendations that have gone forward that
1542 you voted against because they are not strong enough or--

1543 Ms. {Cowles.} Yes. As one of the sometimes three,
1544 sometimes four consumers in the room out of those four, our
1545 votes unfortunately did not go too far.

1546 Mr. {Dwyer.} Can I just follow up on that?

1547 Mr. {Walden.} Yes, Mr. Dwyer.

1548 Mr. {Dwyer.} I mean, and again, I don't--I am not
1549 representing ASTM, they are not here at the table, but I do
1550 participate in the process as Nancy does, and, you know,
1551 anybody who participates in that process has the opportunity
1552 to cast a negative vote on any ballot, and if that ballot is--
1553 --if that argument is found persuasive through the ASTM
1554 process, it can be upheld and modifications can be made to
1555 the ballot before the final rule is issued. I just want to
1556 be very clear that everybody that participates in the process
1557 has an equal vote in that process.

1558 Mr. {Walden.} Okay. And then Mr. Dwyer, I wanted to--
1559 in light of recent events, do these companies like Stork
1560 Craft lose their membership status in your organization?

1561 Mr. {Dwyer.} No, they would not lose their membership
1562 status. The certification program is separate and apart from
1563 membership in the organization.

1564 Mr. {Walden.} Okay, so same for Delta and other brands

1565 that are JPMA certified?

1566 Mr. {Dwyer.} Correct.

1567 Mr. {Walden.} Okay. So they can still be a member?

1568 Mr. {Dwyer.} Correct.

1569 Mr. {Walden.} Okay, even though they have these--in
1570 your testimony, JPMA lists over 20 product categories that
1571 are currently in your certification program and including
1572 cribs and infant carriers. Which products should CPSC list
1573 as their top priorities for safety issues and issue safety
1574 standards for as soon as possible?

1575 Mr. {Dwyer.} In my opinion, sir, which products?

1576 Mr. {Walden.} Yes.

1577 Mr. {Dwyer.} I would say cribs, and that is why we
1578 spent 2 days and why the chairman reached out to the
1579 manufacturers and the consumer groups and asked us, as I
1580 testified, to please help us accelerate rulemaking on full-
1581 size cribs.

1582 Mr. {Walden.} And Ms. Cowles, are you satisfied with
1583 the new recommendations that came out in December?

1584 Ms. {Cowles.} I think banning drop-side cribs is an
1585 important step. However, the real problem with drop sides,
1586 as the family testified, is the hardware failures, using
1587 plastic hardware, and those hardware pieces are still in
1588 other parts of the crib so we do believe we still need this

1589 stronger racking test to test hardware for durability, and
1590 that in fact is being talked about in the meetings that we
1591 have been to, so we are satisfied that the new mandatory
1592 standard will have sufficient strength in it once we get to
1593 that point.

1594 Mr. {Walden.} And did you all vote then on this new
1595 standard that came out in December?

1596 Mr. {Dwyer.} Not yet. The process--

1597 Ms. {Cowles.} In December, he is asking.

1598 Mr. {Dwyer.} Oh, I am sorry.

1599 Mr. {Walden.} And did you support that then?

1600 Ms. {Cowles.} Yes.

1601 Mr. {Dwyer.} I abstain from voting on the ASTM
1602 committees. We support an administrative role but I do
1603 support the activities.

1604 Mr. {Walden.} Okay. You know, I think that is--yes,
1605 that is a good point. The manufacturing problems I think is
1606 probably the issue we are all kind of looking at here. What
1607 should be done there?

1608 Ms. {Cowles.} In terms of the manufacturing of the
1609 product itself? Well, I would submit, and I will talk to
1610 that, but just let me briefly say, many of these are design
1611 issues, if you design a product with bad hardware, but
1612 manufacturing, and I think one of the reasons the older cribs

1613 that people are talking about that seemed to have held up
1614 well were made under the same lax regulations but were made,
1615 you know, here under our--so I think that manufacturing plays
1616 a role and I am hoping that both JPMA, CPSC in their
1617 oversight role, you know, work to make sure that, you know,
1618 if you choose to make a product overseas that you are selling
1619 to American consumers, you need to make sure it is as safe as
1620 if you made it here. That is really the manufacturer's
1621 responsibility.

1622 Mr. {Walden.} Thank you.

1623 Mr. Dwyer, do you want to comment on that?

1624 Mr. {Dwyer.} Manufacturers of these products are
1625 incredibly responsible. Ultimately their customers are
1626 babies. I am the father of three children. I used a drop-
1627 side crib that was handed down to me by a friend of a friend,
1628 disassembled it three times, put it together three times,
1629 took care to follow the instructions every time, and
1630 manufacturers--ultimately children's lives are the most
1631 precious commodity and I believe manufacturers have always
1632 had that--

1633 Mr. {Walden.} You know, if I can interrupt you just a
1634 second, the family behind you made the comment about the
1635 instructions being on the bottom of the mattress or the
1636 bottom of the slat and sort of glued on there. Is that done

1637 so that it continues on if somebody takes it apart?

1638 Mr. {Dwyer.} Correct.

1639 Mr. {Walden.} Because I don't know anybody that keeps
1640 the instructions for anything we put together.

1641 Mr. {Dwyer.} Correct. It is part of the standard
1642 because just that, so that the instructions don't get lost if
1643 the crib is handed down or if it disassembled in between each
1644 child, which a product should be made to be able to
1645 disassembled multiple times, as Nancy indicated, and the
1646 instructions are on there so they don't get lost.

1647 Mr. {Walden.} That is why they are glued on there?

1648 Mr. {Dwyer.} Correct.

1649 Mr. {Walden.} Okay. Thank you, Mr. Chairman. I know I
1650 have exceeded my time. Thanks for your courtesy.

1651 Mr. {Stupak.} I thank you, Mr. Walden.

1652 Mr. Braley for questions.

1653 Mr. {Braley.} Mr. Dwyer, I want to follow up that last
1654 comment you made, manufacturers of these products are
1655 incredibly responsible. You stand by that statement?

1656 Mr. {Dwyer.} I do.

1657 Mr. {Braley.} In the statement you submitted, it
1658 indicates that your manufacturers association has grown to
1659 include more than 250 member companies in the United States,
1660 Canada and Mexico, and that these companies manufacture

1661 and/or import infant products. So do you have members that
1662 are manufacturers in China and Vietnam?

1663 Mr. {Dwyer.} No, we do not.

1664 Mr. {Braley.} Okay.

1665 Mr. {Dwyer.} That actually are manufactured in the
1666 country or manufacture in those countries.

1667 Mr. {Braley.} Right, but my point is, since you have
1668 the word ``import'' in there I assume some of your members
1669 are importing products that are being manufactured, and that
1670 is who the manufacturer is you are referring to when you said
1671 manufacturers are incredibly responsible?

1672 Mr. {Dwyer.} The manufacturers that are members of the
1673 association must have a place of business in North America
1674 but yes, some of them do manufacture their products overseas
1675 or import their products from overseas.

1676 Mr. {Braley.} Right, and isn't it customary that the
1677 inspections that you rely upon are done at the point of
1678 manufacturing?

1679 Mr. {Dwyer.} The inspections for the certification
1680 program?

1681 Mr. {Braley.} Yes.

1682 Mr. {Dwyer.} They are done both domestically and
1683 overseas.

1684 Mr. {Braley.} Okay. And you are aware that it is much

1685 more difficult to ensure the integrity of those inspection
1686 processes when they are being done in a country like China
1687 which has very strict controls on access?

1688 Mr. {Dwyer.} Our members take great care to visit with
1689 their factories overseas every year and to make sure that
1690 quality control practices are taking place at the highest
1691 levels.

1692 Mr. {Braley.} Have you ever tried to serve a Chinese
1693 manufacturer of a defective product that is marketed in the
1694 United States?

1695 Mr. {Dwyer.} Serve?

1696 Mr. {Braley.} Serve for legal process.

1697 Mr. {Dwyer.} No, I have not.

1698 Mr. {Braley.} Do you know what is involved in that
1699 process?

1700 Mr. {Dwyer.} I do not, sir.

1701 Mr. {Braley.} Do you know that international treaties
1702 have to be complied with and that service has to be performed
1703 domestically through the Chinese government that erects
1704 roadblocks that can prolong the actual accountability of
1705 foreign manufacturers who are selling defective products in
1706 this country for years and years if you are ever successful?

1707 Mr. {Dwyer.} I am not familiar with that process, sir.

1708 Mr. {Braley.} Are you aware that certain States like my

1709 home State of Iowa have domestic laws that provide immunity
1710 to sellers of products like some of your members if the
1711 manufacturer is accountable and can be served and that may
1712 put you into this endless limbo of trying to get service in a
1713 country that doesn't want its manufacturers to be served?
1714 And that is exactly what Representative Sutton is talking
1715 about in this bill she is about to introduce. Are you
1716 familiar with that problem from your work with these many
1717 people selling products that affect infants' lives and safety
1718 in this country?

1719 Mr. {Dwyer.} No, sir, but, you know, our program is
1720 built with safety in mind and we have testing. We have
1721 multiple testing. We had multiple testing before the
1722 Consumer Product Safety Improvement Act was even implemented.
1723 Our program, section 104, the requirements of certification,
1724 are more robust and they mirror what this Congress, what this
1725 committee has put together. I am not familiar with the
1726 challenges with serving Chinese manufacturers with, you know,
1727 warrants for defective products but we are here to talk about
1728 our certification program, the ASTM standards.

1729 Mr. {Braley.} Well, in your certification program, have
1730 you ever encountered incidents where the instructions on
1731 assembly are written in that country of origin, in some form
1732 of English that would not make sense to anybody in this room

1733 and yet is being used by the manufacturer and the subsequent
1734 seller of that product as a guide for people in assembly of
1735 that product. Are you aware that takes place?

1736 Mr. {Dwyer.} There is pretty clear guidelines both at
1737 the voluntary and the mandatory level for the standards that
1738 dictate how the instructions should be put together, and I am
1739 not aware that there are issues with communication on the
1740 instructions. It is an issue that the group is working on
1741 and looking at adding some additional warnings and looking at
1742 instructions. Eliminating moving parts would help with any
1743 disassembly issues, but I am not aware that there are any
1744 issues with instructions, sir.

1745 Mr. {Braley.} As part of your certification
1746 requirement, do they look at the assembly instructions being
1747 supplied by the manufacturer?

1748 Mr. {Dwyer.} Yes, they do.

1749 Mr. {Braley.} And do they look at whether or not the
1750 language that is being used is in plain English that can be
1751 easily understood and adapted by the consumer in the assembly
1752 of that product?

1753 Mr. {Dwyer.} Well, the product and the certification
1754 program, the product has to be assembled to the
1755 manufacturer's instructions and so that is a requirement.

1756 Mr. {Braley.} Well, and that is my point. My point is,

1757 the manufacturer in the latest recall is located in China,
1758 located in Vietnam, and they sometimes have a very different
1759 understanding of the English language than American consumers
1760 putting that product together. I am not just talking about
1761 from a professional standpoint. I am talking from the
1762 standpoint of a parent who has assembled many of these
1763 products and is frequently mystified by what the intention is
1764 in the assembly process because it is obviously being written
1765 by somebody who doesn't live in this country.

1766 Mr. {Dwyer.} Are you specifically talking about the
1767 Dorel recall, the Dorel Asia recall?

1768 Mr. {Braley.} Yes.

1769 Mr. {Dwyer.} Six hundred and thirty-five thousand
1770 units?

1771 Mr. {Braley.} Yes.

1772 Mr. {Dwyer.} Which are not JPMA certified, and I am
1773 well aware of extenuating circumstances in that case where
1774 that crib was put together with duct tape by parents, and
1775 criminal charges were charged against those parents for
1776 endangering their child.

1777 Mr. {Braley.} And I would like to bring that up before
1778 I close, Mr. Chairman, because what happens in these cases is
1779 everybody engages in finger pointing, and one of the first
1780 people on the line are the parents dealing with the tragic

1781 loss of their child who are frequently blamed and subject to
1782 criminal prosecutions which are many times later dropped, and
1783 I think that it is important that if there are manufacturers
1784 profiting from the sale of these products, they take a good
1785 look in the mirror and do everything they can to address the
1786 problem, not always blame the parents, and that is why this
1787 work we are here for today is so important, and I yield back.

1788 Mr. {Stupak.} Thank you, Mr. Braley. It should be
1789 noted too in that case where the parents, charges were
1790 brought, they were dropped, and so just so the record is
1791 clear.

1792 Mr. Burgess, when he comes back, I will reserve his
1793 spot. So I guess we are to Ms. Schakowsky for questions.

1794 Ms. {Schakowsky.} I want to talk a little bit more
1795 about the role of parents. In November of last year, we
1796 talked about this, but the CPSC and Stork Craft recalled more
1797 than 2 million cribs due to reports of broken or missing
1798 drop-side hardware. As part of that recall, Stork Craft
1799 crated an instructional video and posted it on YouTube--and
1800 so whoever is working on that, let us get it up there--to
1801 show consumers how to identify problems with their cribs and
1802 how to install the repair kits the company supplied, so if
1803 you will play that.

1804 [Video playback]

1805 Ms. {Schakowsky.} So let me ask you, Ms. Cowles, it is
1806 responsible or realistic, rather, to expect that parents will
1807 follow this recommendation in the real world?

1808 Ms. {Cowles.} No, I don't think any parent does that
1809 every time they put a baby in a crib any more than you open
1810 your hood and check everything before you get in your car to
1811 drive. It is certainly something that we might expect them
1812 to do occasionally but no, I think parents assume they put
1813 together a crib, it is going to stay together.

1814 Ms. {Schakowsky.} Mr. Dwyer, do you think that a tired
1815 mother or father, baby wakes up at 2:00 in the morning and
1816 you put the baby back in bed is going to go around and do a
1817 crib inspection every time before putting the baby back to
1818 sleep?

1819 Mr. {Dwyer.} Having been a very tired father at one
1820 time, no, ma'am.

1821 Ms. {Schakowsky.} So Mr. Dwyer, the JPMA put together a
1822 frequently asked questions page about drop-side cribs. It is
1823 on tab 10 of the document binder. And here is what your
1824 association FAQ sheet says: ``JPMA reminds parents and
1825 caregivers that when you assemble a crib to the
1826 manufacturer's instructions and use it properly, a crib
1827 provides the safest sleeping environment for a baby.'' What
1828 do you mean by--what does JPMA mean by use it properly?

1829 Mr. {Dwyer.} That it is assembled according to the
1830 manufacturer's instructions.

1831 Ms. {Schakowsky.} And inspected every time, right?

1832 Mr. {Dwyer.} We would recommend that parents be aware
1833 that inspection may be needed and we also have safe sleep
1834 guidelines for what not to put in the crib that is part of
1835 the whole process such as heavy blankets or pillows or that
1836 type of thing.

1837 Ms. {Schakowsky.} Stork Craft's CEO Jim Moore issued a
1838 statement after the November recall in which he asserted that
1839 parents improperly used the drop-side cribs implicated in
1840 infant entrapments. Here is how the news accounts quoted Mr.
1841 Moore: ``In the majority of instances, the cribs were being
1842 used with broken parts, parts with pieces missing, parts that
1843 were damaged or with modified or homemade parts.''' So Ms.
1844 Cowles, what do you think of the Stork Craft response?

1845 Ms. {Cowles.} Well, I think that it is particularly
1846 damaging to the recall process, that when manufacturers come
1847 out, and as Mr. Dwyer has done here, continue to blame the
1848 individual parent whose child either has died or was hurt.
1849 It basically says to every other parent using that crib, oh,
1850 I am sure you don't need to worry about your crib because you
1851 are a smart parent who is using it correctly, and so I think
1852 that kind of language, especially after the CPSC has to spend

1853 time negotiating what is in the press release and they come
1854 to an agreement of what is going to be said about it, then
1855 the company comes out later that day or the next day with
1856 those kind of damaging comments I think again both
1857 discourages parents from participating with the recall
1858 because they think theirs must be okay because they obviously
1859 put it together right and downplays the problem. I mean, all
1860 that list of things, if that crib wasn't falling apart,
1861 parents wouldn't have to do any of those things, so it is the
1862 crib, I think, that we are here to talk about and not how
1863 individual parents may decide to fix the problem when their
1864 crib does in fact break.

1865 Ms. {Schakowsky.} And Mr. Dwyer, what were you saying
1866 kind of I felt sort of self-righteously about how these
1867 parents were on the Dorel Asia cribs charged with criminal
1868 negligence or whatever it was.

1869 Mr. {Dwyer.} I just wanted to clarify for Mr. Braley
1870 that those products were not certified by the association and
1871 that I was aware, made aware that there were extenuating
1872 circumstances, that that crib, that there were photos of the
1873 crib that showed duct tape holding the pieces of the crib
1874 together, and that one side was broken from the crib and had
1875 been pushed against the wall, and I was aware that criminal
1876 charges had been brought for child endangerment, and also

1877 there were drug charges. I was not aware that those charges
1878 had been dropped but I was specifically addressing we do not
1879 want those cribs that were recalled lumped into because they
1880 were not certified by the association.

1881 Ms. {Schakowsky.} Did you want to comment, Ms. Cowles?

1882 Ms. {Cowles.} I just wanted to say about the charges, I
1883 know that is not why we are here today but having worked with
1884 many parents whose children have been killed, more times than
1885 you can imagine, that is at least threatened or brought
1886 before the medical examiner can ascertain that the product
1887 itself was defective, so I have had parents charged with
1888 that, with child abuse, with all kinds of things. And so the
1889 initial charge made by the police is no indication of what is
1890 actually responsible for that child's death, especially in a
1891 case like this where the charges are dropped.

1892 Ms. {Schakowsky.} Thank you.

1893 Mr. {Stupak.} Ms. Sutton for questions, please.

1894 Ms. {Sutton.} Thank you, Mr. Chairman, and I want to
1895 follow up on two things. First of all, Representative
1896 Braley's line of questioning about foreign manufacturers, and
1897 I jus want to invite all of our colleagues to seriously
1898 consider getting on this bill--it is a bipartisan bill--to
1899 make sure that we can serve process and submit people who are
1900 selling products in this country to the jurisdiction of our

1901 courts and the enforcement of our laws. That is what I think
1902 the American people expect, and those are the consumers.
1903 Your customers are infants with parents, and they are
1904 counting on us to deliver a degree of safety.

1905 But I also want to follow up with Ms. Schakowsky's line
1906 of questioning because I think this idea of parental error
1907 versus product defect is an important one, and along the same
1908 lines, in September of 2007, CPSC recalled more than a
1909 million Simplicity-brand drop-side cribs in one of the many
1910 recalls involving this company, and the CPSC noted that some
1911 consumers installed the drop side unintentionally down,
1912 upside down. In this situation, the drop side would function
1913 upside down, it would function that way, and it would weaken
1914 the hardware and in some cases detach from the crib. The
1915 Stork Craft drop-side cribs recalled last year had the same
1916 problem, had similar problems. So Stork Craft asserts that
1917 this drop-side problem is not the company's fault. In a
1918 Stork Craft position paper provided to the committee located
1919 at tab 8 in the document binder, the company states, and I
1920 quote, ``It is absolutely unreasonable to expect Stork Craft
1921 to reasonably foresee that a consumer would install the drop-
1922 side rail upside down.''
1923 Mr. Dwyer, do you agree with Stork
1924 Craft's statement? It is unforeseeable that a consumer might
improperly install the drop side upside down when the drop

1925 side will still function that way?

1926 Mr. {Dwyer.} I am not intimately familiar enough with
1927 the product. Obviously if the product is manufactured in
1928 such a way that it could be installed upside down, as was the
1929 case with this product, that that would be the case.

1930 Ms. {Sutton.} I don't understand your answer.

1931 Mr. {Dwyer.} Your question was, is it foreseeable for
1932 that product, for that rail to be installed upside down.
1933 Apparently that is the case, that it is--it was not--it is
1934 foreseeable if it can be installed upside down.

1935 Ms. {Sutton.} So you disagree with Stork Craft's
1936 statement that it is unreasonable to expect that to be
1937 foreseen?

1938 Mr. {Dwyer.} I would say based upon the information,
1939 the limited information I have about the specific product as
1940 I read it here, I would say that I would disagree with that
1941 statement.

1942 Ms. {Sutton.} Thank you.

1943 And Ms. Cowles, I understand that you were a part of a
1944 task group assigned to examine the improper drop-side
1945 installation after the Simplicity recall. Is that correct?

1946 Ms. {Cowles.} That is right.

1947 Ms. {Sutton.} Okay. And the Consumer Product Safety
1948 Commission produced an e-mail to the committee, which is

1949 located at tab 1 of the document binder, and it relates to
1950 this issue. This is an e-mail chain between you, Jonathan
1951 Midget of CPSC and other members of the group tasked with
1952 looking at improper assembly of drop sides. Dr. Midget, who
1953 is an engineering psychologist, comments as follows: ``The
1954 best way to prevent misassembly is to limit the consumer's
1955 ability to put parts in the wrong place. The least effective
1956 strategy is to modify the instructions or create a list of
1957 warnings.'' To his workers at CPSC, Dr. Midget notes in an
1958 e-mail that the crib industry has been, and I quote,
1959 ``freakish in its insistence that instructions of cribs are
1960 at fault. This only makes sense if you don't want to change
1961 any of the shapes of your crib hardware and would rather
1962 blame the consumer.'' Ms. Cowles, is this observation
1963 consistent with your experience negotiating crib safety
1964 standards?

1965 Ms. {Cowles.} I think that this is very consistent both
1966 with my experience on the committee. I think I mentioned in
1967 my longer testimony that the committee will not even look at
1968 incidents that happen in cribs older than 5 years old, even
1969 though as we heard from the family, that could have easily
1970 been a crib that was just in one place and not reassembled,
1971 because they consider it old. They are very quick to blame
1972 when they account things to what the consumer did rather than

1973 to their crib, and again, I think as I said today, that if a
1974 product is made so you can put it together in a way that
1975 causes death, that is a design problem, not a consumer
1976 problem.

1977 Ms. {Sutton.} Thank you, Ms. Cowles, and I appreciate
1978 again, Mr. Chairman, that you are holding this hearing.
1979 These e-mails illustrate the risk of relying on voluntary
1980 industry safety standards, and I yield back.

1981 Mr. {Stupak.} Thanks. If I may, just one question or
1982 two. I think Mr. Burgess will be here in a minute. Let me
1983 just ask this. Mr. Dwyer, I asked about this ad that you put
1984 out saying that you certify products.

1985 Mr. {Dwyer.} Yes, sir.

1986 Mr. {Stupak.} And we talked about recalls. Do you ever
1987 take out similar ads in the same magazines advertising there
1988 has been a recall, like on the cribs?

1989 Mr. {Dwyer.} I am sorry. I didn't understand the
1990 question.

1991 Mr. {Stupak.} Does your association, the Juvenile
1992 Products Manufacturers Association, you put out these ads
1993 advertising these products, that they are certified safe.
1994 Then when they are recalled, do you ever take out an ad
1995 saying these things have been recalled so consumers would
1996 know?

1997 Mr. {Dwyer.} No, we don't name specific products and
1998 put ads for a recall in any magazine.

1999 Mr. {Stupak.} But wouldn't that be a good idea?

2000 Mr. {Dwyer.} I believe that is the role of the agency.
2001 We can, you know, communicate. We issued statements and we
2002 provided statements based upon when the Stork Craft products
2003 were recalled to help parents and concerned consumers
2004 understand the implications. We link to recall.gov on our
2005 website. We--

2006 Mr. {Stupak.} So other than your website, that is all
2007 you do to let parents know that--

2008 Mr. {Dwyer.} We do not take out ads in magazines to
2009 promote the fact that products are recalled. This is part of
2010 a product safety campaign that involves multiple
2011 communication--

2012 Mr. {Stupak.} Sure. These are all products with your
2013 seal on it so if your seal products are being recalled, I
2014 would think you want to let people know that, target these
2015 audiences.

2016 Mr. {Dwyer.} We do communicate but we don't take out
2017 ads in magazines.

2018 Mr. {Stupak.} Okay. I would like to thank this panel
2019 for their testimony. Thank you, witnesses, and thanks for
2020 being here. As Mr. Walden reminds me, we are going to have

2021 votes here pretty quick, so let us see if we can't finish up
2022 this hearing. I will ask the chairperson to come forward,
2023 please, the Hon. Ms. Tenenbaum of the Consumer Product Safety
2024 Commission. Let the record reflect that before you have your
2025 opening statement, it is the policy of this committee that
2026 you have the right under the rules of the House to be advised
2027 by counsel during your testimony. Do you wish to be
2028 represented by counsel?

2029 Ms. {Tenenbaum.} No, sir.

2030 Mr. {Stupak.} And then Ms. Tenenbaum, I would you as
2031 the chairperson of the Consumer Product Safety Commission to
2032 take the oath, please. Raise your right hand.

2033 [Witness sworn.]

2034 Mr. {Stupak.} Thank you. Let the record reflect Ms.
2035 Tenenbaum is under oath, and please present your opening
2036 statement, please.

|
2037 ^TESTIMONY OF THE HON. INEZ MOORE TENENBAUM, CHAIRMAN,
2038 CONSUME PRODUCT SAFETY COMMISSION

2039 } Ms. {Tenenbaum.} Good morning, Chairman Stupak, Ranking
2040 Member Walden and members of the Subcommittee on Oversight
2041 and Investigation.

2042 The overall safety of cribs is a critical concern of the
2043 CPSC and a personal priority of mine. Getting unsafe cribs
2044 off the market and out of the home has always been a key part
2045 of the CPSC's mission, but I strongly believe that we must do
2046 more and have strong federal safety standards that prevent
2047 cribs with design flaws or safety defects from ever making it
2048 into the stream of commerce or into nurseries.

2049 Since the inception of the agency in 1973, the CPSC has
2050 been deeply involved in issues of crib and infant sleeping
2051 environment safety. In November 1973, the Commission
2052 promulgated the first mandatory safety standard governing
2053 full-size cribs. Since that time, the CPSC has also worked
2054 diligently with other standards-developing organizations such
2055 as the ASTM International on voluntary cribs standards.
2056 These mandatory and voluntary standards combined with
2057 substantial outreach efforts have undoubtedly prevented
2058 numerous infant and child injuries.

2059 However, one question that has arisen in some media
2060 reports is the issue of why the CPSC's mandatory crib
2061 standards have not been revised since 1982. The main answer
2062 is that the Commission has limited authority to do so under
2063 section 9 of the Consumer Product Safety Act. Under that
2064 section, which was revised by the CPSIA, the Commission was
2065 generally required to rely on voluntary standards that would
2066 likely result in the adequate reduction of risk and injury
2067 and where there would be substantial compliance with the
2068 standard. This reliance on voluntary standards worked well
2069 in many areas but it also left some substantial gaps that
2070 voluntary-standard-developing organizations were either
2071 unwilling or unable to confront. This provision was modified
2072 by the CPSIA to give the Commission additional authority to
2073 promulgate rules, even when a voluntary standard is in
2074 existence.

2075 In addition, the CPSIA also included section 104, the
2076 Danny Keysar Child Product Safety Notification Act, which
2077 directs the Commission to promulgate new standards for 12
2078 groups of durable infant and toddler products. I strongly
2079 support these additional authorities and have directed the
2080 CPSC staff to make crib safety a key priority starting with
2081 immediate recall of cribs that have been shown to present a
2082 substantial risk of danger and injury to children.

2083 One example of the Commission's efforts to remove
2084 potentially hazardous cribs from the marketplace has been the
2085 two recent recalls of Stork Craft drop-side cribs. In
2086 January 2009, Stork Craft agreed to voluntarily recall over
2087 half a million impacted cribs due to a bracket defect. At
2088 that time the CPSC was also investigating instances regarding
2089 a potential drop-side issue with the cribs. These incidents,
2090 however, involved a large population of cribs with different
2091 styles of drop-side hardware and a different mode of drop-
2092 side failure.

2093 After my arrival at the Commission, I requested weekly
2094 Commission briefings from the Office of Compliance on pending
2095 consumer product investigations. The subject of the
2096 September 24, 2009, briefing was nursery products and
2097 included the Commission's investigation into drop-side cribs.
2098 During that briefing, I learned about the developing
2099 compliance case regarding Stork Craft drop-side cribs as well
2100 as the tragic June 2009 death in Louisiana that involved a
2101 Stork Craft drop-side crib. Following this briefing, I
2102 directed the staff to give immediate priority to the recall
2103 of Stork Craft cribs and this drop-side hazard. On November
2104 23, 2009, the Commission and Stork Craft announced the
2105 largest crib action recall in CPSC history, and as you know,
2106 this involved 2.1 million Stork Craft cribs.

2107 We also recently recalled the Dorel Asia cribs, which I
2108 will not go into detail to save time because you are very
2109 well aware of that recall.

2110 Now, since these recalls, and since my tenure as
2111 chairman, I have decided that we need a new safe sleep
2112 initiative, which has six points that I want to talk to you
2113 about. In my brief statement this morning, I will just talk
2114 about the highlights and then you can ask me questions later.

2115 I think the CPSC has very talented staff that has worked
2116 diligently for years on these issues of safe cribs but I also
2117 think that we could have for a variety of reasons including
2118 funding, inadequate statutory authorities and competing
2119 priorities move quicker to have mandatory and stronger
2120 voluntary standards and I want you to know and make very
2121 clear to this subcommittee that those days are over at the
2122 CPSC. This morning I am pleased to announce the details of
2123 the Safe Sleep Initiative.

2124 First of all, you have heard from other speakers that
2125 the first part of this initiative is to expedite the
2126 rulemaking and have mandatory standards under section 104 for
2127 cribs, and I might want to add that when I came to the
2128 Commission, the schedule for this rule for cribs was
2129 scheduled for 2012. When I learned about it, I pulled it in
2130 front of other rules and said we have to have this standard

2131 now. Second, we are going to expand the Commission's
2132 successful early warning system by having an early warning
2133 team for bassinets, cribs and other sleep environments for
2134 children. Three, we will also increase the monitoring of
2135 recall effectiveness and corrective actions on take rates on
2136 crib recall cases. We want to know how effective are these
2137 recalls. Fifth, we are going to continue with our additional
2138 media outreach. For example, when we recalled Stork Craft,
2139 we estimated that 200 million people saw the television clips
2140 of those recalls. And sixth, we are going to have an
2141 internal management review of how we do recalls not only for
2142 cribs but for other products. When I came to the Commission,
2143 I realized that the Commission needed a new strategic plan.
2144 It also needed consultants from the outside to come in and
2145 look at the operations and the management of that agency, so
2146 we went through the procurement process and I am pleased to
2147 announce that just recently we have secured Booz Allen
2148 Hamilton to do a top-to-bottom review of the CPSC and help us
2149 in this area.

2150 And Mr. Chairman and Ranking Member Walden, I thank you
2151 for having this meeting. It is very important that you show
2152 everyone involved in crib safety how important it is to you,
2153 and I look forward to answering your questions.

2154 [The prepared statement of Ms. Tenenbaum follows:]

2155 ***** INSERT 4 *****

|
2156 Mr. {Stupak.} Thank you, and let me thank you on behalf
2157 of the whole committee and our staffs for your work and
2158 cooperation in this area and also for being here all morning.
2159 You have sat through all the panels and we appreciate that,
2160 and we think that helps in what we are trying to achieve
2161 here.

2162 You said your Safe Sleep Initiative, that was starting
2163 today?

2164 Ms. {Tenenbaum.} We have already started it. It
2165 started really several weeks ago.

2166 Mr. {Stupak.} And part of that you said in your
2167 testimony, when Stork Craft announced a recall, that 200
2168 million saw that.

2169 Ms. {Tenenbaum.} We went on every morning show to
2170 announce the recall and we are using all of our social media--
2171 -Twitter, YouTube, CPSC 2.0, but we estimate over 200 million
2172 saw those--had access to those television tapes.

2173 Mr. {Stupak.} When you do a recall here, especially
2174 like with Stork Craft, the 2 million that were recalled here
2175 in November, that is a voluntary recall, right?

2176 Ms. {Tenenbaum.} It is a voluntary recall, and--

2177 Mr. {Stupak.} And you have to convince the manufacturer
2178 to do it. You don't have authority to say that is it, we are

2179 recalling these cribs, correct?

2180 Ms. {Tenenbaum.} We could if we wanted to go into an
2181 administrative action, which would probably result in
2182 litigation and take more time, but the compliance officials
2183 and the lawyers at the CPSC have said to me, if we can get a
2184 voluntary recall, we can get the remedy to the consumer
2185 quicker and it takes less time, but you have to negotiate.

2186 Mr. {Stupak.} You have to negotiate. And if you look
2187 at tab 7 there, I want to talk a little bit about that,
2188 because you asked to negotiate with the company that does not
2189 believe that their product is defective, right?

2190 Ms. {Tenenbaum.} That is correct. In fact, Stork Craft
2191 maintains to this day that the product is not defective.

2192 Mr. {Stupak.} Still maintains that even though we
2193 recalled 2 million cribs in 2009. So if I look at tab 7, if
2194 I understand this correctly, starting on May 6, 2009, staff
2195 sent an e-mail to Stork Craft advising them to stop the sale
2196 of drop-side cribs, right?

2197 Ms. {Tenenbaum.} That is correct.

2198 Mr. {Stupak.} And then there is a number of entries in
2199 here about what staff was doing, conversations, discussions,
2200 and that wasn't really completed until about October 9.
2201 Stork Craft submits a press release and then you have
2202 negotiations of the press release begins.

2203 Ms. {Tenenbaum.} That is correct.

2204 Mr. {Stupak.} So it takes you about 6 months to
2205 convince them to do a recall, correct?

2206 Ms. {Tenenbaum.} It just depends on the circumstances.

2207 Mr. {Stupak.} But in this one it took about 6 months?

2208 Ms. {Tenenbaum.} It took about 6 months.

2209 Mr. {Stupak.} And then why do we begin negotiations of
2210 a press release? That is October 9th, and it is my
2211 understanding--again, I have another whole page of all the
2212 entries that went through in trying to negotiate a press
2213 release on a recall which infant children possibly died
2214 because of defects in these cribs, and that takes us to press
2215 release issuance of October--excuse me--November 24. So that
2216 is another 6 weeks. You negotiate 6 weeks for a press
2217 release.

2218 Ms. {Tenenbaum.} That is correct. We negotiate every
2219 word of that press release. We are required to under 6B with
2220 the company. Now, 6B under the CPSIA was amended which gives
2221 us more flexibility but we negotiate press releases, and--

2222 Mr. {Stupak.} Six weeks here. You know, being where I
2223 am sit, and maybe I am a little skeptical, but this is sort
2224 of like the Christmas season. That is when people are buying
2225 things. Do you think part of the negotiations is to drag out
2226 the press release, a 1-page press release for 6 weeks, is to

2227 get into the Christmas season to sell more cribs that are
2228 defective that are being recalled?

2229 Ms. {Tenenbaum.} Well, I have asked my staff why it
2230 takes so long, once you have made the decision for recall,
2231 why it takes 6 weeks, and that is the standard procedure, the
2232 standard amount of time, and they produced a document for me
2233 with everything that has to be done, particularly if you are
2234 going to do a recall repair. You have to manufacture the
2235 repair, you have to test it, and then inside the company, in
2236 Stork Craft Company, you know, those decisions, if you are
2237 talking to someone, they have to run it all the way up to the
2238 CEO or whomever is at the level to make the decision, but it
2239 is the truth. I mean, it takes an inordinate amount of time,
2240 and all during this time the consumers don't know that their
2241 crib needs a repair kit.

2242 Mr. {Stupak.} Correct, and then even after you do the
2243 recall, now this is well over 6 months from when we started
2244 this process and 6 weeks to get a press release out, but then
2245 now on top of that they have another 6 months they can sell
2246 the product to the American people, right? Don't they have
2247 another 6 months?

2248 Ms. {Tenenbaum.} No, we stop sale.

2249 Mr. {Stupak.} Pardon?

2250 Ms. {Tenenbaum.} Once the recall is announced, we stop

2251 sale. In fact, the retailers have a way to in their
2252 computers put the serial number of the product and it stops--

2253 Mr. {Stupak.} I thought from Mr. Dwyer, I thought we
2254 had another 180 days after that. Maybe I misunderstood.

2255 Ms. {Tenenbaum.} No, after the--at the recall, it stops
2256 sale.

2257 Mr. {Stupak.} That is the certification, I guess.

2258 Okay. I had it wrong. Why does it take so long? I mean,
2259 you had a number of recalls. In fact, you had one Tuesday
2260 here, 635,000 more cribs. Why does it take so long? Why
2261 does it take 6 months?

2262 Ms. {Tenenbaum.} Well, it shouldn't take 6 months, and
2263 that is why under our Safe Sleep Initiative, we are going
2264 forward going to have a safe sleep team where everyone works
2265 together, the compliance officers, the attorneys, the
2266 epidemiologists, the engineers so that we can all work
2267 together to move a case forward quicker. I think 6 months
2268 personally is too long. And you can also if the company is
2269 not cooperating and keeps insisting, you know, they shouldn't
2270 have a recall, we can issue a unilateral press release, which
2271 we have threatened to do. I have also told our staff, use
2272 every enforcement power you need to move cases forward; don't
2273 let a company push back on you if you have the science and
2274 the engineering complete and you know this is a product that

2275 needs to be recalled. So they know that leadership is behind
2276 them in these recalls. We also have instituted since I came
2277 to the Commission where once a week all five commissioners
2278 meet and we have weekly compliance briefings, and then we
2279 have monthly compliance briefings so we know the status of
2280 cases and can give the staff our thoughts on how urgent we
2281 think these recalls are.

2282 Mr. {Stupak.} Well, hopefully the next time the press
2283 release doesn't take 6 weeks. Six hours should be enough.
2284 If not, you can issue a unilateral one.

2285 Mr. Walden for questions, please.

2286 Mr. {Walden.} Thank you very much, Mr. Chairman.

2287 Now, Chairman, I thought I heard you say you have the
2288 authority at CPSC to unilaterally issue a press release.

2289 Ms. {Tenenbaum.} That is if the company does not
2290 cooperate.

2291 Mr. {Walden.} Okay. So--

2292 Ms. {Tenenbaum.} And we have threatened that.

2293 Mr. {Walden.} --what the chairman is talking about, a
2294 6-week delay in getting a press release, was the company not
2295 cooperating in that process?

2296 Ms. {Tenenbaum.} The company was at that point--they
2297 were cooperating once we told them we were going to do the
2298 recall but when it said 6 weeks, it is not really--I mean,

2299 there were other things going on in that period of time.

2300 Mr. {Walden.} And what other things were going on?

2301 Ms. {Tenenbaum.} Okay. I can give you the recall

2302 notification process. I can talk to you--I mean, first of

2303 all, you have to determine the scope of the product to be

2304 recalled. You have to request--

2305 Mr. {Walden.} And this is CPSC has to do this or the

2306 company?

2307 Ms. {Tenenbaum.} Yes, the Commission has to do this.

2308 You have to look--I mean, it is a 2-page-long or 3-page-long

2309 document of everything that has to occur before you can

2310 recall a case, and you have to make sure the 800 number and

2311 the website are operational. You have to test the kit. The

2312 company has to manufacture the kit, and--

2313 Mr. {Walden.} These are required by your rules?

2314 Ms. {Tenenbaum.} These are required to have a

2315 successful recall so that--

2316 Mr. {Walden.} In your rules, though, right? These are

2317 CPSC rules you are talking about?

2318 Ms. {Tenenbaum.} I don't know that they are rules, they

2319 are just procedures.

2320 Mr. {Walden.} But you control the procedures at CPSC?

2321 Ms. {Tenenbaum.} The Consumer Product Safety

2322 Commission, yes. We control it but we also have to make sure

2323 the recall is done appropriately.

2324 Mr. {Walden.} I fully concur with that, but I am just
2325 trying to get at this issue of why it took 6 weeks to get a
2326 press release out.

2327 Ms. {Tenenbaum.} Well, this was a staff member's notes,
2328 and I don't know if they--

2329 Mr. {Walden.} So you don't think those are accurate
2330 maybe?

2331 Ms. {Tenenbaum.} No, I am not saying that, Mr. Walden.
2332 I am saying that it might have reflected that it was going on
2333 6 weeks but we do have to negotiate every word. They might
2334 go up to their supervisor or to the CEO, come back to us and
2335 say we really dispute this death, so that was a good example.
2336 The death in the Dorel Asia case, the company felt like that
2337 we should not mention the death. So when you get in whether
2338 or not you are going to mention a death, the lawyers on both
2339 sides have to get into it. You have to do an investigation.
2340 So it can take 6 weeks. If we want to say no, we are going
2341 to list, say, four deaths, then you have to say in Stork
2342 Craft there were four deaths. You had to go back and make
2343 sure your facts were true on every death and--

2344 Mr. {Walden.} And do you think that is an unfair
2345 process?

2346 Ms. {Tenenbaum.} Do I think it is unfair? We have to

2347 make sure that it is correct.

2348 Mr. {Walden.} Right. I would concur.

2349 Ms. {Tenenbaum.} I think what I would like to see on
2350 the front end is for us now that we are going forward and we
2351 have our team that is going to be working together, I hope we
2352 can shorten the part of the point leading up to the recall.

2353 Mr. {Walden.} Do you think that the early warning
2354 system has been toothless? Do you think that has worked?

2355 Ms. {Tenenbaum.} The early warning system was formed
2356 after the Simplicity recall, and it puts together a team of
2357 people--lawyers, compliance officers--to look at the data
2358 that is submitted to us.

2359 Mr. {Walden.} It tries to get everybody in your agency,
2360 right, to talk?

2361 Ms. {Tenenbaum.} Right. Earlier on, you mentioned--you
2362 asked me if--or you asked one of the Ciriglianos, you asked
2363 them if they had a duty to report, and they did not.

2364 Mr. {Walden.} No, that was the chairman who said that.

2365 Ms. {Tenenbaum.} Right, and that is one of the issues.
2366 We do not get reports sometimes until years after an incident
2367 has occurred and the sample is gone. So one of the issues
2368 that we were going to say in terms of improving the process
2369 which would take probably statutory authority is to require
2370 States to report events to us. Medical examiners' reports,

2371 we purchase. We work with other--we work voluntarily with
2372 hospitals. We have the NICE system. We have a number of
2373 ways. We go through press releases, newspapers. We do
2374 everything to find out about incidents but there is no duty
2375 to report from the State coroners or medical examiners.

2376 Mr. {Walden.} Thank you. That is helpful information
2377 to have as we go forward. I have just 45 seconds left here,
2378 and we have got votes on, so let me ask you this. Is it the
2379 industry trade group's duty to come up with these new
2380 standards, or if there is a gap in safety, is it CPSC's duty
2381 to put in mandatory standards? You have that authority.
2382 Your predecessors have had that authority. You can step in
2383 and put a standard in that says we are not going to have
2384 drop-side cribs or we are not going to have this type of
2385 manufacturing process, right?

2386 Ms. {Tenenbaum.} I think the ASTM should always have
2387 state-of-the-art, robust standards for all the products.

2388 Mr. {Walden.} I agree.

2389 Ms. {Tenenbaum.} But I also see, when you see patterns
2390 of this kind of thing that go on for years, then it is time
2391 for the CPSC before it gets this late to have a mandatory
2392 standard, and that is why when I came to the Commission we
2393 started looking at the cribs. We changed the schedule so
2394 that this year we will have the mandatory standard. We asked

2395 the ASTM. I called them personally, got them on the phone,
2396 you need to work with us right now to have the best voluntary
2397 standard possible. They voluntarily said yes, we would love
2398 to work with you. They came and spent yesterday and the day
2399 before and worked all day long, and they have come to an
2400 agreement that we need to increase the wood quality. Now it
2401 is a 50-pound standard. They agreed to an 86-pound standard.
2402 We need to test the hardware, given the Canadian racking
2403 method. I understand that is 9,000 times the hardware is put
2404 under stress to be tested. They outlawed wooden screws, and
2405 they also, you know, talked about other issues that would
2406 make the voluntary standard robust.

2407 Mr. {Walden.} Good. Thank you. Thank you for your
2408 work and thanks for your response to questions.

2409 Mr. {Stupak.} Thanks, Mr. Walden.

2410 Ms. Schakowsky for questions, please.

2411 Ms. {Schakowsky.} So let me get it clear. We are going
2412 to have a mandatory standard for cribs that will prohibit
2413 drop sides?

2414 Ms. {Tenenbaum.} Yes, ma'am, we will.

2415 Ms. {Schakowsky.} And when will that be?

2416 Ms. {Tenenbaum.} It will be 2010. We hope by early
2417 summer to have the NPR published in the Federal Register. We
2418 have to have 75 days of comment and then we will have the

2419 standard by the end of the year. We are also pushing the
2420 ASTM to go ahead and adopt voluntary standards with this, and
2421 the good thing about having a mandatory standard that you put
2422 in the CPSIA is that it will be retroactive. It will cover
2423 cribs that are in public places like hotels and childcare
2424 facilities so that the drop side will be banned in the public
2425 places. But we still worry about cribs in homes that
2426 continue to have the drop side.

2427 Ms. {Schakowsky.} And in the meantime, how are we going
2428 to keep these cribs--are all of them with drop sides
2429 recalled?

2430 Ms. {Tenenbaum.} Well, we have recalled 6 million of
2431 them, and all these are voluntary recalls where we have
2432 repair kits and we have to keep continuing to educate people
2433 in the home who have cribs that there is a repair kit that
2434 they need to purchase and so it will still be in the home.
2435 And we also want to reach out to the minority communities
2436 through the neighborhood safety network, the minority
2437 outreach program. Also, we are looking at how we can
2438 communicate through every State agency that licenses
2439 childcare facilities so that we can send out e-mails to say
2440 don't use this brand crib, children have been injured or
2441 killed with these drop sides. So it is up to us to continue
2442 with our public information campaign.

2443 Ms. {Schakowsky.} But there still will be until--so
2444 after the 75-day comment period, when are we going to say a
2445 ban on drop-side cribs?

2446 Ms. {Tenenbaum.} Well, prospectively the ASTM has
2447 banned them, and I asked the director of DHS--well, I asked--

2448 Ms. {Schakowsky.} Ban the manufacture but not all of
2449 them have been recalled?

2450 Ms. {Tenenbaum.} I don't think every crib has been
2451 recalled.

2452 Ms. {Schakowsky.} Drop-side cribs.

2453 Ms. {Tenenbaum.} Drop side, but it is banned
2454 prospectively. I will have to get back with you on that. I
2455 know that--

2456 Ms. {Schakowsky.} But under CPSC, after the--what does
2457 that take us to? There is a 75-day comment period--

2458 Ms. {Tenenbaum.} I would hope by December to have our
2459 mandatory rule done, and I hope we can do it sooner. And the
2460 work that has been done the last 2 days by the ASTM should
2461 allow us to have information, plus the agency put out an ANPR
2462 in 2008, so we are going to try as fast as possible to have
2463 this done.

2464 Ms. {Schakowsky.} Okay. I want to get the letters
2465 right. The JP--what is it?

2466 Ms. {Tenenbaum.} JPMA?

2467 Ms. {Schakowsky.} Voted against having a mandatory
2468 standard, or what was it? I mean, I am trying to understand
2469 the relationship with the industry, and for a long time I
2470 have been concerned about the issue, for example, of these
2471 press releases, and I understand, of course, getting the
2472 accuracy but it doesn't take that long to figure out if
2473 someone has--if a child has died or four children have died,
2474 and the fact that the industry doesn't want that in a press
2475 release, who cares? Why do we have to negotiate that? Why
2476 should it take so long if this is a threat of life? Do we
2477 have to do more? How does our new Act, the Improvement Act,
2478 change the rule about these press releases?

2479 Ms. {Tenenbaum.} Well, I will give you an example.
2480 Just this week we recalled Dorel Asia and the Today show and
2481 other morning shows are very helpful to us and they say we
2482 will announce this so that people can get the word on this,
2483 and we had had it in the press release that a child had died.
2484 The people representing Dorel Asia were talking to Tom
2485 Castello up until right before he went on the air saying do
2486 not mention that death, and so that is how we have to deal
2487 with this, and he mentioned it because we asked him to.

2488 Ms. {Schakowsky.} Well, under the new Act, you said
2489 that there has been some improvements in that. What was
2490 improved?

2491 Ms. {Tenenbaum.} Well, the time under 6B. It just
2492 shortened the period of time. But still the negotiations
2493 about whether or not a death is, you know, because of the
2494 hardware or some fault of the consumer, and that goes back
2495 and forth and we have to be really hard about pushing forward
2496 that we are going to list this death.

2497 Ms. {Schakowsky.} I think we really have to do
2498 something about that, because don't you think that the impact
2499 of a statement where a death has occurred is much more
2500 powerful than--

2501 Ms. {Tenenbaum.} Yes. I mean, if parents know that
2502 your child can tragically die by being entrapped, they will
2503 go in that room and look at that crib immediately, we hope,
2504 or even when a child is injured and we can show parents, this
2505 is not something that you can fix yourself, please get the
2506 repair kit, and if the crib is in such bad shape, please do
2507 not use it.

2508 Ms. {Schakowsky.} Well, as far as I am concerned--

2509 Mr. {Stupak.} I have got to cut you off.

2510 Mr. Burgess, we have 2 minutes left to vote.

2511 Ms. {Tenenbaum.} Thank you, though, for bringing this
2512 up.

2513 Mr. {Stupak.} Mr. Burgess, questions, please.

2514 Dr. {Burgess.} Thank you, Mr. Chairman, and thank you,

2515 Commissioner, for being here today. I hope we have--I know
2516 we have a request in to your office to have a meeting. I
2517 hope we are able to have that soon.

2518 Mr. Chairman, I will also say, having taken a trip out
2519 and seen the testing facility at CPSC, I would encourage a
2520 field hearing at the testing facility sometime. I think it
2521 would be important for us to see how they do a good job with
2522 really sometimes some pretty rudimentary tools, and if we
2523 behave ourselves that day, they will even let us test some of
2524 the toys if we promise not to break them.

2525 Now, I am a little confused on the--that you have banned
2526 the manufacture of drop-side cribs. Is that correct?

2527 Ms. {Tenenbaum.} ASTM has.

2528 Dr. {Burgess.} ASTM has?

2529 Ms. {Tenenbaum.} And we will put that in our mandatory
2530 standard.

2531 Dr. {Burgess.} Who needs to ban the import? Because a
2532 drop-side crib could still be imported by a retailer.

2533 Ms. {Tenenbaum.} Well, what the ASTM is a voluntary
2534 standard and they are saying in the standard, which they
2535 voted on in December of 2009, that it will no longer meet
2536 standards if it is drop side. But, you know, we will have a
2537 rule this year, and I don't want to whine but I want to tell
2538 you that we have had 48 Federal Register notices since the

2539 passage of the CPSIA. There are so many rules under that we
2540 pushed forward that that is why it takes a while to finish
2541 these rules, but anyway, I got you off your train of thought.
2542 I am sorry.

2543 Dr. {Burgess.} Well, some of the things we have been
2544 through before with the lead-up to the CPSIA was the problem
2545 that we have with stuff that is made overseas, read China,
2546 and then brought to this country that doesn't meet our
2547 standards. If we decided that it is the design of the drop-
2548 side crib that is the problem, then it doesn't matter where
2549 it is made, in my opinion. If it is made overseas, then we
2550 should not allow its import. Now, what do we have to do with
2551 the World Trade Organization and all of our treaties and
2552 border stuff, what do we do to keep those cribs from coming
2553 in and being sold in retail outlets in this country?

2554 Ms. {Tenenbaum.} If we ban the drop side, we could stop
2555 it at the port.

2556 Dr. {Burgess.} Have we banned it?

2557 Ms. {Tenenbaum.} We will in the rule.

2558 Dr. {Burgess.} Which is going to happen when?

2559 Ms. {Tenenbaum.} In 2010 we are going to finish that.
2560 It was originally scheduled for 2012 and we have expedited
2561 that to move it up to 2010.

2562 Dr. {Burgess.} Yes, the notes I have from the U.S.

2563 Consumer Product Safety Commission, Office of General
2564 Counsel, required actions pursuant to the Consumer Product
2565 Safety Improvement Act of 2008, and this is dated September
2566 2008, that we would do this by August of 2009, so I guess
2567 that slipped a little bit?

2568 Ms. {Tenenbaum.} I guess it did. We did the durable
2569 nursery equipment items, there were 12 of them, baby baths
2570 and baby walkers.

2571 Dr. {Burgess.} Shouldn't cribs have been up at the top
2572 of that list of 12?

2573 Ms. {Tenenbaum.} Cribs, in my opinion, yes. That is
2574 why I have expedited it.

2575 Dr. {Burgess.} So we on this committee can expect you
2576 to issue a mandatory ban on drop-side cribs sometime in 2010?

2577 Ms. {Tenenbaum.} Yes, sir, and that will be
2578 retroactively applied for cribs in public places such as
2579 childcare facilities and hotel rooms but it won't apply to
2580 bans in homes, so the consumer would still have it under
2581 section 104.

2582 Dr. {Burgess.} Well, if they had existing ones, but
2583 will they still be able to go to a retail outlet and purchase
2584 one?

2585 Ms. {Tenenbaum.} No.

2586 Dr. {Burgess.} Would a retailer be able to import one

2587 for sale?

2588 Ms. {Tenenbaum.} No, not after we say that they don't
2589 meet the standards.

2590 Dr. {Burgess.} So we will be able to stop those at the
2591 border?

2592 Ms. {Tenenbaum.} Yes, sir.

2593 Dr. {Burgess.} Let me just ask you, one of the things
2594 we struggled with during the run-up to the bill in 2008 was
2595 the funding and personnel levels at the CPSC. Where are we
2596 with that now?

2597 Ms. {Tenenbaum.} Well, we are at the level of having
2598 530 FTEs, full-time equivalents, and we now employ as of
2599 today 479. So we are--but we have 45 recruitments in the
2600 process of being hired, and it is our goal to be at the top
2601 of the 530 this year.

2602 Dr. {Burgess.} Now, we were given--both Nancy Nord and
2603 Mr. Moore felt that the funding levels we were providing CPSC
2604 in past years were not satisfactory. Those were increased.
2605 What actions are you taking now? We are going to be in a
2606 tough budget yet. Guess what? It is going to be real tough.
2607 And yet this is one of the more important functions but still
2608 very low on the totem pole of things that get funded. So
2609 what actions are you taking now to ensure that your funding
2610 does not slip?

2611 Ms. {Tenenbaum.} Well, when we--I go and meet
2612 personally with OMB and I go myself, just talk to them about
2613 how important it is to be able to implement the CPSIA and
2614 other statutes. I ask them to hold our agency harmless. And
2615 so I have said, you know, \$10 million to the CPSC is a
2616 tremendous amount. Ten million dollars to a mega agency
2617 would not have the same effect. And we keep demonstrating to
2618 them how we are using it. Also with Booz Allen Hamilton,
2619 which is the company that is going to be doing a management,
2620 operational and strategic plan for us, they will be looking
2621 at what additional resources we need or how we use existing
2622 resources to accomplish our goal, which is keeping consumers
2623 safe.

2624 Dr. {Burgess.} Well, I would just say, don't forget you
2625 have friends on this committee if the appropriators aren't
2626 treated you squarely.

2627 Thank you, Mr. Chairman. I know we have got to go vote.

2628 Ms. {Tenenbaum.} And thank you, Mr. Burgess.

2629 Mr. {Stupak.} Thank you. That concludes of all
2630 questioning. First I ask unanimous consent Mr. Waxman and
2631 the attachment from the Consumers Union be made part of the
2632 record, Mr. Waxman's opening statement.

2633 [The information follows:]

2634 ***** COMMITTEE INSERT *****

|
2635 Mr. {Stupak.} And that concludes all questioning. I
2636 want to thank our witnesses for coming today and for their
2637 testimony. The committee rules provide that members have 10
2638 days to submit additional questions for the record. I know
2639 there are questions as to manufacturers have a duty to report
2640 deaths and injuries, and after you do a recall, we have seen
2641 going in the stores, there is no notification. So there are
2642 going to be other questions. We will follow up probably with
2643 you, Madam Chairperson.

2644 So I ask unanimous consent that the contents of our
2645 document binder be entered in to the record provided that the
2646 committee staff may redact any concerns about privacy,
2647 business proprietary or other law enforcement-sensitive
2648 issues. Without objection, documents will be entered in the
2649 record.

2650 That concludes our hearing. This meeting of the
2651 subcommittee is adjourned. Thank you all for being here.

2652 [Whereupon, at 12:18 p.m., the subcommittee was
2653 adjourned.]