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1 {York Stenographic Services, Inc.}

2 HIF119.170

3 HEARING ON H.R. _____, THE CONSUMER PRODUCT SAFETY ENHANCEMENT

4 ACT

5 THURSDAY, APRIL 29, 2010

6 House of Representatives,

7 Subcommittee on Commerce, Trade, and Consumer Protection

8 Committee on Energy and Commerce

9 Washington, D.C.

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

13 Members present: Representatives Rush, Schakowsky,
14 Sutton, Stupak, Gonzalez, Matheson, Braley, Dingell, Waxman
15 (ex officio), Whitfield, Radanovich, Pitts, Terry, Wilkins
16 Myrick, Gingrey, Scalise, Latta and Barton.

17 Staff present: Phil Barnett, Staff Director, Bruce
18 Wolpe, Senior Advisor; Michelle Ash, Chief Counsel; Robin
19 Appleberry, Counsel; Felipe Mendoza, Counsel; Timothy

20 Robinson, Counsel; Lindsay Vidal, Press Secretary; Karen
21 Lightfoot, Communications Director; Will Cusey, Special
22 Assistant; Daniel Hekier, Intern; Brian McCullough, Minority
23 Senior Professional Staff; Will Carty, Minority Professional
24 Staff; Shannon Weinberg, Minority Counsel; Jerry Couri,
25 Minority Professional Staff; Samuel Costello, Minority
26 Legislative Analyst; and Robert Frisbee, Minority FTC
27 Detailee.

|
28 Mr. {Rush.} The subcommittee will now come to order.

29 The purpose of today's subcommittee hearing is on the
30 Consumer Product Safety Commission Enhancement Act, and with
31 that said, the Chair wants to welcome all the witnesses and
32 all those who are participating here in the audience and I
33 certainly want to apologize to those who are forced to stand.
34 And with that said, the Chair will recognize himself for 5
35 minutes for the purposes of an opening statement.

36 I want to thank again all the witnesses for taking the
37 time out to offer the Congress your views on the legislation
38 that we are shaping. Known as the Consumer Product Safety
39 Enhancement Act, the draft law would give the Consumer
40 Product Safety Commission new regulatory flexibility to
41 exempt certain products, components and materials from lead
42 limits contained in the Consumer Product Safety Improvement
43 Act of 2008. The draft text affords relief for thrift stores
44 and other retailers through an exclusion for certain used
45 children's products from the lead limits. It also extends
46 relief to small manufacturers and other businesses by
47 allowing the Commission to approve alternative test
48 requirements for certain small batch manufacturers. And it
49 would require the Consumer Product Safety Commission to
50 provide outreach and assistance to small businesses and

51 restrict the Commissioner from applying the 2008 laws to
52 inaccessible component parts.

53 The Chair really wants to thank the staff, both the
54 majority and the minority staff. Staff had worked hard,
55 tirelessly with affected stakeholders to understand better
56 their business model, supply chains and special needs.
57 Staff, your efforts have been invaluable in enabling us to
58 put together the draft that we will be working from today and
59 hearing testimony on.

60 [The prepared statement of Mr. Rush follows:]

61 ***** COMMITTEE INSERT *****

|
62 Mr. {Rush.} With that, I look forward to hearing from
63 all the witnesses, and I yield back the balance of my time
64 and recognize the ranking member, Mr. Whitfield, for 5
65 minutes.

66 Mr. {Whitfield.} Well, Chairman Rush, thank you very
67 much, and I certainly want to thank all the witnesses for
68 being here today to help us make the best decision that we
69 can relating to this legislation.

70 I am delighted that we are having this hearing because
71 this legislation is so important and we know from passing the
72 Consumer Product Safety Enhancement Act last year that there
73 have been a lot of problems with this legislation. It is
74 important that we try to balance the protection of children
75 versus also allowing small businesses and others to stay in
76 business as long as they are not endangering the lives of our
77 children.

78 Many of us have received letters and e-mails from
79 constituents who have been affected in a very bad way
80 regarding this legislation, and there was a young gentleman
81 named Ray Curren that lives in my district and he sent an e-
82 mail to me, and it was totally unsolicited, but he says,
83 ``The Consumer Product Safety Enhancement Act has just about
84 destroyed me and my business. As you know, I hand make small

85 lots of historic and folk art toys. These are the types of
86 things that your grandfather and great-grandfather made for
87 their kids and grandkids. I make anywhere from a couple of
88 hundred to 300 or 400 a year. I can no longer make these
89 items. The cost of testing raises the cost of the items
90 beyond the reach of most people. I have to give up my craft
91 and my wholesale shows, which were the majority of my income.
92 I always use American-made paint, stains and finishes, which
93 are lead-free, and natural finishes such as beeswax and
94 mineral spirits, which are food-grade finishes. Now these
95 must be tested and I cannot afford it.' We have had lots of
96 e-mails and letters like that, and the reason that I am
97 particularly interested in today's hearing is that there are
98 so many issues like the cost of the decisional memos, like
99 the lack of exemption authority for the consumer protection
100 agency, and hopefully you can provide us additional
101 information about the functional purpose petition and the
102 absorption exclusion that is in the current law, and whether
103 or not we should be looking at the economic impact of this
104 legislation on businesses, particularly at this time when we
105 are focused on trying to create jobs.

106 There is no question that we need to take some action,
107 and we do need to make sure that children are not exposed to
108 unusually large amounts of lead, and I am convinced that we

109 can do so in a balanced way that will protect children and at
110 the same time allow small businessmen and women who are
111 making products that are not a danger to children to stay in
112 business. So I really look forward to this hearing and I
113 look forward to working with Chairman Waxman and Chairman
114 Rush and the other members of the committee as we take up
115 this legislation and try to make it even better, and I yield
116 back the balance of my time.

117 [The prepared statement of Mr. Whitfield follows:]

118 ***** COMMITTEE INSERT *****

|
119 Mr. {Rush.} The Chair now recognizes the chairman of
120 the full committee, the gentleman from California, Mr.
121 Waxman, for 5 minutes.

122 The {Chairman.} Thank you very much, Mr. Chairman.

123 Over 4 years ago, we were getting reports about children
124 who were dying of lead poisoning. One boy in particular,
125 Darnell Brown, swallowed a metal charm that came with a pair
126 of kids' shoes. A year later, two children became comatose
127 and had to be hospitalized because of a children's toy that
128 turned out to have a toxic drug in it. That same year,
129 millions of cribs were recalled for a simple defect that had
130 caused multiple infant deaths. The bottom line was clear:
131 Our system for keeping children safe was broken. In fact,
132 the entire agency charged with policing these products, the
133 Consumer Product Safety Commission, was broken and in need of
134 comprehensive reform.

135 In 2007 and 2008, Congress reviewed the reasons for
136 these terrible tragedies and crafted a response. In August
137 of 2008, after months of hearings, markets and an extended
138 House-Senate conference, the Consumer Product Safety
139 Improvement Act was enacted on a broad bipartisan basis.
140 That law was a victory for consumers and contained provisions
141 that will enable the CPSC to protect children for decades to

142 come. The provisions were essential not only to protecting
143 children but also to restoring consumer confidence in the toy
144 industry itself.

145 Since enactment, the Commission has made strides in
146 carrying out the law but some areas of implementation have
147 not been smooth. We have heard from a number of stakeholders
148 that certain provisions of the law need adjustment. We have
149 taken these concerns seriously, and over the past yet met
150 repeatedly with stakeholders affected by the new law to
151 understand their concerns and to craft an appropriate
152 legislative response. These stakeholders have included small
153 and large manufacturers, small and large retailers, thrift
154 stores and other used-good sellers, trade associations,
155 consumer advocates and the CPSC itself.

156 The draft text that we are here to discuss today is the
157 result of this process. It is not a perfect solution and it
158 does not represent complete fulfillment of anyone's wish
159 list. As our witnesses will testify, however, it is a fair
160 and reasoned measure that would grant significant and
161 meaningful relief to many stakeholders while still protecting
162 our children from dangerous products.

163 The text of this draft is not set in stone, and we look
164 forward to any and all constructive input that will be
165 offered today but the draft does reflect the hard work of

166 months of negotiation with stakeholders and a delicately
167 struck balance between the need for targeted changes to the
168 law and the need to preserve the most important public health
169 accomplishments of that law.

170 It also reflects a compromise of both industry
171 stakeholders and consumer and public health groups are
172 willing to support. I think this level of consensus is
173 remarkable and I expect that today's testimony will go a long
174 way in making clear how important these changes are and how
175 important it is that they be narrowly crafted.

176 I hope that my colleagues will review the draft
177 carefully and consider supporting its passage through this
178 committee. Toy safety is not now and has never been a
179 partisan issue and it is my sincere hope that this committee
180 can unite in supporting fair, meaningful relief for
181 businesses while still protecting our children.

182 Thank you, Mr. Chairman.

183 [The prepared statement of Mr. Waxman follows:]

184 ***** COMMITTEE INSERT *****

|
185 Mr. {Rush.} The Chair wants to thank the full committee
186 chairman.

187 The Chair now recognizes the gentleman from Nebraska,
188 Mr. Terry, for 2 minutes.

189 Mr. {Terry.} Thank you.

190 After looking over this enhancement bill, I remain
191 concerned that we are not adequately addressing any of the
192 problems associated with the CPSIA that have been expressed
193 to me since its enactment. Don't get me wrong, the bill does
194 include some good things like making the 100 PPM lead
195 substrate standard prospective when it becomes effective
196 August 14, 2011. As we know, under the existing law, that
197 standard would be retroactive. I am glad to see that the
198 bill would exclude from the phthalate standard inaccessible
199 component parts of children's toys and childcare articles.
200 Currently, the law excludes inaccessible component parts from
201 the lead substrate standard but not from the phthalate
202 standards.

203 However, I also have some serious concerns about the
204 CPSC's ability to evaluate risk and reasonableness. It is my
205 understanding that this bill was ostensibly intended to give
206 the CPSC greater flexibility in granting exceptions in
207 situations where it is impractical to comply and there is no

208 significant risk of injury. As we know, consumer product
209 safety commissioners are on record requesting such
210 flexibility. Section 2 of this enhancement bill attempts to
211 give the CPSC to grant exceptions but the hurdles are
212 impossibly high. As drafted, in order to grant an exception,
213 the CPSC would have to find, one, that it is not practical or
214 feasible to manufacture the components without lead, two,
215 that the component is not likely to be placed in the mouth,
216 taking into account foreseeable use and abuse, and three,
217 that there will be no reasonable measure adverse effect on
218 public health or safety. The CPSIA currently permits the
219 CPSC to grant exceptions if it finds, one, that it won't
220 result in any absorption of lead in the human body, and two,
221 that there won't be any other adverse impact on health or
222 safety. I don't believe that there is a material difference
223 between no measurable adverse effect and won't result in any
224 absorption. Both are a zero-tolerance threshold. Plus when
225 coupled with not likely to be placed in the mouth taking into
226 account feasibility use and abuse, the bill does not give the
227 CPSC the flexibility it needs to grant reasonable exceptions,
228 so I would like to see a threshold that permits the CPSC to
229 evaluate risk and reasonableness.

230 I thank the chairman for holding this hearing, and I
231 don't have any more time to yield back.

232 [The prepared statement of Mr. Terry follows:]

233 ***** COMMITTEE INSERT *****

|
234 Mr. {Rush.} The Chair recognizes the gentle lady from
235 Illinois, Ms. Schakowsky, the vice chair of the subcommittee,
236 for 2 minutes.

237 Ms. {Schakowsky.} Thank you, Mr. Chairman.

238 The Consumer Product Safety Improvement Act was a
239 landmark piece of consumer protection legislation that has
240 already improved the safety of products on the shelves,
241 particularly those made for children. The new law is the
242 most significant reform of the Consumer Product Safety
243 Commission and its responsibilities in decades. It
244 authorized additional resources for CPSC so that they will
245 finally have the tools and personnel to protect our children
246 from dangerous toys and products. The safety net was broken
247 and we fixed it. Implementation of the new law, however, was
248 not without a few bumps in the road and the industries
249 represented by our witnesses have requested some changes to
250 the CPSIA.

251 I want to commend Chairman Waxman, Chairman Rush and
252 their staffs for crafting a bill that would make the sought-
253 after fixes without undermining the important public health
254 mandates that we included in the original legislation. For
255 example, the CPSC will be allowed to exclude specific
256 products or materials from the lead limits but only if such

257 an exemption will have ``no measurable adverse effect on
258 public health or safety.''

259 I am also pleased that the bill does not allow changes
260 to provisions I authored that require safety testing for
261 durable infant or toddler products for which the CPSIA
262 created strong mandatory standards and that can cause
263 considerable harm, as we have seen most recently with a high
264 number of crib recalls. I want to use that point to
265 reiterate how important the CPSIA was to overhauling a system
266 that wasn't protecting our families and how important it is
267 to maintain the strength of the law.

268 I yield back the balance of my time.

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

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

|
271 Mr. {Rush.} The Chair now recognizes the gentleman from
272 Ohio, Mr. Latta, for 2 minutes.

273 Mr. {Latta.} Thank you, Mr. Chairman, Ranking Member
274 Whitfield. Thank you for holding this important hearing
275 today to discuss the Consumer Product Safety Enhancement Act.

276 While this hearing is on revising previously passed
277 legislation, I have heard from many of my small businesses,
278 manufacturers, employers and employees who feel that many of
279 the suggested changes will do more harm than good. It is
280 very important to protect our children and maintain strong
281 safety regulations. However, we must not craft legislation
282 that creates more regulatory burdens. I am concerned that
283 there is the strong potential for direct negative effects
284 such as job loss, budgetary constraints and business closures
285 in an already difficult economic environment.

286 At a time of economic hardship and an average
287 unemployment rate in my Congressional district of over 13
288 percent unemployment, and in the State of Ohio of 11 percent,
289 we cannot pass legislation that will further hinder business.
290 According to the National Association of Manufacturers, 2
291 years ago I had the ninth largest manufacturing district in
292 Congress, and today my district stands at 20th. Currently, I
293 represent the largest manufacturing and the largest

294 agricultural district in the State, and I have concerns that
295 any legislation that forces more bureaucratic mandates on
296 businesses further hinders and hampers economic growth.

297 Mr. Chairman, I appreciate you holding a hearing
298 regarding a legislation fix on this issue. I look forward to
299 working with you and the ranking member on this legislation,
300 and I yield back.

301 [The prepared statement of Mr. Latta follows:]

302 ***** COMMITTEE INSERT *****

|
303 Mr. {Rush.} The Chair now recognizes the gentlelady
304 from Ohio, Ms. Sutton, for 2 minutes.

305 Ms. {Sutton.} Thank you, Mr. Chairman.

306 Consumer product safety is not an area we can afford to
307 ignore. In the last Congress, I was proud when we passed on
308 a bipartisan basis the Consumer Product Safety Improvement
309 Act. For far too long, we read story upon story about
310 dangerous toys. The Consumer Product Safety Improvement Act
311 has strengthened the CPSC and has begun to ensure American
312 families are protected from dangerous toys and products.

313 Children must be protected from dangerous levels of
314 lead. Toys and children's products should be safe before
315 they reach the store shelves. Recalling a product after a
316 child is poisoned, or even worse, killed, is far too little,
317 far too late.

318 Now, I understand that there are some products that have
319 inaccessible components that include lead such as
320 recreational vehicles, and we must use common sense as we
321 make our policies to effectively work to protect our children
322 and consumers. The Consumer Product Safety Enhancement Act
323 will provide the flexibility for the Commission to address
324 such products and utilize common sense. Parents do not want
325 their children exposed to lead.

326 As imports continue to grow, and we should note that 80
327 percent of all toys sold in the United States are imported
328 from China alone, we have seen some manufacturers show a
329 remarkable failure to adhere to basic safety standards. It
330 is a national shame and embarrassment when companies and
331 importers pay more attention to their costs than our safety
332 and the safety of our children and families. That is why I
333 introduced the Foreign Manufacturers Legal Accountability Act
334 to protect American consumers and businesses from defective
335 products manufactured abroad. I look forward to taking that
336 up in this committee.

337 The American people deserve and demand that the products
338 they are sold are safe and the American people expect that we
339 make necessary improvements and clarifications to legislation
340 to achieve our goals, in this case, our goal to protect
341 children from defective products and lead.

342 Thank you, and yield back.

343 [The prepared statement of Ms. Sutton follows:]

344 ***** COMMITTEE INSERT *****

|
345 Mr. {Rush.} The Chair now recognizes the gentleman from
346 Pennsylvania, Mr. Pitts, for 2 minutes.

347 Mr. {Pitts.} Thank you, Mr. Chairman. Thank you for
348 holding this hearing on the committee print of the Consumer
349 Product Safety Enhancement Act.

350 I think we all agree that protecting consumers,
351 especially children, from unsafe products is a worthy goal of
352 government regulation. However, the implementation of the
353 Consumer Product Safety Improvement Act has given many cause
354 for concern. We have observed a number of unforeseen and
355 negative consequences arise that are now putting undue
356 pressure on businesses and manufacturers here in the United
357 States and throughout the world.

358 I received countless e-mails, phone calls and letters
359 from businesses in my district and across the United States
360 expressing the difficult and damaging effects this law is
361 having on them. While this committee print may address some
362 of the issues that have been brought to my attention, the
363 language is still vague and issues are still left
364 unaddressed. The bill needs to be improved. I am still
365 greatly concerned that small businesses in particular will
366 not receive the relief they deserve.

367 Mr. Chairman, I ask unanimous consent to enter into the

368 record a letter I received from my constituent, Randy
369 Hertzler, who is here today, which expresses his concerns
370 about the inconsistencies between the CPSIA and EN-71, the
371 European standard. He asserts the committee print before us
372 today may be helpful but the wording is ambiguous and does
373 not give full assurance that his concerns and that of many
374 others will be satisfied.

375 I do have grandchildren, and I want to be sure their
376 toys are safe, but we need to do this in a way that is
377 realistic, clear and fair.

378 I look forward to hearing from our witnesses today, and
379 I appreciate all of them before using, and I ask unanimous
380 consent to enter into the record the letter.

381 [The prepared statement of Mr. Pitts follows:]

382 ***** COMMITTEE INSERT *****

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383 Mr. {Rush.} Hearing no objections, so ordered.

384 [The information follows:]

385 ***** COMMITTEE INSERT *****

|
386 Mr. {Rush.} The Chair now recognizes the chairman
387 emeritus of the full committee, my friend from Michigan, Mr.
388 Dingell, for 5 minutes.

389 Mr. {Dingell.} Mr. Chairman, I thank you, and I commend
390 you for holding today's hearing. It is a very important
391 matter, and I think this will ensure that the committee's
392 work to ensure a sound and practicable regulatory system for
393 consumer products proceeds according to the regular order.

394 As an author of the original Product Safety Act back in
395 1972 with my good friend, Mr. Moss of California, I am
396 pleased with what the statute has done and I am a
397 longstanding advocate for better protections to our Nation's
398 consumers. I wholeheartedly support a stronger regulatory
399 framework to ensure the safety of consumer products
400 distributed in commerce in the United States, particularly
401 those meant for use by children. When Chairman Rush,
402 Chairman Waxman, Ranking Member Barton, Ranking Member
403 Whitfield and I wrote the Consumer Product Safety Improvement
404 Act in 2008, we did so in furtherance of this goal. That was
405 a bipartisan piece of legislation, and it was a good one, and
406 it came out of this committee unanimously, as my colleagues
407 will remember, and passed the House unanimously. It then
408 went to the United States Senate, and at that point

409 unintended consequences arose and they have been exaggerated,
410 exacerbated by the fact that the Senate resisted intelligent
411 and necessary changes during the discussions in the
412 conference, and this has created severe imposition of
413 unnecessary, onerous regulatory burdens on businesses,
414 particularly small business, with little appreciable positive
415 impact on consumer safety and health. And indeed, the
416 Consumer Product Safety Commission has had the misfortune to
417 have to toe dance around and to try and write regulations
418 that would make sense after the Senate imposed changes.

419 The legislation we consider today, namely the Consumer
420 Product Safety Enhancement Act, seeks to address the
421 shortcomings of CPSIA while maintaining the strong
422 protections that it affords consumers. CPSEA provides the
423 Commission with much-needed regulatory authority, relief for
424 thrift stores, assistance for small businesses. I commend
425 you and your fine work in crafting a bill to accomplish these
426 goals, and I note that CPSEA has support in the form of
427 letters of endorsement from the National Association of
428 Manufacturers and the Motorcycle Industry Council, the
429 Bicycle Product Suppliers Association, Goodwill and the
430 Handmade Toy Alliance.

431 Finally, while I will not be seeking amendments to
432 CPSEA, I will be seeking the assistance of you and Chairman

433 Waxman and your strong assurances for the record that
434 language clarifying the meaning of certain terms and
435 provisions in the bill will be included in the committee's
436 report. I find a real danger of ambiguity in these areas and
437 hope that we can clarify those problems.

438 I look forward to a productive discussion this morning
439 about CPSEA, and yield back the balance of my time.

440 [The prepared statement of Mr. Dingell follows:]

441 ***** COMMITTEE INSERT *****

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442 Mr. {Rush.} The gentleman is assured that we will take
443 in consideration his request, and staff will work together on
444 these matters and other matters that might be of concern to
445 you.

446 The Chair recognizes the ranking member of the full
447 committee, Mr. Barton of Texas, for 5 minutes.

448 Mr. {Barton.} Thank you, Mr. Chairman. I want to thank
449 you and Chairman Waxman and Chairman Dingell for agreeing to
450 this hearing. I also want to say that normally I don't read
451 my opening statement, I speak extemporaneously, but because
452 this hearing actually is an action item hearing that is
453 probably hopefully going to lead to real legislation, I am
454 going to read my statement, which again is something I don't
455 normally do.

456 I do want to express my strongest appreciation for
457 agreeing to this legislation hearing. I have been asking for
458 this for a long time. In fact, I requested a hearing almost
459 as soon as the problems with the implementation with CPSIA
460 became apparent. We sent letters in January and March of
461 2009, and then again when the subcommittee held a hearing in
462 September with the then newly appointed Chairman Tenenbaum.
463 Hearing Chairman Tenenbaum's views about the future of the
464 CPSC was an important oversight task, but I believe then and

465 still believe today that we need the facts about the
466 implementation and the real-world effects of CPSIA if we are
467 going to understand what the problems are and how to fix
468 them.

469 I am very glad that we have an array of stakeholders
470 before us today, Mr. Chairman, who can finally have their
471 voices heard. Their stories about how the 2008 CPSIA law
472 impact their lives and their businesses and their ideas more
473 importantly about how to remedy the unintended consequences
474 of this law are vital to a real reform effort. I want to
475 thank each of the witnesses for being here.

476 I would like to highlight, however, that it would also
477 be helpful if we could have had the CPSC commission before us
478 today. The CPSC is the agency that is charged with enforcing
479 the law that we pass. I believe it is necessary to hear the
480 regulatory impact from their point of view. Specifically,
481 there are provisions in the proposed legislation that were
482 requested by the CPSC but which have never been examined
483 during a legislative hearing. The witnesses today are not in
484 a position to explain why the CPSC requested those
485 provisions.

486 We began this journey, Mr. Chairman, back in 2007 in
487 response to a spate of calls for recalls for toys with lead
488 paint. The law that was passed in response to those requests

489 expanded into something that none of us really imagined, or
490 at least I didn't. It has turned, in my opinion, in some
491 cases into a regulatory and compliance nightmare. Products
492 like Native American ceremonial regalia that were never
493 intended to be covered have been ensnared by the law. There
494 are now over 2,500 additional pages and that grow almost
495 every day of rules and regulations. Golf clubs, bicycles,
496 leather riding saddles as well as educational equipment like
497 children's brass band instruments and microscopes, believe it
498 or not, are banned hazardous substances under this law. Let
499 me repeat that: a brass trumpet and a microscope are banned
500 hazardous substances and may not legally be sold for
501 children's use.

502 Other objects that are not banned hazardous materials
503 may still not be legally sold because they cannot be tested
504 in accordance with the law today. For example, an object
505 like a child's saddle made of real leather poses no risk of
506 lead poisoning, contains no plastic parts, has no phthalates,
507 yet the law requires it to be tested for both. As I
508 understand the problem, these items are one of a kind and
509 these tests are destructive. Once you prove that a saddle
510 isn't made of lead or phthalate, the saddle is valueless
511 because you have destroyed the saddle. That is ridiculous.
512 Even if an object can be made in batches, these tests are

513 cost prohibitive for many small businesses.

514 I appreciate and support the chairman's willingness to
515 provide small businesses with testing cost relief but I am
516 concerned about whether the so-called alternative testing
517 methods consistent with the CPSIA really exist, and the CPSC
518 isn't here to answer that question. If such testing does
519 exist, we do not know how long it will take for the CPSC to
520 bless these methods by regulation. Further, those companies
521 will always have the uncertainty of wondering whether someone
522 might challenge the CPSC determination in court.

523 To the witnesses before us today, I understand that most
524 of you support this bill. I do too generally because it does
525 move the ball forward in terms of child safety. I also
526 understand that you have ideas that would make the bill even
527 better. I want to emphasize to you today this is the chance
528 to let your voice be heard. You rarely get a second bite at
529 the apple in terms of Congressional hearings and you never
530 get a third. My interest here is not to be obstructionist.
531 In fact, Chairman Dingell, Chairman Waxman and myself met
532 last week or the week before just to discuss this very
533 hearing. We want each of your businesses to thrive. We want
534 homemade product makers to go back to work. We want to save
535 consumers unnecessary cost. We want companies that were
536 forced by this law to lay off employees to rehire those laid-

537 off workers. We want our children to have a childhood that
538 is filled with children's saddles, golf clubs, leather
539 footballs, bikes, brass instruments, books, microscopes and
540 telescopes. We want to make sure that this fix is done
541 right.

542 Mr. Chairman, when we began the children's products back
543 in 2007 and when we delivered the bill to the President's
544 desk, the Democrats and Republicans alike on this committee
545 felt that we had done a good thing and we had worked together
546 with the stakeholders. From fact-finding letters to
547 oversight hearings to drafting sessions to legislative
548 hearings and markups, the process under the leadership of
549 Chairman Dingell and yourself, Mr. Chairman, was open,
550 transparent, cooperative and bipartisan. I hope as we move
551 forward that that same spirit of 2007 will prevail in 2010.

552 With that, Mr. Chairman, I yield back, and I sincerely
553 appreciate this legislative hearing and I appreciate the
554 extra time to read my statement.

555 [The prepared statement of Mr. Barton follows:]

556 ***** COMMITTEE INSERT *****

|
557 Mr. {Rush.} The Chair thanks the gentleman. You would
558 have done a much better job had you spoken extemporaneously.
559 You would have been more convincing.

560 Mr. {Barton.} That is probably true, Mr. Chairman.

561 Mr. {Rush.} The Chair recognizes the gentleman from
562 Iowa, Mr. Braley, for 2 minutes.

563 Mr. {Braley.} Thank you, Mr. Chairman, and thank you
564 for holding this hearing on product safety, which is one of
565 the most important responsibilities that this committee has.

566 I just want to echo some of the comments made by the
567 chairman emeritus because despite our best efforts, 535
568 people strive valiantly to create perfect legislation and it
569 rarely ever happens, and yet that doesn't mean that we give
570 up and stop focusing on the problems that real people, real
571 businesses, real consumers have in dealing with the impact of
572 those bills that we work on every day, and that is why this
573 hearing is so significant because it is a reflection of a
574 realization that there were continuing problems after we
575 passed the last law, and the fact that real Americans are
576 impacted by those decisions and we need to work together in a
577 bipartisan way to address those ongoing concerns.

578 If you look at the organizations supporting the text of
579 this legislation, I think you will develop an appreciation of

580 why this is such an important achievement: the National
581 Association of Manufacturers, Retail Industry Leaders
582 Association, Motorcycle Industry Council, Handmade Toy
583 Alliance and Goodwill Industries. Like many things we work
584 on, you sometimes see people coming together working for the
585 public good who don't always line up on the same side of
586 issues. That is why it is important for us to listen and
587 learn and continue to refine and reflect legislation in that
588 ever-growing pursuit of perfection, and that is why I am glad
589 we are having this hearing and look forward to the comments
590 of our witnesses, and I yield back.

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

592 ***** COMMITTEE INSERT *****

|
593 Mr. {Rush.} That concludes the opening statements.

594 Dr. {Gingrey.} Mr. Chairman.

595 Mr. {Rush.} Oh, I am sorry. Please forgive me. The
596 Chair recognizes the gentleman from Georgia, Dr. Gingrey, for
597 2 minutes for the purposes of opening statement.

598 Dr. {Gingrey.} Chairman Rush, thank you. I want to
599 thank you for calling today's hearing on the committee print
600 of the Consumer Product Safety Enhancement Act of 2010.

601 As we begin today's hearing, I would also like to thank
602 you for postponing last week's subcommittee markup on this
603 bill so we could have this opportunity to move the
604 legislation through regular order.

605 Ultimately, I believe that we all agree on the goal of
606 ensuring that the products purchased by consumers can be used
607 safely. That is why after concerns arose in 2007 this
608 subcommittee and Congress as a whole acted swiftly to enact
609 the Consumer Product Safety Improvement Act of 2008.

610 However, since the law was enacted, we have been faced with a
611 number of unintended consequences due to the law's
612 implementation. From legislation that was only 63 pages
613 long, the Consumer Product Safety Commission now has a set of
614 regulations that are 2,500 pages long. Clearly, some of the
615 products that will be subjected to the regulation under this

616 bill pose no threat to children. Due to the testing methods
617 that will be adopted, children will not have the ability to
618 purchase a baseball mitt, a brass musical equipment or even a
619 microscope to be used in a classroom, as the ranking member
620 just testified.

621 If our end goal is to eradicate lead from the products
622 that parents buy for their children, then we may also be
623 sacrificing at the same time the promotion of exercise,
624 appreciation of the arts and STEM education in the process.
625 That was not the intention of the bill that was signed into
626 law back in 2008, and we need to work to correct it to keep
627 the safety of our children in mind but to do in a practical
628 way.

629 Throughout the 111th Congress, my Republican colleagues
630 on the subcommittee have consistently urged that we make
631 substantive improvements to CPSIA in order to provide relief
632 to the small businesses--thank goodness some of them are here
633 today as witnesses--who are being negatively affected by this
634 law. However, I fear in the same way that we created a
635 number of unintended consequences through CPSIA, we will be
636 making some of the errors through this current legislation.
637 While I believe that this bill that we will be discussing
638 today does make some needed improvements that are long
639 overdue, we are missing the opportunity to be able to do more

640 to rectify the unintended consequences presented by this law.

641 I look forward to hearing the testimony from each of you

642 today so we can work to improve upon this law, and I yield

643 back. I see I have gone a little bit over my time, and I

644 thank you for your indulgence, Mr. Chairman.

645 [The prepared statement of Dr. Gingrey follows:]

646 ***** COMMITTEE INSERT *****

|
647 Mr. {Rush.} The Chair now recognizes the gentleman from
648 Louisiana, Mr. Scalise, for 2 minutes.

649 Mr. {Scalise.} Thank you, Mr. Chairman. I am glad that
650 our subcommittee is finally having a hearing on the Consumer
651 Product Safety Enhancement Act passed last Congress and the
652 legislation before us today.

653 It is important that we continue to examine the safety
654 of children's products. We have an obligation to ensure that
655 all consumers are properly protected. At the same time, we
656 also have an obligation to debate and pass smart, effective
657 legislation. To do this, we must find the appropriate
658 balance between protecting consumers and protecting small
659 businesses and manufacturers and the people who work for
660 them.

661 Mr. Chairman, I was not a Member of Congress when our
662 subcommittee first took up the Consumer Product Safety
663 Improvement Act in 2007, which is one reason I am glad that
664 the subcommittee has decided to pursue regular order by
665 having this hearing before we hold the markup. I am sure we
666 have all heard the horror stories and the complaints that
667 have surfaced as this law has been implemented. We have all
668 been made well aware of the severe unintended consequences
669 and the significant burdens that this law has placed on

670 manufacturers and small businesses, not just from national
671 associations or corporations but from small businesses and
672 mom-and-pop stores in our district that are struggling under
673 the burdens and regulations of this law including some that
674 have closed as a result of those unintended consequences.
675 The testing requirements and compliance and administrative
676 costs are having devastating effects on the businesses that
677 produce the wide variety of products that now fall under the
678 jurisdiction of CPSIA, many of which pose no risk or injury
679 to a child and were never intended for children in the first
680 place.

681 Unfortunately, the problems don't end there. The
682 complex regulations being implemented are further adding to
683 the plight of manufacturers and businesses. A 63-page law
684 has produced almost 2,500 pages of rules and regulations and
685 the CPSC is not even done writing all those yet. Not only am
686 I troubled by the effects that CPSIA is having on small
687 businesses, but I am also concerned about its effect on the
688 CPSC. The regulations, testing and compliance procedures
689 that CPSC is now responsible for are substantial. I hope
690 that we have not forced the CPSC to sacrifice its obligations
691 in other areas of product safety or prevented the Commission
692 from properly doing its job. This is a particular concern
693 for me and my constituents because the CPSC is currently

694 involved in an ongoing investigation of toxic Chinese
695 drywall. I hope that CPSIA is not keeping CPSC from
696 providing answers to the thousands of homeowners across the
697 country that have fall victim to toxic Chinese drywall.

698 I would like to ask the CPSC these questions but their
699 absence at today's hearing is conspicuous. How can we fully
700 understand the implications of CPSIA and the bill before us
701 today if we cannot question the agency that is in charge of
702 implementing the law? I hope that we will have the
703 opportunity to pose these questions to the CPSC.

704 I do look forward to hearing from the panelists that are
705 here before us today. I am particularly interested to hear
706 if they fully support the provisions in this bill or if they
707 are just going along in hopes that they will not be hurt by
708 the final version.

709 Thank you, and I yield back.

710 [The prepared statement of Mr. Scalise follows:]

711 ***** COMMITTEE INSERT *****

|

712 Mr. {Rush.} That concludes the opening statements of
713 the members of the subcommittee, and now it is my pleasure to
714 introduce to you the witnesses who are at the table this
715 morning. Seated at my left is Mr. Rosario Palmieri. He is
716 the vice president of infrastructure, legal and Regulatory
717 Policy for the National Association of Manufacturers. Next
718 to Mr. Palmieri is Mr. Paul Vitrano. He is the general
719 counsel of the Motorcycle Industry Council. Seated next to
720 Mr. Vitrano is Mr. Jim Gibbons. He is the president and CEO
721 of Goodwill Industries International. Seated next to Mr.
722 Gibbons is Mr. Dan Marshall, who is representing the Handmade
723 Toy Alliance. And next to Mr. Marshall is one Ms. Rachel
724 Weintraub, who is the director of product safety and is the
725 senior counsel for the Consumer Federation of America. And
726 next to Ms. Weintraub is Mr. Steve Levy. Mr. Levy is
727 representing the American Apparel and Footwear Association.
728 And lastly, seated next to Mr. Levy is Mr. Rich Woldenberg.
729 He is the chairman of Learning Resources Incorporated.

730 The Chair wants to thank you again for coming. It is
731 the policy and practice of this committee to swear in the
732 witnesses, so would you please stand and raise your right
733 hand?

734 [Witnesses sworn.]

735 Mr. {Rush.} Now we will allow the witnesses to have 5
736 minutes for opening statements and we will begin with Mr.
737 Palmieri.

|
738 ^TESTIMONY OF ROSARIO PALMIERI, VICE PRESIDENT,
739 INFRASTRUCTURE, LEGAL AND REGULATORY POLICY, NATIONAL
740 ASSOCIATION OF MANUFACTURERS; PAUL VITRANO, GENERAL COUNSEL,
741 MOTORCYCLE INDUSTRY COUNCIL; JIM GIBBONS, PRESIDENT AND CEO,
742 GOODWILL INDUSTRIES INTERNATIONAL; DAN MARSHALL, HANDMADE TOY
743 ALLIANCE; RACHEL WEINTRAUB, DIRECTOR OF PRODUCT SAFETY AND
744 SENIOR COUNSEL, CONSUMER FEDERATION OF AMERICA; STEVE LEVY,
745 AMERICAN APPAREL AND FOOTWEAR ASSOCIATION; AND RICHARD
746 WOLDENBERG, CHAIRMAN, LEARNING RESOURCES, INC.

|
747 ^TESTIMONY OF ROSARIO PALMIERI

748 } Mr. {Palmieri.} Thank you, Chairman Rush, Ranking
749 Member Whitfield and members of the subcommittee, I
750 appreciate the opportunity to testify today about the
751 Consumer Product Safety Enhancement Act on behalf of the
752 National Association of Manufacturers, or NAM.

753 We are the Nation's largest industrial trade association
754 representing manufacturers in every industrial sector in all
755 50 States. We have a presence in every Congressional
756 district, providing good high-paying jobs. The United States
757 is the world's largest manufacturing economy, produces \$1.6
758 trillion of value, or 11-1/2 percent of GDP, and employs

759 nearly 12 million Americans working directly in
760 manufacturing.

761 On behalf of the NAM, I wish to express support for the
762 Consumer Product Safety Enhancement Act, or CPSEA.
763 Manufacturers of consumer products and their component parts
764 are committed to producing safe products. In 2008, in the
765 wake of intolerance lapses in children's product safety, the
766 Consumer Product Safety Improvement Act was passed. The NAM
767 supported provisions in that law that would give the CPSC
768 staff more staff and financial resources to deal with the
769 dramatic rise in imported consumer products and globalized
770 supply chains.

771 The implementation of that law, however, has not been
772 smooth, and significant unintended consequences have cost
773 manufacturing jobs in industries producing safe products.
774 The CPSEA that we are here to discuss will begin to eliminate
775 several of those unintended consequences. Currently,
776 products that present no risk to children from lead content
777 like bicycles, motorcycles, ATVs and snowmobiles have been
778 effectively banned for sale. This legislation would amend
779 the exclusion process to allow these products to once again
780 be sold and be affordable. The NAM and its member appreciate
781 your agreement to further define critical words in the
782 legislation such as ``practicable'' and ``measurable adverse

783 impact'' and committee report language to give the CPSC the
784 clear direction to apply reason, common sense and sound
785 analysis to decisions about granting exclusions. The CPSC
786 must be able to review petitions for exclusion immediately
787 upon passage of this bill. Any delay or necessity for the
788 CPSC to write new rules to govern this process could put more
789 manufacturing jobs at risk. It took the CPSC 6 months to
790 produce the rule for the exclusion process the first time.
791 We cannot wait that long for relief after passage of this
792 bill. Words matter and definitions matter in legislation.

793 Recently the CPSC staff has presented extremely
794 problematic interpretations of words from the original Act
795 that were not intended by Congress. In a first draft of
796 rules meant to interpret the definition of children's
797 products, they took the plain language of the CPSC of
798 ``designed or primarily intended for children'' and turned it
799 into ``designed and commonly recognized as intended for a
800 group of users constituted by a significant proportion of
801 children.'' This could have resulted in items intended for
802 general use to be inappropriately considered as children's
803 products and created new, unnecessary testing burdens, and
804 also with the so-called 15-month rule they have turned the
805 phrase ``reasonable testing program'' into anything but
806 reasonable and are proposing to dramatically increase the

807 testing burden for manufacturers. We encourage you to give
808 clear direction and definition to what the CPSC must do to
809 the amended exclusion process.

810 This bill is also helpful in a number of other areas.
811 It recognizes that a component part can present no risk to a
812 child if it is inaccessible. It would extend similar
813 treatment to inaccessible phthalates, as the original Act did
814 for inaccessible lead and relieve those parts from the
815 content and testing requirements. The legislation also
816 recognizes dramatic disruptions to the supply chain from
817 retroactive application of lead content limits and applies
818 future reductions prospectively as recommended by the CPSC.
819 It will also allow manufacturers and retailers to continue to
820 donate safe products to charities, and you will hear from
821 Goodwill Industries shortly.

822 Also, the CPSEA does not attempt to expand the CPSC's
823 authority unnecessarily, regulate undefined new threats or
824 reopen debates from the enactment of the 2008 legislation.
825 This bill is urgently needed, and delays associated with such
826 controversial provisions could prevent needed relief from
827 coming in time to preserve manufacturing jobs that have been
828 hard hit in this recession.

829 Thank you for your efforts to correct these and other
830 unintended consequences of the Consumer Product Safety

831 Improvement Act. I urge swift passage of the CPSEA to begin
832 those corrections and to preserve critical manufacturing
833 jobs.

834 Thank you, and I will be happy to answer any questions.

835 [The prepared statement of Mr. Palmieri follows:]

836 ***** INSERT 1 *****

|

837 Mr. {Rush.} Thank you.

838 Mr. Vitrano, you are recognized for 5 minutes.

|
839 ^TESTIMONY OF PAUL VITRANO

840 } Mr. {Vitrano.} Chairman Rush and distinguished members
841 of the subcommittee, thank you for the opportunity to testify
842 this morning on the need for amendments to the Consumer
843 Product Safety Improvement Act. I am Paul Vitrano, general
844 counsel of the Motorcycle Industry Council. MIC is a not-
845 for-profit national industry association representing nearly
846 3,000 manufacturers and distributors of motorcycles and all-
847 terrain vehicles, motorcycle, ATV and recreational off-
848 highway vehicle parts and accessories and members of allied
849 trades.

850 The lead provisions of the CPSIA were primarily intended
851 to protect children from ingesting lead from toys. However,
852 it has had unintended consequences and has created an unsafe
853 situation for youth ATV and motorcycle riders. The Act has
854 effectively banned the sale of age-appropriate youth vehicles
855 because of small amounts of lead that are critical to the
856 functionality of certain components such as engine casings
857 and suspension systems. These smaller, lighter, speed-
858 restricted models have been specifically designed for youth
859 riders with the goal of keeping them off of larger, faster,
860 adult-sized units.

861 CPSC has acknowledged that the ban on these youth models
862 creates a compelling safety issue because it likely will
863 result in younger children riding larger and faster adult-
864 sized vehicles. CPSC's studies show almost 90 percent of
865 youth injuries and fatalities occur on adult-sized ATVs. On
866 the other hand, CPSC's scientists acknowledge that the
867 presence of small amounts of lead in metal alloys used in
868 these youth models does not present a health hazard to
869 children.

870 For more than a year, MIC, its members, their dealers
871 and many of the millions of Americans who safety and
872 responsibly ride their off-highway vehicles with their
873 children have urged Congress to amend the Act to stop this
874 unintended ban on youth models. Together, these constituents
875 have sent over 1 million e-mails and letters and made
876 hundreds of calls and personal visits to Capitol Hill seeking
877 a legislative solution for three commonsense reasons.

878 First, the lead content in metal parts of ATVs and
879 motorcycles poses no risk to kids. Second, everyone agrees
880 that the key to keeping youth safe on ATVs and motorcycles is
881 having them ride the right size vehicles. The ban has
882 resulted in what CPSC correctly describes as ``a more serious
883 and immediate risk of injury or death'' than any theoretical
884 risk of lead exposure from these products. Finally, the

885 unintended ban is significantly harming the economy and
886 costing jobs, and if not corrected will result in about \$1
887 billion in lost economic value in the retail marketplace
888 every year.

889 Congress never intended to ban youth-model vehicles when
890 it passed the CPSIA. Moreover, CPSC Chairman Tenenbaum and
891 the other commissioners have asked Congress to provide the
892 Commission with flexibility to grant exceptions from the lead
893 content provisions, specifically noting the need to address
894 youth ATVs and motorcycles.

895 We appreciate the efforts that this committee is taking
896 to deal with the unintended consequences of this Act. We
897 already have submitted evidence to CPSC that we believe is
898 sufficient to obtain exceptions for youth ATVs and
899 motorcycles under section 2 of the proposed bill.
900 Ultimately, however, CPSC will have to interpret that
901 language to determine whether to grant an exception for our
902 products. That is why we strongly urge the committee to
903 provide as much clarity as possible in developing a
904 legislative solution so CPSC will have no doubt that Congress
905 intends to assure the continued availability of youth
906 vehicles.

907 Throughout our discussions, we have encouraged the
908 committee to include statutory language to provide CPSC with

909 explicit guidance. In the absence of such language, however,
910 it is critical that there be report language accompanying the
911 bill that defines the terms ``practicable'' and ``no
912 measurable adverse effect'' in section 2.

913 In closing, MIC and its members support section 2 of the
914 CPSEA with the accompanying report language that has been
915 proposed. We also would welcome additional explicit guidance
916 to CPSC to grant exceptions for youth ATVs and motorcycles.
917 We urge Congress to complete its work, pass this bill and
918 help solve the unintended consequences of the CPSIA. Thank
919 you.

920 [The prepared statement of Mr. Vitrano follows:]

921 ***** INSERT 2 *****

|
922 Mr. {Rush.} The Chair now recognizes Mr. Gibbons for 5
923 minutes.

|
924 ^TESTIMONY OF JIM GIBBONS

925 } Mr. {Gibbons.} Good morning, Chairman Rush and Ranking
926 Member Whitfield and all the members of the subcommittee. I
927 want to thank you for giving Goodwill Industries
928 International an opportunity to talk with you this morning.
929 My name is Jim Gibbons. I am the president and CEO of
930 Goodwill Industries International, and we really do
931 appreciate what you are doing and how you are listening to
932 your constituents and specifically your constituents from
933 your local Goodwills that are in your community that make up
934 a workforce that has grown through 2009 by almost 3,000
935 people even in this trying time, and that workforce and the
936 Goodwill system served nearly 2 million people in your
937 communities and mine.

938 Goodwill is made up of 159 local community-based
939 organizations throughout the United States, and many of you
940 are familiar with Goodwill and our 2,400 stores. Our unique
941 business model that leverages a donated good retail model to
942 create employment employees for those 90,000-plus people and
943 to serve those two million people throughout America is a
944 unique model that really relies on the generosity of
945 individuals to donate to Goodwill and each unique donation is

946 a unique product that then enters into the retail space and
947 provides and is transformed into both employment and
948 resources to fund employment, training and other social
949 services at the very local level. But the uniqueness of our
950 model and that of other human service organizations that use
951 donated goods retail model to fulfill their mission such as
952 the Salvation Army, and Goodwill and the Salvation Army are
953 the two largest human service providers that use a donated
954 goods retail model, are totally tied to this one-at-a-time
955 contribution, and for Goodwill, that is 60 million donation
956 drop-offs a year, and because of that uniqueness and the
957 uniqueness of every donation, we support section 3 of the
958 Consumer Product Safety Enhancement Act because we think it
959 truly drives the clarity in the legislation to allow us and
960 other organizations like us to work with the CPSC in a very
961 effective and meaningful way for implementation.

962 We have worked closely with CPSC over the years, and
963 even before the requirements were placed on us legislatively
964 for the recall process, we worked hand in hand with CPSC for
965 them to train our people, to work with our people on
966 compliance so that we build a recall capability strongly
967 throughout our network, and to demonstrate and to really act
968 on our values of protecting the families that shop at our
969 stores and the people that we serve. That commitment to

970 safety along with section 3 of the Consumer Product Safety
971 Enhancement Act together we believe will allow the proper
972 clarity for us to provide safety, to work with the Consumer
973 Product Safety Commission in a very effective way, and to
974 serve a growing need in communities because of today's
975 economy where more and more people are knocking on our doors
976 in your communities and communities around the country for
977 services, whether that is due to dislocation or an industry
978 leaving their neighborhood or for the young woman who is a
979 mother of three with a high school education that needs those
980 services so she can skill up to be a producing member of our
981 communities.

982 So we support section 3 of the draft legislation and we
983 believe it will drive the necessary clarity for us to full
984 the intent of safety and still provide the excellent human
985 services that are needed in a pretty tough economy.

986 So thank you very much and I will gladly answer any
987 questions.

988 [The prepared statement of Mr. Gibbons follows:]

989 ***** INSERT 3 *****

|
990 Mr. {Rush.} The Chair now recognizes Mr. Marshall for 5
991 minutes.

|
992 ^TESTIMONY OF DAN MARSHALL

993 } Mr. {Marshall.} Hello. My name is Dan Marshall. I am
994 the founder and vice president of the Handmade Toy Alliance.
995 The HTA represents 435 small businesses affected by the
996 unintended consequences of the CPSIA. Thank you for the
997 opportunity to speak today.

998 My wife Millie Adelshime and I own Peapods Natural Toy
999 Store in St. Paul, Minnesota. For the past 12 years, we have
1000 supported our family selling cloth diapers, baby carriers and
1001 wood toys, many of which are handcrafted by artisans in the
1002 United States. I am here today with fellow HTA board members
1003 Jolie Fay of Skipping Hippos in Oregon and Randy Hertzler of
1004 euroSource in Pennsylvania

1005 When Congress first spoke of toy safety legislation, we
1006 all applauded your efforts. As we learned the details of the
1007 actual law, however, we realized that it applied not just to
1008 companies like Mattel that had betrayed the public's trust
1009 but would apply broadly to all children's products and
1010 effectively outlaw many small family businesses, not because
1011 our products were unsafe but because we simply could not
1012 afford the mandatory third-party testing and labeling
1013 requirements which disproportionately affect small batch

1014 manufacturers and specialty retailers.

1015 The deadline for third-party testing is February 10th of
1016 next year. After that point, our member businesses face
1017 extinction. Although many of us have already paid for XRF
1018 testing of our products, we simply cannot afford to pay for
1019 the services of a CPSC-certified lab. For that reason, the
1020 HTA has endorsed the Consumer Product Safety Enhancement Act.
1021 The provisions of this bill, which allow alternative testing
1022 methods for small batch manufacturers, are imperative to the
1023 survival of our members. We hope that it can proceed through
1024 this committee, the House and the Senate as quickly as
1025 possible.

1026 However, we have made it clear that we have two primary
1027 concerns regarding the language of this bill. First, we
1028 desire clarity and simplicity in the definition of
1029 ``alternative testing method.'' We believe the standard for
1030 small batch manufacturers should be the same reasonable
1031 testing methods applicable to non-children's consumer
1032 products under the CPSIA. Leaving ``alternative testing
1033 method'' ambiguous places new rulemaking burdens on the CPSC
1034 and extends the uncertainty about compliance for HTA
1035 businesses.

1036 We are willing and able to work with the CPSC through
1037 this additional rulemaking process and appreciate the

1038 opportunity we have had already to work with them but we feel
1039 that more flexible language would greatly simplify the
1040 standard. In particular, we would like the committee report
1041 language, or preferably the bill itself, to stipulate, one,
1042 that small batch toy makers be exempted from third-party
1043 testing for ASTM compliance. These destructive tests cost
1044 \$200 to \$350 per toy, which is a significant impediment to
1045 small batch toy makers; two, that the CPSC allow the use of
1046 XRF testing as an alternative testing method for lead in
1047 paint, lead in substrate and other mineral content standards;
1048 three, that EN-71 testing certification qualify as an
1049 alternative testing method. This provision is critical for
1050 preserving access to quality European children's goods and
1051 removing the regulatory trade barrier created by the CPSIA.
1052 And four, that small batch manufacturers be fully exempted
1053 from batch labeling requirements. Even with these
1054 stipulations, we do fear that non-business hobbyists and
1055 crafters will lack the resources and understanding to fully
1056 comply with the law.

1057 Our second primary concern with the bill pertains to the
1058 definition of small batch manufacturer. In particular, we
1059 are concerned about the \$1 million company revenue cap. We
1060 feel that this limit should either be removed altogether or
1061 should be based only on income generated by the manufacturer

1062 or importer of children's products without including other
1063 unrelated business income. If this limit is not changed or
1064 removed, we fear that this committee will continue to hear
1065 from constituents wondering why specialty products like
1066 adaptive toys for children with disabilities are no longer
1067 available.

1068 Finally, we have long argued that meaningful reform of
1069 the CPSIA should grant the CPSC the authority to make
1070 adjustments to the law based on risk analysis. In
1071 particular, we would like the CPSC to be given the
1072 flexibility to adjust certification requirements based on the
1073 age of a product's intended user and the risk of injury that
1074 that product poses.

1075 In conclusion, on behalf of our members, I would like to
1076 thank this committee for addressing this important issue and
1077 urge you to quickly pass the CPSEA and meaningful reform of
1078 the CPSIA. Thank you very much.

1079 [The prepared statement of Mr. Marshall follows:]

1080 ***** INSERT 4 *****

|
1081 Mr. {Rush.} Ms. Weintraub, welcome back to the
1082 subcommittee, and you are recognized now for 5 minutes.

|
1083 ^TESTIMONY OF RACHEL WEINTRAUB

1084 } Ms. {Weintraub.} Thank you very much. Chairman
1085 Dingell, Chairman Rush, Representatives Barton and Whitfield,
1086 thank you and other members of the committee. Thank you very
1087 much for inviting me here today. I am Rachel Weintraub,
1088 director of product safety and senior counsel with the
1089 Consumer Federation of America. CFA is a nonprofit
1090 association composed of over 300 State and local pro-consumer
1091 groups that was founded to advance the consumer interest
1092 through education and advocacy. I offer this testimony on
1093 behalf of CFA as well as Consumers Union, Kids in Danger, the
1094 National Research Center for Women and Families, Public
1095 Citizen and the U.S. Public Interest Research Group.

1096 In 2008, the bipartisan Consumer Product Safety
1097 Improvement Act passed overwhelmingly in both the House and
1098 Senate. Before this law passed, Congress undertook at least
1099 a yearlong deliberative process to consider the implications
1100 of this Act. There were approximately 15 hearings and
1101 markups in the House and Senate covering issues and products
1102 related to the CPSIA and a conference in regular order
1103 between both chambers of Congress. The resulting law, the
1104 CPSIA, will make consumer products safer by requiring that

1105 toys and infant products be tested before they are sold and
1106 by practically banning lead and phthalates in children's
1107 products. This law also authorizes the first comprehensive
1108 publicly accessible consumer complaint database, gives the
1109 CPSC the resources it needs to protect the public such as
1110 enabling it to hire additional staff who do the work at the
1111 agency and increase civil penalties. The CPSIA's passage
1112 came in the wake of a record number of recalls of hazardous
1113 products from the market that injured and killed vulnerable
1114 consumers and a weakened federal oversight agency that failed
1115 in its meager efforts to protect the public's health and
1116 safety.

1117 Consumers believe that the products they buy for their
1118 children should be safe. Many consumers believed that some
1119 entity issued stamps of approval for products before they
1120 were sold in a store. However, that was never true. The
1121 CPSIA significantly changes the reactive nature of the CPSC
1122 by requiring that children's products subject to mandatory
1123 standards be tested for safety before they are sold.

1124 The Consumer Product Safety Enhancement Act was drafted
1125 in response to requests for flexibility and exemptions from
1126 some of CPSIA's provisions raised by various entities. The
1127 consumer community, which has strongly supported the CPSIA,
1128 believes that any changes made to the CPSIA must not weaken

1129 product safety standards and must not weaken public health
1130 protections. The current draft of the CPSEA grants CPSC more
1131 flexibility in decision making and provides additional
1132 assistance to manufacturers. However, overall, it does not
1133 appear that the public health will be harmed. We do not
1134 oppose the current text of the CPSEA.

1135 The functional-purpose exemption in section 2 contains a
1136 three-part test for manufacturers to seek exemptions from
1137 lead requirements. Each of these prongs is necessary to
1138 protect the public health. These criteria should not be
1139 weakened in any way.

1140 Section 3 of the bill includes exemptions for thrift
1141 stores and other retailers. While this goes quite far in
1142 exempting these products from the lead limits of the CPSIA,
1143 the provision includes necessary limitations that does not
1144 allow exemptions for certain high-risk products. We could
1145 not support any weakening of this provision, either.

1146 The special provisions for small businesses include
1147 allowing certain businesses to be exempt from third-party
1148 testing when the Commission finds that reasonable testing
1149 methods assure compliance with relative safety standards. We
1150 also could not accept any weakening of this provision.

1151 Despite the delicate balance that the CPSEA achieves,
1152 however, there have been two proposals offered by others that

1153 if implemented would serve to considerably weaken public
1154 health. They would open a series of gaping loopholes in the
1155 CPSIA that allow more lead into a host of toys and other
1156 products. These proposals are not included in the bill and
1157 we would oppose any inclusion of them in any legislation.

1158 First, some have argued that the CPSIA should not apply
1159 to children's products for children 12 years and younger but
1160 rather should cover those only intended for children six and
1161 younger. This approach was rejected by Congress when it
1162 passed the CPSIA. Congress embraced the belief that there is
1163 in fact a shared toy box, and as a mother of three children,
1164 I see it every single day. Thus, the reality that children's
1165 toys and products are often shared by children within a
1166 family plus the fact that many within the industry are
1167 already complying with the higher age standards requires the
1168 scope of the CPSIA to remain as is. And second, some have
1169 proposed that a risk analysis be applied for regulating lead
1170 in products. Requiring the CPSC to conduct risk analysis for
1171 lead is not acceptable. It would reverse the presumption for
1172 safety. It would mean a return to the state of the law
1173 before CPSIA was passed, and this has been rejected by
1174 Congress and by consumers previously as not being
1175 sufficiently protective of public health and far exceeds the
1176 flexibility that the CPSC requested to regulate lead.

1177 Lead is a well-documented neurotoxin that has a wide
1178 range of effects on a child's development including delayed
1179 growth and permanent brain damage. In the rare instance that
1180 children's products require lead, the CPSEA provides for a
1181 targeted exemption for functional purpose. This exemption is
1182 tightly drafted to ensure that children remain protected from
1183 harms of lead exposure.

1184 The proposed CPSEA appears to carefully balance two
1185 distinct schools: to uphold the safety protections provided
1186 in the CPSIA while seeking to accommodate the adamant request
1187 by some stakeholders to alter certain provisions. This fine
1188 balance can easily be destroyed if the limited public health
1189 protections in the bill are removed or narrowed.

1190 Okay. I have one final sentence. Thank you. Our
1191 organizations would oppose any alteration of this legislation
1192 that would loosen product safety standards and once again
1193 leave consumers and their families vulnerable to unsafe
1194 products. Thank you.

1195 [The prepared statement of Ms. Weintraub follows:]

1196 ***** INSERT 5 *****

|
1197 Mr. {Rush.} The Chair recognizes Mr. Levy for 5
1198 minutes.

|
1199 ^TESTIMONY OF STEVE LEVY

1200 } Mr. {Levy.} Good morning, Chairman Rush, Ranking Member
1201 Barton, Ranking Member Whitfield, Vice Chair Schakowsky. My
1202 name is Steve Levy. I am the director of operations for Star
1203 Ride Kids. We are a children's wholesaler based on New York.
1204 Today I am speaking on behalf of the American Apparel and
1205 Footwear Association, the AAFA. I would like to ask the
1206 committee's permission to enter my full statement into the
1207 record. In the written comments we have laid out specific
1208 recommendations for the proposed amendments. Right now I am
1209 just going to take a little bit of a broader look.

1210 Our association, the AAFA, represents over 600 apparel
1211 and footwear manufacturers and wholesalers. The majority of
1212 children's clothing and footwear sold in this country each
1213 year comes from companies in our association. Although we
1214 have several large companies in our group, many of our
1215 members are what the Small Business Administration identifies
1216 as small businesses, enterprises with an average of 50 or
1217 less employees. We have many family-run businesses as well,
1218 many being run by second generation and in some case third
1219 and fourth generations. We make safe children's wear.
1220 Safety has been and always will be a priority for us.

1221 To give you a little bit of background on apparel,
1222 footwear and lead, in general apparel and footwear are
1223 inherently lead-free. Lead is not an ingredient when
1224 manufacturing apparel. Lead does not show up in the fabric
1225 itself that is used to make apparel. In the 40,000 lab test
1226 reports that the AAFA, our group, provided to CPSC last year,
1227 there was no lead in any of the fabric. In less than 5
1228 percent of the reports, lead did show up in certain
1229 embellishments and accessories.

1230 So where might lead come to play in children's apparel?
1231 There may be trace elements of lead in the metals used
1232 sometimes to make zippers and grommets. In addition, fake
1233 rhinestones and crystals, what we call ``bling'' in our
1234 industry, that are used to embellish garments may also have
1235 lead. There may be trace elements of lead in certain
1236 pigments used to achieve color depth in buttons. But more
1237 often than not, like the fabric, embellishments and
1238 accessories don't have lead in them.

1239 Are we an industry taking steps to eliminate these
1240 sources of lead? Absolutely. Is the amount of lead we are
1241 talking about a threat to public health and safety?
1242 Absolutely not. I can say this with confidence because the
1243 committee through its proposal to permanently exempt used
1244 clothing stores and the CPSC through its findings have

1245 confirmed this. The CPSC has not advised parents to go to
1246 their closets and remove all pre-CPSIA clothing if they were
1247 not able to verify that the lead levels of their clothing
1248 didn't meet the new standards in the CPSIA. So we do have
1249 and will continue to have apparel manufactured before the
1250 CPSIA being worn and being sold and exchanged through used
1251 clothing stores for many years to come. So the threat of
1252 lead in apparel is nonexistent. Just as an overview, the
1253 total children's wear children's industry recalls for 2008
1254 was .0082 of more than 6 billion items of clothing and pairs
1255 of shoes sold in 2008.

1256 So if lead in children's clothing and footwear is not a
1257 threat, then what is the solution? The ideal solution would
1258 be to include in this proposed amendment the exemption for
1259 new apparel and new footwear just as you have proposed for
1260 used clothing. In any event, the CPSC must be empowered to
1261 use science and risk assessment in determining exemptions and
1262 promulgating regulations. As an example, they recently
1263 reviewed rhinestones, the bling we were talking about, the
1264 rhinestones, and they found that the lead did not leach out
1265 into the body when tested through the acid digestive method,
1266 so although the absolute levels of lead were higher than the
1267 CPSIA, they did not go into the body.

1268 Additionally, federal preemption of State safety

1269 regulations including proposition 65 in California, which had
1270 a special carve-out in the CPSIA, must be included in this
1271 amendment because there is a great deal of confusion and fear
1272 in the marketplace due to conflicting and overlapping
1273 regulations and requirements.

1274 Keep in mind, the CPSC of today is a very different
1275 agency from what it was in 2008. Today it is fully funded.
1276 There is a new commissioner. All five of the commissioner
1277 seats are there. So Congress should have the faith in the
1278 agency and its competent leadership that they can execute the
1279 will of Congress and the intent of safety and product safety.
1280 So please allow them to ensure that the regulations promote
1281 product safety and don't get in the way of product safety.
1282 Thank you.

1283 [The prepared statement of Mr. Levy follows:]

1284 ***** INSERT 6 *****

|
1285 Mr. {Rush.} The Chair now recognizes Mr. Woldenberg for
1286 5 minutes for the purposes of opening statement.

|
1287 ^TESTIMONY OF RICHARD WOLDENBERG

1288 } Mr. {Woldenberg.} Thank you. Mr. Chairman, Ranking
1289 Member Whitfield and distinguished members of the
1290 subcommittee, thank you for the opportunity to testify this
1291 morning. My name is Richard Woldenberg. I am chairman of
1292 Learning Resources Inc., a Vernon Hills, Illinois-based
1293 manufacturer of educational materials and educational toys.

1294 I have administered or supervised our company's safety
1295 and regulatory compliance activities since 1990. We are very
1296 proud of our safe products. Having devoted considerable
1297 resources to safety over the years, Learning Resources
1298 suffered only one recall of 130 pieces in its 25-year
1299 history. To put this minor event in perspective, I estimate
1300 that we have sold about 1 billion pieces of our products over
1301 the years.

1302 Despite our exemplary safety record, the CPSIA made us
1303 feel like public enemy number one. The challenges of the new
1304 law have been enormous. While I favor efforts to make
1305 children's products safer, this new law has had little impact
1306 on safety. Instead, this law has increased manufacturing
1307 costs, eliminated jobs and killed off safe products simply
1308 because they are no longer economic to produce.

1309 The CPSIA makes the cost of compliance unbearable. From
1310 2006 to 2008, our testing costs have increased more than
1311 eight fold. We estimate that these costs will triple again
1312 after the CPSC lifts its testing stay in 2011. Testing costs
1313 are often thousands of dollars per product. Our quality team
1314 has grown from one person to four, including me, plus an
1315 outside lawyer on retainer. This staff is likely to increase
1316 just to manage more paperwork. Despite these heavy costs,
1317 our safety record is unlikely to improve. Our products were
1318 already proven safe.

1319 Our problems don't end with testing costs or increased
1320 staffing. We are being crippled by regulatory complexity.
1321 More than 20 months after the passage of the CPSIA, we still
1322 don't have a comprehensive set of regulations. Please
1323 consider how mind boggling these rules have become. Here are
1324 the CPSC rules that governed our company until 2008. At only
1325 186 pages, these rules clearly defined our responsibilities
1326 and could be taught to our staff. Compliance with the law
1327 was a focused, manageable task. Today, the rules total
1328 almost 2,500 pages, and these are not all the rules, just the
1329 ones that pertain to my business. And the rules keep
1330 changing and they are not finished. We are acutely aware
1331 that each word in every rule is a potential source of
1332 liability now up to and including jail time. This three-inch

1333 wedge, 608 pages, is what the CPSC has published in the last
1334 month alone that pertain to my business. Can you imagine
1335 trying to master these rules and teach them to your staff
1336 while still doing your full-time job? Ironically, the
1337 recalls of 2007 and 2008 were never a rules problem. Those
1338 famous recalls were clearly a compliance problem. Imagine
1339 what will happen now with a 12-fold increase in rules.

1340 The confusion from this tangle of rules and regulations
1341 hurts us every day. We spend an inordinate amount of time
1342 arguing with customers over the rules, often having to call
1343 lawyers to resolve disputes. It makes doing business slow,
1344 tedious and very expensive, not to mention unpleasant.

1345 Many companies are tiring of the continual fighting and
1346 are dropping products and vendors. Who will be served by the
1347 end of commerce in these safe products? Small businesses are
1348 particularly ill suited to managing these challenges. They
1349 lack the skills, resources and the business scale to absorb
1350 these responsibilities. It is no longer a level playing
1351 field for small businesses making children's products.
1352 Consequently, small businesses bear the greatest risk of
1353 liability under the law, despite being responsible for almost
1354 no injuries from lead in the last decade. The double whammy
1355 of massive new regulatory obligations and the prospect of
1356 devastating liability are driving small businesses out of the

1357 market today. The CPSIA went off track by taking away the
1358 CPSC's authority to assess risk. If the CPSC could again
1359 regulate based on risk, safety rules could focus on those
1360 risks with the real potential to cause harm to children.

1361 I recommend several steps to reduce complexity and cost
1362 without sacrificing children's product safety. First,
1363 restore risk assessment to the CPSC. Second, reduce the age
1364 limit in the definition of children's products to six years
1365 of age. Third, restrict tracking labels to durable products
1366 with the proven potential to do harm and with long product
1367 life. And fourth, impose procedural limits to ensure
1368 fairness in penalty assessment under the CPSIA.

1369 In conclusion, I urge your committee to address the
1370 fundamental flaws in the CPSIA to restore order to the
1371 children's product market and to protect small businesses
1372 from further damage.

1373 I appreciate the opportunity to share my views here
1374 today and I am happy to answer your questions.

1375 [The prepared statement of Mr. Woldenberg follows:]

1376 ***** INSERT 7 *****

|
1377 Mr. {Rush.} The Chair thanks all the witnesses and now
1378 the Chair recognizes himself for 5 minutes for the purposes
1379 of questioning the witnesses.

1380 I want to begin with Mr. Vitrano. Mr. Vitrano, I
1381 understand from your testimony that in an ideal world you
1382 would like to see an explicit, complete exemption from the
1383 law for recreational vehicles, but I also heard you say that
1384 you support this legislation. I would like to ask you to
1385 clarify on that point. What impact would this legislation
1386 have for the ATV and motorbike industry, and would it provide
1387 you with significant relief from the problems you have
1388 highlighted in your testimony?

1389 Mr. {Vitrano.} Thank you, Mr. Chairman. Our singular
1390 focus is to make sure that youth vehicles are available so
1391 kids can safely ride our products with their family. As I
1392 said in my testimony, we believe we have already submitted
1393 sufficient evidence to obtain an exception under the language
1394 that is proposed in the bill but we are not going to be the
1395 ones to make that decision. That is why it is absolutely
1396 critical that this committee provide as much guidance as
1397 possible to the CPSC to make it clear that the terms that are
1398 set forth in the bill are designed to grant us relief. We
1399 support many explicit instruction in the statutory language.

1400 We also support the committee report proposal that has been
1401 circulated which would provide clarity and more greatly
1402 ensure that we would obtain relief. Again, our goal is to
1403 make sure our products are available and we think there are
1404 any number of ways to accomplish that including the bill.

1405 Mr. {Rush.} So in order to be perfectly clear, you
1406 support the legislation and report language as written
1407 without any further changes because it provides you with a
1408 way to get to the relief you need from the Commission. Is
1409 that correct?

1410 Mr. {Vitrano.} That is correct.

1411 Mr. {Rush.} Thank you so very much.

1412 Now let me move on to Mr. Marshall. In your testimony,
1413 you stated that this legislation will offer to much to your
1414 membership ``significant relief.'' Can you tell us more
1415 about that? What relief does this legislation provide for
1416 your members and what proportion of your members will get
1417 that relief?

1418 Mr. {Marshall.} Thank you. I think the analogy I have
1419 in my head of our 435 member businesses as well as all the
1420 small crafters across the country who might not even know
1421 about this law yet that we wouldn't even recognize as
1422 businesses but are merely crafting things in their own homes
1423 and selling them at craft fairs, of which there are thousands

1424 upon thousands. The image I have is of us in a river
1425 drifting downstream toward a waterfall, which is February 10,
1426 2011, and this bill is the only branch we see to grab onto to
1427 get us out of that river. We have not ever believed that the
1428 perfect should be the enemy of the good, and even though
1429 there are things in here that we think long term would be
1430 improvements to the Consumer Product Safety Improvement Act,
1431 we feel that this bill as written would save a substantial
1432 number of those businesses that are heading toward
1433 destruction, and for that reason we emphatically endorse this
1434 bill and we do urge the committee to think thoughtfully about
1435 what this bill does and to move it through Congress as
1436 quickly as possible.

1437 Mr. {Rush.} In your testimony, you expressed concern
1438 about the effects of this CPSIA and point out that the
1439 Handmade Toy Alliance endorses the Consumer Product Safety
1440 Enhancement Act. You suggest several modifications to the
1441 draft that would make it even better for your members, but
1442 you also testified that you support the draft in its current
1443 form and you hope the legislation can proceed through this
1444 committee and the House and the Senate as quickly as
1445 possible. In your opinion, how does the bill improve the
1446 CPSIA?

1447 Mr. {Marshall.} Well, frankly, I mean, we are up

1448 against this testing deadline, which the CPSC has told us
1449 they are not going to extend further beyond February 10th of
1450 next year, and having alternative methods in place and in the
1451 hope that the CPSC will agree with us about what the
1452 definition of alternative testing method is will allow our
1453 members to document the safety of their products without
1454 having to pay the often-exorbitant costs of third-party lab
1455 testing.

1456 Our businesses range a lot in size but we all have in
1457 common the fact that we are making toys and other children's
1458 products in very small batches. We are not importing 20,000
1459 items at a time from China. We are working with very small
1460 manufacturers in the United States and in Europe, and the
1461 challenges in complying with this law are so much greater
1462 when you are making products in such small batches, and for
1463 that reason we believe that the alternative testing method
1464 protocol if we can come to agreement with the CPSC and
1465 hopefully the report language, which I haven't had the
1466 opportunity to see yet, will enhance our understanding of
1467 that, will make it possible for these small businesses to
1468 document compliance without having to pay for third-party lab
1469 testing.

1470 Mr. {Rush.} That concludes my time. Mr. Whitfield, you
1471 are recognized for 5 minutes.

1472 Mr. {Whitfield.} Thank you very much, and thank you all
1473 for your testimony.

1474 Mr. Vitrano, in your testimony you talked about some
1475 report language that I assume that you have seen. Have you
1476 been given some report language that you feel comfortable
1477 with and if that language is there you would support this
1478 legislation?

1479 Mr. {Vitrano.} That is correct.

1480 Mr. {Whitfield.} Now, let me ask you a question. Of
1481 course, I have got this report language and it says the
1482 committee expects the Commission to consider and so forth and
1483 so forth and so forth, so it is using the word ``expect.``
1484 It certainly doesn't direct them the way this legislation
1485 directs a lot of things. It seems to me that it would be
1486 very easy to put this language in the bill instead of using
1487 it as report language, and if I were in your shoes, I would
1488 feel much more comfortable if this specific language was in
1489 the bill relating to this Manufacturers Association versus
1490 State Farm Insurance case. So you would support it being in
1491 the bill, wouldn't you?

1492 Mr. {Vitrano.} Absolutely. As I had testified, we have
1493 urged repeatedly that explicit guidance be provided in the
1494 statute. At this point the bill does not include that but we
1495 do appreciate and support if it is not going to be in the

1496 statute that the report language as proposed be included.
1497 Again, our singular focus is to make sure these vehicles are
1498 available. We believe that it is the intent of this
1499 committee to make sure that happens. Whatever can be done to
1500 make sure that happens is what we are supporting. Statutory
1501 language would be better. The report language could get us
1502 there as long as it is clear to the CPSC.

1503 Mr. {Whitfield.} Well, you know, I believe there are a
1504 lot of other products other than just yours that would
1505 benefit from this as well. I have heard a lot about these
1506 zippers in children's clothing and so forth and it is my
1507 understanding they have lead in them. Is that right, Mr.
1508 Levy?

1509 Mr. {Levy.} If I could just clarify the problem with
1510 lead and zippers, it is interesting. A zipper is actually
1511 made up of about five to seven different components, and what
1512 we have been finding or what we found in a few of the items
1513 is that one of the components--as an example, this is a
1514 failed garment. I can't reach the piece. There is a small
1515 piece inside of the garment that had lead levels higher than
1516 the 600 parts per million. So we have a garment here. It is
1517 not accessible to my fingers to get at it that now failed.
1518 There were thousands and thousands of garments involved. And
1519 under the--the way the agency is interpreting it, it is above

1520 the absolute level, and even though it's not common sense.
1521 We keep using that term. I can't access it. The CPSC has
1522 said that fabric is not a barrier to access and it devised a
1523 very small probe which they could stick in and touch and oh,
1524 that is lead, it failed.

1525 Mr. {Whitfield.} So you cannot sell that and meet the
1526 requirements of this--

1527 Mr. {Levy.} This garment would not be saleable.
1528 However, if it was in someone's closet or it is at a Goodwill
1529 store, no problem with it.

1530 Mr. {Whitfield.} Now, Ms. Weintraub, in your testimony
1531 you made it very clear that you want to protect children and
1532 you have children. Would you object to that item being sold,
1533 what he has in his hand right there?

1534 Mr. {Weintraub.} The problem is unfortunately that
1535 children mouth zippers all the time. I have three young
1536 children. My oldest child, who is almost six, he mouths
1537 zippers as well. So the problem is--

1538 Mr. {Whitfield.} They get zippers and they mouth them.
1539 Is that what you are saying?

1540 Ms. {Weintraub.} Yes. So the problem is that children
1541 interact with clothing in dynamic ways, and though in this
1542 one instance the part that contains lead may appear to be
1543 inaccessible by the fabric, in another product it may not be.

1544 So the problem is the complexity of drafting a rule for huge
1545 variability in product types.

1546 Mr. {Whitfield.} Well, you know what? The Food and
1547 Drug Administration permits up to .1 microgram of lead for
1548 each 1 gram of a piece of candy, and yet the Commission under
1549 this law rejected a petition from a toy company that wanted
1550 to have a brass axle on a toy car that had less absorbable
1551 lead than the FDA allows in a piece of candy. Now, I mean,
1552 how ludicrous is that? I mean, I think we all want to
1553 protect children but I think we want to use some common
1554 sense, and to me, we are appropriating a lot of money to the
1555 Consumer Product Safety Commission, and I see nothing wrong
1556 with giving them flexibility to exempt on their own looking
1557 at their risk assessments and science and so forth. I guess
1558 my time is expired.

1559 Mr. {Rush.} The Chair now recognizes the chairman
1560 emeritus of the full committee, Mr. Dingell, for 5 minutes
1561 for the purposes of questioning the witnesses.

1562 Mr. {Dingell.} Thank you, Mr. Chairman.

1563 This question to Messrs. Palmieri, Vitrano, Marshall and
1564 Levy. Section 2 of the Consumer Product Safety Enhancement
1565 Act amends the Consumer Product Safety Improvement Act to
1566 include a so-called functional-purpose exemption test for
1567 certain materials, products and components from the Act's

1568 lead limits. To be granted an exemption, a manufacturer must
1569 first satisfy a three-part test, the first condition of which
1570 stipulates the product, material or component part requires
1571 the inclusion of lead because it is not practicable or
1572 technologically feasible to manufacture such product,
1573 component part or material in accordance with subsection A by
1574 removing the excessive lead or by making the lead
1575 inaccessible. I believe the statute leaves some ambiguity as
1576 to the meaning of the term ``practicable'' and should be
1577 modified or clarified via report language. Do you agree, yes
1578 or no, gentlemen?

1579 Mr. {Palmieri.} Yes, sir.

1580 Mr. {Vitrano.} Yes.

1581 Mr. {Dingell.} Then Mr. Marshall and Mr. Levy?

1582 Mr. {Marshall.} In this case, I don't think--

1583 Mr. {Dingell.} Yes or no?

1584 Mr. {Marshall.} Yes. This particular section I don't
1585 think will apply to our members. We don't have the
1586 capability to go through this process.

1587 Mr. {Dingell.} Next witness. Mr. Levy, yes or no?

1588 Mr. {Levy.} I would have to--I am not sure.

1589 Mr. {Dingell.} Now, to Messrs. Palmieri, Vitrano,
1590 Marshall and Levy, should any report language on this point
1591 define ``practicable'' as relating to the cost of compliance

1592 to the expected safety benefit of the compliance, yes or no?

1593 Mr. {Palmieri.} Yes, sir.

1594 Mr. {Vitrano.} Yes.

1595 Mr. {Vitrano.} Sure, that sounds reasonable.

1596 Mr. {Dingell.} I am sorry?

1597 Mr. {Vitrano.} Yes.

1598 Mr. {Dingell.} Mr. Levy?

1599 Mr. {Levy.} Yes.

1600 Mr. {Dingell.} Thank you, gentlemen. Next question,

1601 the question to the same three witnesses. The third

1602 condition of the functional-purpose exclusion in section 2 of

1603 the bill requires that a product, component part or material

1604 will have no measurable adverse effect on public health or

1605 safety, taking into account normal and foreseeable use and

1606 abuse. Do you believe the phrase ``measurable adverse effect

1607 on public health or safety'' requires clarification in report

1608 language, yes or no?

1609 Mr. {Palmieri.} Yes, sir.

1610 Mr. {Vitrano.} Yes.

1611 Mr. {Marshall.} I am sorry. Our member businesses have

1612 no real opportunity to gather the evidence needed to follow

1613 that.

1614 Mr. {Dingell.} Thank you. Mr. Levy?

1615 Mr. {Levy.} No.

1616 Mr. {Dingell.} No?

1617 Mr. {Levy.} Yes.

1618 Mr. {Dingell.} Did you say yes or no? If you are
1619 content to leave the record ambiguous, I am content to do so
1620 too.

1621 Now, this question to the same panel of witnesses. I
1622 fully support the intention of section 4 of the bill, which
1623 provides regulatory assistance and relief for small
1624 manufacturers and other businesses. I am concerned that this
1625 section may not make clear the committee's intention for the
1626 Consumer Product Safety Commission to create or approve
1627 alternative product testing methods to ease the regulatory
1628 burdens on small businesses. Do you believe that the
1629 committee's report on this bill should include language to
1630 that effect, yes or no?

1631 Mr. {Palmieri.} Yes, sir.

1632 Mr. {Vittrano.} Yes.

1633 Mr. {Marshall.} Yes.

1634 Mr. {Dingell.} And you, Mr. Levy?

1635 Mr. {Levy.} Yes.

1636 Mr. {Dingell.} Now again to the same four witnesses, if
1637 you please. Likewise, should the committee make it clear in
1638 its report that it intends for the Commission to allow the
1639 use of XRF testing as an alternative testing method for lead

1640 in paint and lead in substrate, yes or no?

1641 Mr. {Palmieri.} Yes, sir.

1642 Mr. {Vitrano.} Yes.

1643 Mr. {Marshall.} Most emphatically, yes.

1644 Mr. {Levy.} Yes.

1645 Mr. {Dingell.} Thank you, gentlemen.

1646 Thank you, Mr. Chairman. My time is just about expired.

1647 Mr. {Rush.} The Chair recognizes the ranking member of

1648 the full committee, Mr. Barton, for 5 minutes.

1649 Mr. {Barton.} Well, thank you, Mr. Chairman. I have

1650 got a number of questions.

1651 First question is something that I don't believe anybody

1652 addressed in your testimony, and that is the issue of the

1653 requirement of tracking labels on products that are so

1654 inexpensive and small that it is almost impossible to comply

1655 with that. Does anybody have a comment about some exemption

1656 relief in terms of tracking labels?

1657 Mr. {Woldenberg.} Tracking labels are very burdensome

1658 in our business. We have 1,500 products and we manufacture a

1659 number of those products several times a year. We would like

1660 tracking labels to be optional except in the case of high-

1661 value items that are durable like cribs and bassinets with

1662 demonstrated potential to harm. In our case, since we have

1663 an almost zero recall rate over 25 years, we would like it to

1664 be our choice as to whether or not we make that investment to
1665 future recall expenses.

1666 Mr. {Barton.} Ms. Weintraub, do you have a comment on
1667 that?

1668 Ms. {Weintraub.} I disagree. Tracking labels are
1669 important for consumers as well as for the agency to be able
1670 to know where the product is from. It can enable consumers
1671 to identify whether they in fact have--

1672 Mr. {Barton.} Even if it is a product that costs less
1673 than \$5 and comes out of a vending machine?

1674 Ms. {Weintraub.} That product could be deadly if there
1675 are excessive levels of lead. It shouldn't matter what the
1676 cost is. Any consumer product could pose a risk of harm, and
1677 the consumer should be able to identify whether a hazardous
1678 product--

1679 Mr. {Barton.} Do you really expect something that comes
1680 off an assembly line 100,000 a day to require a tracking
1681 label for each and every one of those? I mean, that is not
1682 just not practicable, in my opinion.

1683 Ms. {Weintraub.} I think that--

1684 Mr. {Barton.} You would just ban that product? You
1685 would just basically take it off the marketplace?

1686 Ms. {Weintraub.} I think there are ways that we could
1687 come up with it. I think the CPSC has been working on it as

1688 well and has articulated that would be a reasonable way to
1689 identify products so that it is both practicable and useful
1690 for consumers so they have reliability that the products that
1691 are in their homes are safe.

1692 Mr. {Barton.} Okay. My second question deals with the
1693 language on phthalates. Myself and Congressman Waxman had a
1694 compromise in the bill that was endorsed by Chairman Dingell
1695 that made a phthalate ban prospective. The CPSC agreed with
1696 that language but a court case in New York overturned it.
1697 Does anybody care to comment on whether we should try to
1698 address that issue again? Anybody? We don't have anybody
1699 from the chemical industry here so that may not be something
1700 that you all care to address. Anybody?

1701 Okay. Next question deals with the exemption relief.
1702 As the current draft is written, there is a three-part test.
1703 Chairman Dingell alluded to this test. I don't think that as
1704 currently drafted that is a workable test. I don't think you
1705 need the first two parts of it. I think the third part is
1706 the relevant part, and the word ``measurable'' makes it
1707 almost meaningless because you can measure lead down to zero.
1708 I would suggest the removal of the word ``measurable'' and
1709 just leave the test as a one-part test. If it doesn't have
1710 an adverse health effect that the CPSC could, not should but
1711 could give an exemption. Does anybody want to comment on

1712 that?

1713 Mr. {Woldenberg.} For us as a small business, the
1714 exemption process is closed, as Mr. Marshall has said. It is
1715 really not feasible. Take, for example, my business. We
1716 have 1,500 products, and let us just say for the sake of
1717 argument that I have 10 components per product. I have to
1718 prove that each component in each product deserves the
1719 exemption. That means that I have to mount 15,000 exemption
1720 requests to get my entire product line cleared one by one.
1721 The chairman of the CPSC sent in a letter today emphasizing
1722 that it is a one-by-one analysis. It almost doesn't matter
1723 what the tests are. The door is closed. I can't pay for it.
1724 I can't afford the consultants and I can't hire the lawyers.

1725 Mr. {Barton.} Mr. Palmieri, do you have a comment on
1726 that?

1727 Mr. {Palmieri.} I think that we believe that
1728 ``measurable'' is a helpful word in the definition as well as
1729 the report language so that it is an actual impact on public
1730 health as opposed to a theoretical one.

1731 Mr. {Barton.} I am not sure I understand what you just
1732 told me.

1733 Mr. {Palmieri.} What I am saying is that your
1734 suggestion was that lead in itself can be measured, but
1735 again, we are not talking about the lead content of the

1736 product but whether or not it can actually have an impact on
1737 a child's health.

1738 Mr. {Barton.} Well, I agree with the last part.

1739 Mr. {Palmieri.} And I am just saying that is why we
1740 think the word ``measurable'' is helpful.

1741 Mr. {Barton.} But if you leave ``measurable'' in there,
1742 the test--there can never be an exemption, because I am told
1743 if you have any lead at all, you can measure it to the
1744 infinite decimal point, so there needs to be some practical
1745 definition and not an automatic exclusion but you could give
1746 the CPSC reasonable authority to make an exclusion if the
1747 advocate for the exclusion is able to prove that it should be
1748 given. That is all I am trying to get at.

1749 Mr. {Palmieri.} And it is our understanding both with
1750 that phrase and with the report language that this is
1751 completely different test than the ``any absorption''
1752 standard which was in the original Act, which ended up being
1753 a zero tolerance for any leachable lead and that this is a
1754 different test and so we agree, strong report language
1755 clarifying what that means so that the Commission knows
1756 exactly how to act on it immediately is critical to this
1757 functioning.

1758 Mr. {Barton.} My time is expired but Mr. Levy wants to
1759 make a comment, and I would assume that Mrs. Weintraub also

1760 wanted to make a comment, so--

1761 Mr. {Levy.} I just wanted to say to Mr. Woldenberg's
1762 point here, if we take the approach, and I think this should
1763 be the approach now that the CPSC has been reconstituted, I
1764 think we have to say let us empower them with strong language
1765 to look out for product safety in regard to children's
1766 products and let them identify as opposed to us taking 15,000
1767 items. We have 16 billion pairs of jeans and shoes in the
1768 marketplace, which is constantly changing, the fashion
1769 business, as opposed to us constantly going and looking for
1770 exemption, exemption. If I am in the motorcycle industry, my
1771 product line is not changing that much, my components are not
1772 changing. I can afford to invest in the testing and so
1773 forth. But our products are not dangerous. Our products are
1774 safe. Give the agency the ability that they were founded on
1775 to find if there is a problem, let them come out and find it,
1776 as opposed to us having to go petition SKU style by style by
1777 style.

1778 Mr. {Barton.} Ms. Weintraub?

1779 Ms. {Weintraub.} Yes, sir. Thank you. We believe that
1780 these three prongs are all necessary and important. The
1781 first prong, is the lead in fact necessary. Why should there
1782 be lead in a children's product? Consumers don't want lead
1783 in their products. If it doesn't have to be there, it

1784 shouldn't be, and if it could move the market to reduce lead
1785 in consumer products, it should. So that is the first prong,
1786 is the lead necessary essentially. The second prong, is the
1787 product one that would likely to be mouthed or ingested, that
1788 is the most common route of exposure and the most dire types
1789 of consequences occur from mouthing and ingesting products.
1790 Unfortunately, the story of Darnell Brown that Chairman
1791 Waxman mentioned, the child died because he swallowed a
1792 trinket from a shoe that contained--it was almost 100 percent
1793 lead and the child died. What we want to do here, and I know
1794 what everyone agrees is the goal here is to protect children
1795 from unsafe products, and that is our collective desire. And
1796 the third prong, measurable adverse impact on public health,
1797 I think that and all of these is a good compromise in terms
1798 of having a system, a test that is workable as well as one
1799 that will protect the public health.

1800 Mr. {Barton.} Thank you, Mr. Chairman.

1801 Mr. {Rush.} Ms. Schakowsky, you are recognized for 5
1802 minutes.

1803 Ms. {Schakowsky.} Thank you, Mr. Chairman. I wanted to
1804 ask Mr. Gibbons a question, not just because no one has asked
1805 him a question, but because I actually have a question.

1806 I wanted just to get on the--first of all, in this
1807 economic downturn, I think it is particularly important that

1808 you be able to serve the market that you do, but I wanted to
1809 ask if you feel that the Consumer Product Safety Enhancement
1810 Act does provide the relief that your organization needs?

1811 Mr. {Gibbons.} I certainly do. I think the clarity
1812 that is in section 3 helps us work real closely with CPSC,
1813 which we have done in the past, but it really does work so
1814 that we can continue along a path that is safe. It works
1815 with us to identify, you know, unsafe products and areas, and
1816 we are confident that we can work with the CPSC. If there
1817 are things we haven't even thought of yet, you know, we
1818 identify, we will work them in a very proactive way so we
1819 think it works very effectively.

1820 Ms. {Schakowsky.} And I realize you are speaking for
1821 Goodwill but you did bring up the Salvation Army. I am
1822 wondering if within your business community, within your
1823 industry, if you will, do you feel that your remarks and your
1824 support are reflected in those other organizations?

1825 Mr. {Gibbons.} Yes, I do.

1826 Ms. {Schakowsky.} Thank you.

1827 Ms. Weintraub, I want to--there has been consistent
1828 testimony here, and you as the only one really here who was
1829 involved in the original bill and defending the language, and
1830 I realize that you are not necessarily supporting the changes
1831 but you are not opposing the changes. There has been this

1832 talk about going back to what was risk assessment, and I
1833 wondered if you could just elaborate a bit more on why we
1834 have been there, done that and in my view and I think the
1835 reason that we passed the bill it didn't work. I think you
1836 would do a much better job articulating that.

1837 Ms. {Weintraub.} Well, I don't know if that is true but
1838 I will try. Thank you. Yes, the big problem that risk
1839 assessment causes is the reason why we ended up in the place
1840 that we were before passage of the CPSIA, that is, CPSC could
1841 have used the authority, had authority, could have used it
1842 but didn't use it effectively, and the problem, because it
1843 was broad and not specific, was that actions weren't taken
1844 and there were loopholes in existing--in the practice of the
1845 CPSC that left our Nation, our children, our families at risk
1846 and they were in fact at risk, and they were posed, they were
1847 put in danger because of that. A risk analysis has numerous
1848 problems in and of itself as well. There are many ways to
1849 interpret it, and it was clear that we needed a more
1850 narrowed, clear test that limited the amount of lead in a
1851 very concrete fashion. As is clear from scientists, and I
1852 think everyone at the table would agree, there is no known
1853 safe level of lead. When you are working in that
1854 environment, consumers need to be able to trust that products
1855 will not pose harm to their children, and risk assessment in

1856 this and other contexts does not do the job.

1857 Ms. {Schakowsky.} I just wanted to point out that on
1858 the issue of tracking labels, that the language in the bill
1859 as passed that required as practicable and also said that
1860 bulk-vended products actually are totally exemption from the
1861 tracking labels.

1862 Yes, you wanted to comment on that, Mr. Levy?

1863 Mr. {Levy.} Yes, just in terms of the tracking labels,
1864 in the apparel industry we are already required to put an RN
1865 number, which tracks back who the manufacturer is, and we
1866 feel that that is sufficient to satisfy--anyone can go to
1867 Google, put an RN number and find the manufacturer. But what
1868 has happened as with much of the CPSIA is, our retail
1869 customers have issued, not as high as this but a nice stack
1870 of individual requirements on tracking labels and so forth.
1871 So and the same thing is going to happen with the preemption
1872 of the State laws. So because it is where practicable in
1873 that case, our retailers are saying no, we don't want any
1874 chance, and you have to sew our label in, and the next
1875 retailer has a different interpretation of what should be on
1876 the label. So we feel in terms of tracking labels, the RN
1877 number for apparel is sufficient and we would like to see an
1878 exemption or at least an understanding by the agency that
1879 that would satisfy the requirements.

1880 Ms. {Schakowsky.} Let me just ask you a question on
1881 that, though. If you have the RN number--

1882 Mr. {Rush.} Let me just warn all the members that we
1883 have a pending vote on the floor at 12:15 and so I want to
1884 really be pretty tight in regards to limiting the members'
1885 questions to 5 minutes. With that said, Ms. Schakowsky, I
1886 want to move on to Mr. Pitts.

1887 Mr. {Pitts.} Thank you, Mr. Chairman.

1888 Mr. Marshall, as I understand it, the CPSIA standard and
1889 the European EN-71 standard are incompatible, making it
1890 nearly impossible for small toy distributors to carry out
1891 their business now. First of all, can you explain a little
1892 bit on how they are incompatible?

1893 Mr. {Marshall.} Yeah, and this is a significant factor.
1894 My store as well as dozens of others of our members made a
1895 niche business out of importing small batch goods from
1896 Europe. Speaking personally, at this point we have all but
1897 ceased importing toys and other goods from Europe because of
1898 the CPSIA and also a great number of companies that have
1899 already tested the European standards simply cannot afford to
1900 retest to CPSIA standards and have withdrawn from the market
1901 including some of our most important suppliers. There are
1902 some differences between the EN-71 standard, and I am not an
1903 expert in it. The most substantial, though, is the

1904 definition of lead content limits. EN-71 has an absorbable
1905 standard which more closely reflects the effect of lead
1906 content on a child's health whereas, as you know, the CPSIA
1907 is a total lead standard, but more to the point, labs that
1908 are testing for EN-71 aren't necessarily certified by the
1909 CPSC to be testing for CPSIA, and small batch manufacturers
1910 in Europe have exactly the same problem as small batch
1911 manufacturers in America in terms of paying for those tests.
1912 And so that is creating the same problem.

1913 But I want to remind the committee what the definition
1914 under the CPSIA of a manufacturer is, and my store under the
1915 CPSIA, as well as many other of our members, is considered a
1916 manufacturer when we import a specialty German toy to this
1917 country unless it goes through an importer that is based in
1918 the United States, we are importing directly and so we are
1919 the manufacturer. We are the ones responsible for--

1920 Mr. {Pitts.} Let me ask you then, do you think American
1921 toy distributors should be able to sell European toys that
1922 are compliant with the European standard?

1923 Mr. {Marshall.} Yes. I don't think anyone here is
1924 going to argue that a toy that has been tested to EN-71
1925 standards is not safe for the American market.

1926 Mr. {Pitts.} Does anyone disagree with that? Ms.
1927 Weintraub?

1928 Ms. {Weintraub.} This is a complex issue, one of trade
1929 issues and harmonization of standards, and I am not an expert
1930 on those issues, but there are reasons why the absorbability
1931 concept of lead has been rejected, and for those reasons, I
1932 could get into them, but for those reasons the United States
1933 has rejected looking at lead from that perspective.

1934 Mr. {Pitts.} So you do not think the E.U. adequately
1935 protects their children?

1936 Ms. {Weintraub.} No, I am not saying that, but in terms
1937 of looking at how the test is conducted, it is very different
1938 than how the CPSC does it.

1939 Mr. {Pitts.} Okay. This is a slightly different
1940 question. Do you think American toymakers should be able to
1941 sell toys in other countries, even if they are not compliant
1942 with the U.S. standards but as long as they are compliant
1943 with the safety regulations of their destination country?

1944 Ms. {Weintraub.} Are you asking me?

1945 Mr. {Pitts.} Mr. Marshall first.

1946 Mr. {Marshall.} As far as I know, none of our members
1947 actually manufacture any products that are not in compliance
1948 with those standards of the CPSIA. It isn't really the
1949 testing costs that causes problems. Manufacturers that are
1950 selling to, for example, Europe from the United States and
1951 which we have a couple of members that do that, they do have

1952 this dual testing requirement that they--

1953 Mr. {Pitts.} Mr. Woldenberg?

1954 Mr. {Woldenberg.} We have an office in the U.K. and
1955 testing EN-71 for at least 20 years. We have never seen any
1956 issues of safety relating to our reliance on EN-71 testing in
1957 any part of our business. It is essential for our business
1958 to be able to enter other markets. We sell in 80 other
1959 countries. We can't afford to be closed out of those
1960 markets. That is how we keep our business going.

1961 Mr. {Pitts.} You testified that your costs have
1962 increased eight times, you expect three times more. Clearly,
1963 you are testing more. Are these increasing testing levels
1964 and costs making your products safer than they were before?

1965 Mr. {Woldenberg.} Not in my opinion, because we only
1966 had recall of 130 pieces in 25 years. We would prefer to
1967 spend our money on supply-chain management.

1968 Mr. {Pitts.} And how can be sure that products are safe
1969 if they are not tested before going to market?

1970 Mr. {Woldenberg.} Well, testing has always been part of
1971 our strategy. The problem with the testing regime here is we
1972 have to test and test and test again and again things that we
1973 know are safe. What we want to do is to be able to spend our
1974 money on testing in ways that inform us about problems we may
1975 have in our supply chain. Because of the efforts we put in

1976 controlling our supply chain, the risks of problems with our
1977 products is not random, so we don't need to test every single
1978 batch of every single thing. That is how we manage our
1979 business.

1980 Mr. {Pitts.} Thank you. My time is up.

1981 Ms. {Schakowsky.} [Presiding] Thank you.

1982 Mr. Braley.

1983 Mr. {Braley.} Thank you.

1984 Mr. Woldenberg, I am very sympathetic to the earlier
1985 positions you expressed regarding the volume of regulations
1986 that you are dealing with in this particular area. In the
1987 last two Congresses, my Plain Language in Government
1988 Communications Act has passed the House overwhelmingly on two
1989 occasions. I am a firm believer that we need to write not
1990 just the government documents that you interact with but also
1991 the regulations and statutory language in language that the
1992 intended recipients of that information can understand and
1993 act on, and I am convinced if we did, that stack of piles in
1994 front would be substantially smaller.

1995 You also made some comments in your statement that I
1996 want to follow up on. You said the CPSI has killed off safe
1997 products. Do you remember saying that?

1998 Mr. {Woldenberg.} Yes.

1999 Mr. {Braley.} Can you give us examples of safe products

2000 that have been killed off because of CPSI?

2001 Mr. {Woldenberg.} Well, I am in the education industry,
2002 and we cater to a lot of small niche businesses. They are
2003 small businesses that cater to highly disabled children. A
2004 lot of those items have a very low volume. Many of those
2005 companies are discontinuing those items but that is just a
2006 very slow background degeneration.

2007 Mr. {Braley.} Can you give us examples of some
2008 companies that are being--their products are being killed off
2009 because of CPSI?

2010 Mr. {Woldenberg.} I was contacted by a company in
2011 Colorado that serves the education industry that informed me
2012 that they have thousands of products that are under \$1,000 in
2013 sales a year. They cannot afford to test those items and
2014 intend to discontinue many of them when testing becomes
2015 mandatory.

2016 Mr. {Braley.} And what company is that?

2017 Mr. {Woldenberg.} The company is called American
2018 Educational Products.

2019 Mr. {Braley.} Okay. Are there other products that you
2020 can identify that CPSI has killed off that are safe products?

2021 Mr. {Woldenberg.} Well, we make decisions on product
2022 development in our company all the time, and the hurdle rate
2023 for volumes in our company has gone up because of expenses,

2024 and so now for us to introduce a new item, if we don't expect
2025 sales of over a higher bar, that item never comes to market.

2026 Mr. {Braley.} No, but I am getting back to your
2027 statement that CPSI, the bill that we passed previously, has
2028 killed off safe products. This is your opportunity to share
2029 with us those products that have been killed off, to use your
2030 words.

2031 Mr. {Woldenberg.} We have dropped telescopes. We are
2032 moving out of microscopes. There have been items like a
2033 potato clock, which is an educational item you may be
2034 familiar with that has been recalled and dropped because of
2035 trivial non-safety-related violations with this law.

2036 Mr. {Braley.} Now, Ms. Weintraub, I don't know if you
2037 have had a chance to look at some of the recommendations
2038 submitted by Mr. Woldenberg but I want to ask you about a few
2039 of them and get your feedback. One is that the definition of
2040 children's product should not include anything primarily sold
2041 to or intended for use in schools. Do you agree with that
2042 recommendation?

2043 Ms. {Weintraub.} We don't agree.

2044 Mr. {Braley.} Why is that?

2045 Mr. {Braley.} Children interact with products in
2046 schools just as they do at home, and unfortunately, there
2047 have been numerous recalls of educational-based products for

2048 high levels of lead.

2049 Mr. {Braley.} The third recommendation was that in lead
2050 in substrate and phthalate testing should be based on a
2051 reasonable testing program not mandated outside testing, the
2052 tenets of a reasonable testing program should be set by the
2053 reasonable business judgment of the manufacturer. Do you
2054 agree with that recommendation?

2055 Ms. {Weintraub.} I disagree.

2056 Mr. {Braley.} Why not?

2057 Ms. {Weintraub.} You know, that moves us even further
2058 back than other ideas. We need a standard that not only that
2059 consumers can rely upon but also one that government and
2060 industry can rely upon to set a bright-line level of lead
2061 that is not acceptable.

2062 Mr. {Braley.} The fourth recommendation was definition
2063 of ``children's product'' should be limited to children six
2064 years old or younger. Do you agree with that recommendation?

2065 Ms. {Weintraub.} I disagree.

2066 Mr. {Braley.} Why?

2067 Ms. {Weintraub.} Children play with products that are
2068 in the household. As I mentioned, I have three children. I
2069 have an almost six-, almost four- and one-year-old. My
2070 children are very aware of what choking hazards are. They
2071 have toys that stay in their room. But there is an important

2072 difference between a choking hazard and lead, and that is,
2073 not only can I not identify whether the product has lead,
2074 they certainly can't either, so we need to have laws that
2075 protect children in concrete, reasonable ways that reflect
2076 how children actually interact with toys.

2077 Mr. {Braley.} One of the other recommendations as part
2078 of recommendation number 4 is that the definition of ``toy''
2079 for lead-based purposes should be limited to children three
2080 years old or younger. Do you agree with that recommendation?

2081 Ms. {Weintraub.} I do not.

2082 Mr. {Braley.} Why is that?

2083 Ms. {Weintraub.} For similar reasons, that children of
2084 broader ages use those toys and that would be less protective
2085 of public health.

2086 Mr. {Braley.} Thank you. My time is expired. I yield
2087 back.

2088 Ms. {Schakowsky.} Mr. Radanovich.

2089 Mr. {Radanovich.} Thank you, Madam Chair.

2090 Ms. Weintraub, you had mentioned in that unfortunate
2091 incident about the child swallowing a bead and dying from
2092 lead poisoning. Is it true, at least it was my understanding
2093 that that bead was 99.1 percent lead and was already in
2094 violation of existing laws at the time?

2095 Ms. {Weintraub.} I believe that it was--I will have to

2096 check that. It is my understanding. My understanding that
2097 the lead, it was almost lead itself and previous law was that
2098 there was a prohibition on lead in paint, not in the
2099 substrate. So I will have to check, but that is my
2100 understanding.

2101 Mr. {Radanovich.} It is my understanding that there
2102 were laws already in the books that would have prevented
2103 that.

2104 Madam Chair, if I can ask for a UC consent, I have got a
2105 list of companies that are either going out of business or
2106 stopping products as a result from kind of in answer to Mr.
2107 Braley's question to Mr. Woldenberg. I would ask unanimous
2108 consent that that and also a statement by Mr. Pitts be
2109 entered into the record.

2110 [The information follows:]

2111 ***** COMMITTEE INSERT *****

|
2112 Ms. {Schakowsky.} Without objection, so ordered.

2113 Mr. {Radanovich.} Thank you, Madam Chair.

2114 I am sorry, I don't have a lot of time, so I am going to
2115 fire through a lot of questions here. Mr. Woldenberg, you
2116 talked about having to file a petition for each of your
2117 hundreds or thousands of products. Is there really any frame
2118 of reference here? And we have heard all kinds of estimates
2119 about how much it costs to file an exception petition
2120 supported by all the relevant scientific data. How much does
2121 it cost on average to file a petition for an exception? And
2122 I would open that to anybody here who can answer the question
2123 for me.

2124 Mr. {Woldenberg.} Well, some of the people at this
2125 table have filed them. All I can tell you is that I have to
2126 hire a human factors expert, I have to hire a toxicological
2127 expert, I have to hire a lawyer and I have to see it through
2128 several months of processing including a hearing. That is a
2129 lot of money.

2130 Mr. {Radanovich.} Can you put a price tag on it?

2131 Mr. {Woldenberg.} I would estimate \$25,000 to \$50,000
2132 per.

2133 Mr. {Radanovich.} Per?

2134 Mr. {Woldenberg.} Per, and that is probably on the low

2135 end. I am sure that some of the people at this table spent
2136 way more.

2137 Mr. {Radanovich.} For you, Mr. Woldenberg again, if
2138 another microscope manufacturer is successful in getting an
2139 exception, does that mean that you can also sell your
2140 microscopes or must you also file for an exemption?

2141 Mr. {Woldenberg.} I believe that I have to file for my
2142 products. My products are not identical to anyone else's.

2143 Mr. {Radanovich.} All right. Ms. Weintraub, I
2144 understand that Legos is--and you had mentioned choking as an
2145 issue. But from what I understand, according to CPSC's
2146 report, toy-related deaths and injuries in 2006 through 2008,
2147 the causes most common of injury and death were drowning,
2148 motor vehicle involvement, falls, airway obstruction,
2149 aspiration, suffocation, choking, drowning, strangulation and
2150 blunt force. Lead exposure was not among them. And under
2151 your theory, aren't the small pieces like those in Legos here
2152 that are found in common toy boxes far more dangerous than
2153 the item made with either .03 percent or .01 percent lead?

2154 Ms. {Weintraub.} I can't say--

2155 Mr. {Radanovich.} This is the definition for anything
2156 that is small enough to be choking on.

2157 Ms. {Weintraub.} Yes.

2158 Mr. {Radanovich.} I would like your response to that.

2159 Ms. {Weintraub.} Yes. Sure. Unfortunately, I can't
2160 say that lead is not as hazardous. Yes, it is much easier to
2161 see what a choking hazard is, and the types of harm are more
2162 quantifiable. But with harms with lead, they are not always
2163 acute. It is rare, in fact, that they are acute. However,
2164 health economists have estimated that every time an average
2165 blood lead level by increases by a small amount across
2166 children born in any given year, there is \$7.5 billion lost
2167 in potential earnings for those children. So even low levels
2168 of lead can cause decreases in IQ points, and while it
2169 doesn't come out in CPSC's annual toy death and injury data,
2170 the harms are there and they do cause incredible large costs.

2171 Mr. {Radanovich.} And I agree with you. I think we all
2172 agree that lead in the presence of humans and children is not
2173 a good thing but I guess the question is, are you taking it
2174 too far? Because it is necessary, for example, in the
2175 steering column of bicycles, and I have to ask you, how many
2176 times do you have to lick a handlebar before you are going to
2177 get lead poisoning on a bicycle? I mean, how far is far
2178 enough or until you take it too far to where it just doesn't
2179 make any sense at all?

2180 Ms. {Weintraub.} Well, you know, I think the Consumer
2181 Product Safety Enhancement Act is a reasonable compromise,
2182 very--you know, the drafters of it very carefully listened to

2183 all stakeholders, and the desire is to deal with the types of
2184 concerns you raised, to take the interactive use of a product
2185 and whether there is a health impact, so I think the--

2186 Mr. {Radanovich.} If I may just ask quickly, Mr.
2187 Woldenberg, would you agree with that?

2188 Mr. {Woldenberg.} I think that there is a lot of
2189 environmental sources of lead that children take in. I found
2190 a study that said that children under three eat a half a gram
2191 of dirt a day, which contains 40 parts per million lead. So
2192 the massive lead that a child would be exposed to from
2193 broadly defined children's products, this is not a toy bill.
2194 This is a children's products bill, that the massive lead
2195 that we get in our air, in our water, in our food, in the
2196 dirt that is on our hands and the other things that we
2197 contact is substantially greater than what is absorbed into
2198 our body than what comes out of the products that we make
2199 except for soluble lead, which has always been on the books
2200 for years as being against the law, soluble lead being lead
2201 in paint and pure lead. That is where the problem is.

2202 Mr. {Radanovich.} Thank you, Madam Chair.

2203 Ms. {Schakowsky.} Mr. Stupak.

2204 Mr. {Stupak.} Thank you.

2205 Let me follow up a little bit with what Mr. Radanovich
2206 is asking. Mr. Vitrano, you indicated in your testimony that

2207 the motorcycle industry submitted evidence to the CPSC to
2208 obtain exclusions for youth ATVs and motorcycles under the
2209 Act, but ultimately the decision is up to the CPSC to grant
2210 the exclusion. What clarifying language do you believe the
2211 committee must include to ensure that the CPSC interprets the
2212 language to grant exclusion for metal parts for ATVs,
2213 motorcycles, bicycles under the Act?

2214 Mr. {Vitrano.} Thank you. We feel it is absolutely
2215 critical that the terms ``practicable'' and ``no measurable
2216 adverse effect'' be defined. We have urged throughout the
2217 process that those definitions be included in the statutory
2218 language. The bill does not include them but we have been
2219 presented with draft report language that does include those
2220 definitions and are providing the additional clarity that is
2221 absolutely necessary so that it is perfectly clear that this
2222 committee intends the CPSC to exclude our products from the
2223 lead content limits.

2224 Mr. {Stupak.} Okay. Have you been asked to comment on
2225 those proposed regulations then, or rules on lead?

2226 Mr. {Vitrano.} Throughout the process of development of
2227 this bill, we have been in discussion with staff and have
2228 provided extensive input into how we feel the definitions
2229 should read.

2230 Mr. {Stupak.} Do you feel your concerns have been taken

2231 into consideration?

2232 Mr. {Vitrano.} As I said, our preference would be
2233 statutory language, but we are comfortable with the report
2234 language that has been proposed and our support of section 2
2235 is with the exception that report language will be included.

2236 Mr. {Stupak.} Okay. I wanted to get that clarified.

2237 Mr. Marshall, let me ask you this. I had a couple e-
2238 mails from some of my constituents. Let me just read one.
2239 ``My family is dependent solely on the income we generate
2240 from manufacturing homemade knit items for newborns all the
2241 way to adults. We sell them through our own store, on the
2242 Internet all over the United States as well as nine other
2243 countries. We need our items exempted from the testing
2244 requirements underneath this new act. Duplication of testing
2245 should not be required of the materials we use for
2246 manufacturing our products have already been tested. I have
2247 no problem with the labeling now required and will begin
2248 doing so as soon as possible but I cannot afford to pay an
2249 average of \$500 per item for each of the 70 items I create
2250 and sell all over the world, and every time I purchase yarn,
2251 the dye lot will be different and the item will have to be
2252 tested again. Please help us out.'' You are sort of
2253 testifying about the same items you are having with your toy.
2254 Is this a common practice? I mean, you are getting things

2255 manufactured in the United States that have already been
2256 tested, but when you folks come to assemble them, then they
2257 have to be retested?

2258 Mr. {Marshall.} Well, there are a couple things going
2259 on here, depending on the type of product, and one of the
2260 issues has been communication to the general crafting
2261 community and small business community exactly where the
2262 legislation and rulemaking now stands. For example, yarn and
2263 other fabrics have been exempted from lead testing by the
2264 CPSC. However, if you are making a toy, another thing that
2265 hasn't--let us say they are making that yarn and making it
2266 into a small doll, that is now a toy, that needs to be tested
2267 to ASTM standards unless we get this bill passed, and that is
2268 a whole other set of tests which are also very expensive.
2269 So, yes, that is exactly the concern that the testing
2270 requirements, to prove that a product is compliant are
2271 enormous, and component testing is another thing that the
2272 CPSC has been moving forward on. However, we do feel it is
2273 going to take years for that really to come to fruition where
2274 we develop a marketplace where there are CPSC lab-certified
2275 zippers and CPSC lab-certified buttons available to the small
2276 business community to make their products.

2277 Mr. {Stupak.} I have no further questions. Thank you.

2278 Ms. {Schakowsky.} Mr. Scalise to conclude.

2279 Mr. {Scalise.} Thank you, Madam Chair.

2280 And if I could just ask to everybody on the panel yes or
2281 no, and we have got limited time. I have a few questions I
2282 want to hit on. But we have heard from at least two
2283 commissioners and Commission staff that the scope of the law
2284 is too broad. Do you agree, yes or no, that the scope of the
2285 law is too broad?

2286 Mr. {Palmieri.} We are supportive of the improvements
2287 that this legislation makes.

2288 Mr. {Scalise.} Still more improvements may be to limit
2289 the scope or are you comfortable?

2290 Mr. {Palmieri.} If the exclusion process works, then it
2291 removes products that are safe from being included.

2292 Mr. {Vitrano.} We feel very strongly that ATVs and
2293 motorcycles should be excluded from the lead content
2294 provisions.

2295 Mr. {Scalise.} So too broad.

2296 Mr. Gibbons?

2297 Mr. {Gibbons.} I think the section 3 of the draft
2298 legislation helps to narrow things appropriately.

2299 Mr. {Scalise.} Okay.

2300 Mr. {Marshall.} We are talking about the original
2301 Consumer Product Safety Improvement Act?

2302 Mr. {Scalise.} And the bill before us.

2303 Mr. {Marshall.} Okay. Yeah, the CPSIA we believe has
2304 been too broad and we do feel that we would get significant
2305 relief under the bill pending before this committee.

2306 Ms. {Weintraub.} We can--we do not oppose the CPSEA.
2307 We can live with it. If it is weakened, I don't know if that
2308 would be--

2309 Mr. {Scalise.} Do you think it is too broad?

2310 Ms. {Weintraub.} We can live with the language as it is
2311 now but it can't be made weaker and consumer protections
2312 can't be weakened.

2313 Mr. {Levy.} Congressman Scalise, I believe it is too
2314 broad. What started as the toy bill now includes books,
2315 clothing, ATVs. I think it is much too broad.

2316 Mr. {Woldenberg.} Definitely too broad.

2317 Mr. {Scalise.} Thank you. Is there any reason why the
2318 Commission itself shouldn't have the discretion to determine
2319 the age that would be appropriate for restrictions on lead
2320 limits? Would you support--yes or no, would you support
2321 giving the Commission that discretion to determine
2322 appropriate ages for lead?

2323 Mr. {Palmieri.} I think that is one of the
2324 recommendations that the staff had a number of years ago, but
2325 again, we support the improvements that are in this draft
2326 legislation.

2327 Mr. {Vitrano.} Our sole objective here is to make sure
2328 youth ATVs and motorcycles are available for young riders and
2329 we believe we could get there with the CPSEA.

2330 Mr. {Gibbons.} In the context of your earlier question,
2331 the broadness of the law, you know, there are certain
2332 elements that apply to Goodwill and other human service-
2333 providing organizations so, you know, I don't know that our
2334 opinion is as important for that question but we do think
2335 that the ongoing enhancement really is valuable for
2336 communities.

2337 Mr. {Marshall.} Yes, we do believe that the CPSC should
2338 be given the flexibility to adjust requirements for both
2339 content and testing certification based on age. Thank you.

2340 Ms. {Weintraub.} We adamantly disagree.

2341 Mr. {Levy.} I think the reconstituted CPSC and fully
2342 funded CPSC is more than capable today, so I think giving
2343 that discretion much different than 2 years ago, I think I
2344 would agree.

2345 Mr. {Woldenberg.} The CPSC should have the discretion
2346 to make that judgment.

2347 Mr. {Scalise.} Thank you.

2348 Ms. Weintraub, kind of following up a little bit on Mr.
2349 Radanovich's question on, you know, the toy box theory and
2350 how far you go when you are talking about products in

2351 treating a six-year-old the same as a 12-year-old or higher.
2352 If you just go to the example of like not just toys, a
2353 mother's purse or lead limits in keys, you know, I have got a
2354 one-year-old son, the first thing he goes for is the cell
2355 phone or the remote controls, and those aren't children's
2356 products but that is what they go for. So would you be
2357 supportive if you are trying to have the same apply to
2358 something like this which a child can get as easy access to
2359 as a Lego.

2360 Ms. {Weintraub.} The scope of this law has been
2361 children's products. There is many other sources of lead in
2362 our environment, in our homes, and I think lead should be
2363 reduced as much as possible in all of them.

2364 Mr. {Scalise.} So even a cell phone you would want to
2365 have that same limit applied like keys in a mother's purse or
2366 the purse itself or the cell phone?

2367 Ms. {Weintraub.} Ideally, yes.

2368 Mr. {Scalise.} For everybody else, it will probably be
2369 the last one I have time for. But if a less costly
2370 alternative testing requirement would be adequate for small
2371 batch manufacturers, then why not apply that to all
2372 businesses subject to the same testing requirements, would
2373 you all support subjecting that same approach for all
2374 manufacturers?

2375 Mr. {Palmieri.} It is not a provision we have thought
2376 through or talked with our members to see if it is important
2377 or how it would advantage or disadvantage some, so I would
2378 want to get back to you on that.

2379 Mr. {Scalise.} I appreciate that.

2380 Mr. {Vitrano.} It is not an issue that we are
2381 addressing through the bill.

2382 Mr. {Scalise.} Thank you.

2383 Mr. {Gibbons.} Ditto.

2384 Mr. {Marshall.} Obviously we have been negotiating this
2385 carefully so it applies to our member businesses. We are
2386 hoping that we can set an example as alternative testing
2387 methods and other ways of certifying products, a fair
2388 approach that may well be extended to other types of
2389 products.

2390 Ms. {Weintraub.} I was still contemplating my answer to
2391 your previous question, so can you repeat it, please?

2392 Mr. {Scalise.} The previous question, would you want
2393 those same lead standards to apply to the cell phone that
2394 applies to the other children's products?

2395 Ms. {Weintraub.} That is what your question was to
2396 everyone?

2397 Mr. {Scalise.} That was the last question. This one
2398 relates to small batch processors having the same--if that

2399 works for them and addresses some of the cost issues that
2400 become prohibitive, would you support having that apply if it
2401 is safe for a small batch to apply to all manufacturers?

2402 Ms. {Weintraub.} I would not.

2403 Mr. {Levy.} I would say the same rules should apply, it
2404 is safe or it is not safe, to new clothes, to used clothes,
2405 and small business or big business, it should be the same
2406 rules.

2407 Mr. {Woldenberg.} I agree that effective rules should
2408 be available to all members of the regulated community, and I
2409 would point out since the CPSC has stayed the testing
2410 requirements until 2011, we have seen a sharp drop in recall
2411 rates notwithstanding the testing has not been mandatory, so
2412 clearly there is something else at play here that is
2413 explaining the improvement.

2414 Mr. {Scalise.} I appreciate your candor.

2415 Mr. {Rush.} Ms. Myrick, you are recognized for 5
2416 minutes.

2417 Mrs. {Myrick Wilkins.} Thank you, Mr. Chairman, and I
2418 am sorry that I wasn't able to be here for your testimony but
2419 I did have a couple of questions to ask, please.

2420 Mr. Levy, there is language included in CPSI that
2421 preempts State laws. Has this provision worked, in your
2422 opinion?

2423 Mr. {Levy.} It has not worked, in our opinion, because
2424 Proposition 65 had a special carve-out and we are also seeing
2425 Wisconsin, New York have drawstring laws, and although the
2426 agency has ability to do preemption in those cases, they
2427 haven't. So it is very confusing. People are very worried.
2428 We would like to see one standard applied and applied
2429 nationally.

2430 Mrs. {Myrick Wilkins.} Thank you.

2431 Mr. Woldenberg, how much have the costs of CPSI impacted
2432 your business, your product line, your payroll, et cetera?

2433 Mr. {Woldenberg.} I estimate that our costs have
2434 increased in the last, since 2006 to 2009, about \$450,000.

2435 Mr. {Myrick Wilkins.} That is a lot.

2436 Mr. {Woldenberg.} I agree with that.

2437 Mrs. {Myrick Wilkins.} How do you feel that it is
2438 unfair to small business other than the cost factor? What
2439 else is affecting you?

2440 Mr. {Woldenberg.} Well, I have to tell you, it is
2441 extremely disruptive because there is so much disagreement
2442 out in the marketplace. I won't necessarily tell you that it
2443 is confusion. There is just a lot of disagreement as to what
2444 are the applicable rules. This is a lot to master. A lot of
2445 people don't read it.

2446 Mrs. {Myrick Wilkins.} I know.

2447 Mr. {Woldenberg.} How many people do you think have
2448 actually read this.

2449 Mrs. {Myrick Wilkins.} Right.

2450 Mr. {Woldenberg.} And so we spend all the time arguing
2451 with our customers, which is terrible. We argue among
2452 ourselves. We don't even know what we should do. There
2453 might be two people who think we should do it this way, two
2454 people that think you have to do it that way, and you are
2455 always calling your lawyer. We don't know how to maintain
2456 our records. The very fact that the CPSC continues to issue
2457 rules upon rules upon rules without conforming them means
2458 that we are continually learning, relearning, resetting up,
2459 tearing down, because the rules are not static. It is just a
2460 terrible burden and it is not productive.

2461 Mrs. {Myrick Wilkins.} And along the same line, you
2462 said it does not make children safer. How can you expand on
2463 that?

2464 Mr. {Woldenberg.} Our efforts to make children safe
2465 rely on careful management of our supply chain. We very
2466 often find ourselves doing business with family businesses
2467 like our own where we know the mom, the dad, the brother, the
2468 sister, we have known them for years. Getting aligned with
2469 them on our practices, understanding how they operate their
2470 business, that is the best way for us to control quality, and

2471 we like to use inspections as well as testing to provide the
2472 controls so that we can assure the quality of a large stream
2473 of product.

2474 Mrs. {Myrick Wilkins.} Relative to this bill, what is
2475 the appropriate definition for a small business in this bill,
2476 in your opinion?

2477 Mr. {Woldenberg.} I think the federal definition of 500
2478 employees or \$500 million makes sense because you have to
2479 have enough people with the skills to understand these kinds
2480 of rules to implement them. It is completely ridiculous to
2481 think that a million-dollar business can manage this, just
2482 completely ridiculous. A million-dollar business is more
2483 like a lemonade stand than it is like Mattel, and so we can't
2484 hold them to the Mattel standard. You are just condemning
2485 them to business death.

2486 Mrs. {Myrick Wilkins.} Very good point.

2487 Yes, sir, you wanted to add to that?

2488 Mr. {Marshall.} Yes. I would like to say if I could,
2489 the HTA would like to submit a list of businesses that have
2490 closed or withdrawn from the market.

2491 Mrs. {Myrick Wilkins.} I would appreciate that very
2492 much. I was going to ask the chairman if I could submit this
2493 economic impact report on businesses that had been hurt by
2494 this, to put it in the record.

2495 [The information follows:]

2496 ***** COMMITTEE INSERT *****

|
2497 Mr. {Rush.} Hearing no objection, so ordered.

2498 Mrs. {Myrick Wilkins.} Thank you, Mr. Chairman. That
2499 is all the questions I have. I yield my time.

2500 Mr. {Rush.} The Chair thanks the witnesses for your
2501 testimony. There is a vote pending and so now the committee
2502 stands adjourned.

2503 [Whereupon, at 12:32 p.m., the Subcommittee was
2504 adjourned.]