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RPTS MCCONNELL

DCMN HERZFELD

OVERSIGHT OF THE CONSUMER PRODUCT SAFETY COMMISSION

THURSDAY, AUGUST 2, 2012

House of Representatives,  
Subcommittee on Commerce,  
Manufacturing and Trade,  
Committee on Energy and Commerce,  
Washington, D.C.

The subcommittee met, pursuant to call, at 9:40 a.m., in Room 2322, Rayburn House Office Building, Hon. Mary Bono Mack [chairwoman of the subcommittee] presiding.

Present: Representatives Mack, Blackburn, Bass, Harper, Lance, Guthrie, Olson, McKinley, Pompeo, Kinzinger, Barton, Butterfield, Schakowsky, Sarbanes and Waxman (ex officio).

Staff Present: Paige Anderson, CMT Coordinator; Kirby Howard, Legislative Clerk; Brian McCullough, Senior Professional Staff Member, CMT; Gib Mullan, Chief Counsel, CMT; Andrew Powaleny, Deputy Press

Secretary; Shannon Taylor Weinberg, Counsel, CMT; Michelle Ash, Democratic Chief Counsel; Felipe Mendoza, Democratic Senior Counsel; and William Wallace, Democratic Policy Analyst.

Mrs. Bono Mack. Good morning. The subcommittee will now come to order.

It has been a year now since Congress, at the urging of our subcommittee, approved key reforms to the Consumer Product Safety Improvement Act of 2008. Today we are going to check under the hood, talk to members of the Consumer Product Safety Commission, and see how it is working.

And the chair now recognizes herself for an opening statement. And I appreciate that general counsel changed the clock from 86 minutes to 5 minutes, but I will keep it to 5 minutes.

So, established in 1972, the Consumer Product Safety Commission is an independent agency created by Congress to protect consumers against unreasonable risks of injuries associated with consumer products. By and large the CPSC does an admirable job of protecting Americans, and I remain very supportive of its work, but on occasion the agency makes some puzzling, head-scratching decisions which create economic hardships for U.S. businesses without appreciably improving the safety of certain products.

By law the CPSC has the authority to regulate the sale and manufacture of more than 15,000 different consumer products, ranging from baby cribs to toys and from all-terrain vehicles to swimming pools. Without question the CPSC has very broad authorities, which makes congressional oversight critically important. The agency has the power to ban dangerous consumer products, issue recalls of products already on the market, and research potential hazards associated with

a wide range of consumer products.

Today the CPSC learns about unsafe products in several ways. The agency maintains a consumer hotline and Website through which consumers may report concerns about unsafe products or injuries associated with products. It also operates the National Electronic Injury Surveillance System, which collects data on product-related injuries treated in hospital emergency rooms.

The broad reach of the CPSC was on full display in 2007, which has been referred to as the "year of the recall" in the U.S. Fueled by the Chinese toy scare, the CPSC alone imposed a record 473 recalls in 2007, many of these recalls involving lead in toys and other children's products. These much-publicized safety issues prompted Congress to take action and resulted in passage of the Consumer Product Safety Improvement Act of 2008, also known as CPSIA.

Among other things, CPSIA increased funding and staffing for the CPSC, placed stricter limits on lead levels in children's products, restricted certain phthalates in children's toys and child-care articles, and required the CPSC to create a public database of their products. The public database, saferproducts. -- excuse me, yes, saferproductsdot.gov -- no, okay, staff thinks I wouldn't notice saferproducts.gov -- thank you, staff.

So, this remains a source of controversy. Manufacturers continue to express their concern that most of the complaints are not vetted by the CPSC before they are made public, opening the door to all kinds of mischief, whether to fuel lawsuits or to try and ruin a

competitor's brands.

Within months of enactment of CPSIA, it became clear that implementing a number of provisions would be extremely problematic, prompting the agency to issue several significant stays of enforcement prior to 2011, including the imposition of lead limits for ATVs, off-road-use motorcycles and snowmobiles. Why the agency even considered such limits is one of those puzzling, head-scratching decisions. So last year, after several hearings, and after bicameral and bipartisan negotiations, both the House and the Senate passed H.R. 2715, offered by myself and my good friend and colleague Mr. Butterfield. On August 12, 2011, President Obama signed that legislation into law. Our purpose was to relieve unfair and costly burdens imposed on American businesses, while still maintaining critically important consumer safeguards. Today I am very anxious to learn how well that new law is working.

[The prepared statement of Mrs. Bono Mack follows:]

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Mrs. Bono Mack. And with that, the gentlelady from Illinois is now recognized for 5 minutes for her opening statement.

Ms. Schakowsky. Thank you.

Let me just say that Mr. Butterfield will be here. He is on the floor and unable to come now, but I want to yield first to Mr. Waxman, who is the ranking on the full committee, for his opening statement.

Mr. Waxman. Thank you very much, Ms. Schakowsky, for your courtesy in allowing me to go ahead of you at this time because of scheduling problems that I have.

I want to thank you, Madam Chair, for holding this hearing to conduct oversight on the activities of the U.S. Consumer Product Safety Commission, and I am pleased that we have all four Commissioners here today to provide testimony.

This month will mark 4 years since enactment of the Consumer Product Safety Improvement Act of 2008, or what is called CPSIA. It will mark 1 year since enactment of Public Law 112-28, which gave the Consumer Product Safety Commission additional flexibility in implementing the law.

This law was a landmark piece of legislation. It fundamentally changed how we protect children from potentially dangerous products. Implementation of this law has been the predominant focus of the Commission. The goal of the law was to transform the agency's mission. The Commission used to be an underfunded, ineffective, reactive agency. Today the Commission is still underfunded, unfortunately, but it is no longer ineffective and reactive. Today the agency is on a path

toward anticipating risks to children and acting to prevent them.

No transformation is easy, and this has been no different. There were some rough waters in the early days of implementation, and a year ago we had to act to pass some targeted fixes to the law. But make no mistake about it, this law has been a success. Thanks to this safety law, we now have strong standards for products used by infants and children, including cribs, toddler beds, walkers, and bath seats. We now have a product registration system that enables manufacturers or retailers of durable infant and toddler products to contact parents with recall or other safety information.

We now have a consumer products safety information database where the public can file and view reports about harm from consumer products. And we also have testing of products to ensure that they are safe before they ever make it into our children's hands.

And the results of the law are clear. Toy-related deaths have fallen, recalls due to lead have declined by 80 percent, and recalls overall have continued to decline as products have become safer. Border enforcement is also up.

These protections matter to parents. They matter to children. So I look forward to hearing -- the hearing today from the Commissioners about their continuing work. While I may not be able to be here throughout your testimony, I certainly will have a chance to review it after you have given it, as I have for your statements that have been entered into the record. And I thank all four of you for being here and yield back the balance of my time.

Mrs. Bono Mack. Thank the gentleman.

[The prepared statement of Mr. Waxman follows:]

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Mrs. Bono Mack. And at this point I will recognize Ms. Schakowsky for 5 minutes for a statement. We have nobody requesting time on our side.

Ms. Schakowsky. Well, I thank you, Madam Chairman, for holding this hearing. I think it is important for the subcommittee to hear from the Consumer Product Safety Commission about its activities, and particularly the ongoing implementation of the landmark Consumer Product Safety Improvement Act.

A few weeks ago, I joined Chairman Tenenbaum, and Danny Keysar's mother, Linda Ginzler, at a press conference to mark the adoption of the strongest standard in the world for play yards. The play yard standard is significant because it was a dangerous product that led to Danny's death at his day-care center when it really was used as a crib, collapsed and choked him. And the portion of this CPSIA that I authored and that mandated the new standard bears his name.

I mention the play yard standard because it is a specific example of how the CPSIA's safety standard for toys and children's products will save lives. That was our goal at the outset of drafting the legislation, and it is the one that we met.

Last year we passed a bill with some narrow fixes so that implementation of the law could continue smoothly. And I welcome today's opportunity to review progress, but want to say clearly that I believe it is absolutely critical that we continue to support and uphold the fundamentals of this historic legislation.

I want to highlight that CPSIA was a bipartisan effort. It passed

the House 424 to 1, from the beginning to the end, and is a model for what this Congress can achieve on behalf of the American people.

And, Chairman Tenenbaum, I commend you for your leadership on implementing the safety standards for children's products, and also for your ongoing work to improve the safety of table saws and window coverings, and I thank you for leading this Commission in a way that continues to provide safety and security to the American consumer. And I also deeply thank Commissioners Adler, Nord, and Northup for their service, and for being here today. And I yield back the balance of my time.

Mrs. Bono Mack. I thank the gentlelady.

[The prepared statement of Ms. Schakowsky follows:]

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Mrs. Bono Mack. And we turn our attention now to the panel that we have before us today. Each of our witnesses has prepared an opening statement that will be placed into the record. You will each have 5 minutes to summarize the statement in your remarks, but I am sure you all are very familiar with this -- the way it works.

Our distinguished panel includes the Honorable Inez Tenenbaum, Chairman of the Consumer Product Safety Commission, and we thank you very much for postponing or changing your travel plans to be with us today, and thank you very much for that. We also have with us the Honorable Robert Adler, Commissioner at the CPSC; the Honorable Nancy Nord, Commissioner; and our former colleague, it is great to see her again, the Honorable Anne Northup, another Commissioner at the CPSC.

So good morning. Thank you all very much for being here today. And with that, Chairman Tenenbaum, you may begin with your 5 minutes.

STATEMENTS OF HON. INEZ M. TENENBAUM, CHAIRMAN, CONSUMER PRODUCT SAFETY COMMISSION; HON. ROBERT S. ADLER, COMMISSIONER, CONSUMER PRODUCT SAFETY COMMISSION; HON. NANCY A. NORD, COMMISSIONER, CONSUMER PRODUCT SAFETY COMMISSION; AND HON. ANNE M. NORTHUP, COMMISSIONER, CONSUMER PRODUCT SAFETY COMMISSION

STATEMENT OF HON. INEZ M. TENENBAUM

Ms. Tenenbaum. Thank you. Good morning, Chairman Bono Mack and members of the Subcommittee on Commerce, Manufacturing, and Trade. I am pleased to be here today to discuss the U.S. Consumer Product Safety Commission's operations and activities to keep consumers safe from dangerous and defective consumer products.

The agency is in the strongest position to meet its mission than it has been in more than a decade. In the limited time I have today, I would like to focus on a few recent achievements as well as look ahead to 2013.

The first area I would like to use is the CPSC's ongoing work to ensure that infant and toddler products meet some of the world's strongest safety standards. In the years leading up to the passage of the CPSIA, there were numerous instances of injuries and deaths to infants and small children in defective infant and durable nursery equipment. As a result the CPSA contains section 104, which requires mandatory safety standards for most infant and toddler products.

When I assumed the chairmanship of the Commission in the summer of 2009, there were no mandatory safety standards for any of these products. Since then I have moved to implement this mandate as quickly as possible. In December 2010, the Commission passed the toughest crib safety standard in the world. Subsequently we also passed mandatory safety standards for baby walkers, baby bath seats, bed rails, toddler beds, and play yards.

In addition to infant and toddler products, the Commission has also implemented the CPSIA's requirement that all children's products in the market be subject to periodic independent assessment of the safety by a third-party testing laboratory. We provided manufacturers with a great amount of flexibility and choice on how to comply as long as they have a high degree of assurance that their children's products are compliant. We are currently reviewing our staff's report on the potential ways to reduce third-party testing costs consistent with ensuring compliance as required by Public Law 1228.

I am also very proud of the work by Commission staff to implement and maintain the publicly searchable database [saferproducts.gov](http://saferproducts.gov). Overall [saferproducts.gov](http://saferproducts.gov) is a model of open government and consumer empowerment, and I appreciate the hard work by many of this subcommittee to further improve [saferproducts.gov](http://saferproducts.gov) during the Public Law 1228 debate.

The best way to ensure that dangerous consumer products never get into the hands of consumers is to ensure that they never enter the United States. As Chairman I have placed special emphasis on the past year on the continued development of the CPSC's Office of Import

Surveillance. This office works hand in hand with U.S. Customs and Border Protection officers in major U.S. ports of entry to inspect and detain shipments that violate U.S. Consumer Product Safety standards. In fiscal year 2011, CPSC import surveillance staff was able to stop approximately 4.5 million units of violative and hazardous consumer products from entering the United States.

In 2013, funding permitted, I am optimistic that the CPSC will be able to take additional steps toward full implementation of a fully integrated targeting system, often referred to as the risk assessment methodology, or RAM. This will allow CPSC staff to analyze a greater number of import shipments, identify those that are more likely to violate consumer safety laws, and ensure that our limited resources are dedicated to those shipments.

I would also like to highlight a number of positive collaborative relationships we have established. The first is in the area of educating parents to ensure that infants have a safe sleep environment. As part of this I have reached out to major retailers who sell sleep products like cribs and play yards to ask them to join me in educating parents that the safest way for their baby to sleep is alone in a crib on its back.

Accidental ingestion of coin and button cell batteries is another area in which we are keenly focused. We had very productive meetings with the major battery manufacturers, and a range of possible solutions from design changes to safer packaging have been discussed.

The third collaborative model is occurring in youth sports,

particularly in the area of head injuries in football. I am very pleased that after much hard work initiated by my office, a group effort led by the National Football League is under way to provide economically disadvantaged youth football programs with new helmets, and to conduct an education campaign to bring about a culture change in this sport.

In the coming months and years, I see a CPSC addressing hazards I have already mentioned as well as moving to address emerging hazards. At CPSC we are carrying out a statutorily required, proactive regulatory agenda, and consumers are safer because of this approach.

With an increasing focus at the ports, with more meaningful standards coming online, and with even greater public/private efforts, I envision safer and safer products in the hands of consumers. They deserve no less.

Chairman Bono Mack, thank you for the opportunity to testify. I am happy to answer any questions you may have later. Thank you.

Mrs. Bono Mack. Thank you very much.

[The prepared statement of Ms. Tenenbaum follows:]

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Mrs. Bono Mack. Commissioner Adler, you are recognized for 5 minutes.

**STATEMENT OF HON. ROBERT S. ADLER**

Mr. Adler. Thank you very much. Good morning.

Mrs. Bono Mack. If you can just pull it much closer for -- a little bit closer. And is it turned on?

Mr. Adler. I have no idea. The one that says push?

Mrs. Bono Mack. Thank you.

Mr. Adler. Let me try that again.

Good morning, Chairman Bono Mack and members of the Subcommittee on Commerce, Manufacturing, and Trade. Thank you for the opportunity to testify today along with my fellow CPSC Commissioners. I am pleased to be here today to discuss an agency that I have been associated with in some fashion since its establishment in 1973 and have been a Commissioner at since August of 2009.

This October will mark the 40th anniversary of the passage of the landmark Consumer Product Safety Act, and looking back now, I believe Congress and the agency should take great pride in what the agency has accomplished, especially considering the immense scope of our mission, which is to protect the public from any and all unreasonable risks associated with roughly 15,000 categories of consumer products.

What has the agency accomplished? As a starting point I would cite the estimated 30 percent reduction in the rate of deaths and

injuries associated with consumer products since the agency's inception. And I would particularly point to the dramatic drop in death and injuries to children, such as the reductions of over 90 percent in childhood poisoning deaths and crib-related deaths.

In short, CPSC has produced an excellent return on investment. By our calculation this drop in deaths and injuries has resulted in over \$16 billion in reduced societal costs, or many, many times the resources the CPSC has been given to do its job. And as a very small agency, we have had to produce these benefits at very low cost.

Of course, even efficiency has its limits. As of 5 years ago, the CPSC had shrunk to a skeleton crew of less than 400 and a budget of \$62 million. To Congress' credit, in 2008, almost unanimously you passed the CPSIA, providing the agency with more tools and directing it to do more work and do it faster. Put simply, the CPSIA revitalized an agency that was underfunded and undermanned, and for that I am sure consumers across the country are grateful.

Undoubtedly the biggest change felt by the children's product community has been the mandate in the CPSIA that all children's products be tested by third-party independent laboratories before they enter the market, and on a continuing basis thereafter. Let me assure you that we at the Commission have worked very hard to implement this mandate in a thoughtful and measured way, and I can report that we finally reached the point where the final rule will take effect in February.

Of course, such a strong safety step forward carries broad

implications for our regulated community, and we know that and are fully aware of our need to work closely with them as we implement the law.

As we approach the fourth anniversary of CPSIA, it is worth reflecting on two common themes in the law. The agency needed more resources and other tools to accomplish its safety mission, and it needed to change its approach to vulnerable populations, particularly children. I think we will keep this in mind as we move forward into the future.

I do want to note one particular provision in the CPSIA because it is something the Congress changed in the CPSIA. I believe that in section 9 of the CPSIA, and other sections of our laws, we have the most burdensome cost-benefit requirements in the entire Federal Government. Under these requirements, by my count, the Commission has managed to issue a grand total of nine safety rules in 31 years, or roughly one every 3-1/3 years.

The Congress recognized this, and Congress took major strides to lessen the burden. Congress didn't abolish the need for cost-benefit; Congress retained it in the Regulatory Flexibility Act. And to drive the point home, you prescribed extraordinarily short deadlines for the promulgation of rules for children's products. This approach, to me, clearly has succeeded. By the most conservative count possible under these procedures, we have issued 10 safety rules in the past 4 years, or 2-1/2 rules every year as opposed to 1 every 3-1/3 years.

In closing, I want to share one major concern about a growing and increasingly vulnerable population, older Americans, of which I am now

one. In fact, despite being only 13 percent of the population, older Americans suffer 60 percent of the deaths and injuries associated with consumer products. The fact that I now fit within this demographic has definitely helped me understand what a serious challenge we face in the coming years as America ages.

I look forward to working with my colleagues and the members of this subcommittee as we focus on our mission to protect our citizens from risks of unreasonable injury or death.

Thank you very much.

Mrs. Bono Mack. Thank you, Commissioner.

[The prepared statement of Mr. Adler follows:]

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Mrs. Bono Mack. And welcome, Commissioner Nord. You are recognized for 5 minutes.

**STATEMENT OF HON. NANCY A. NORD**

Ms. Nord. Thank you so much. I am delighted to be here.

You have in front of you four different statements representing the views, the opinions, the observations and, in some cases, the criticisms of the four Commissioners of the CPSC. And yes, we all agree on many things. Of course, we all agree that children are our most vulnerable consumers and, more importantly, our most precious asset.

Of course, we all agree that increased resources for engineers, compliance officers, scientists, port inspectors, and yes, dare I say, some lawyers has allowed us to really bump up our game in carrying out our mission.

Of course, a state-of-the-art testing lab, which I am very proud to have initiated the efforts for, has met with rave reviews, and moving our information technology systems into the 21st century has met with strong approval.

Indeed, we find common ground in dealing with serious issues like mandatory safety standards for infant and toddler products and using our new authorities to address hazards like drawstrings. And we are all very, very proud of the great work that our staff is doing, especially in the ports and out in the field.

So in many cases it is not the what, it is the how. And I am very

concerned that we are falling short on the how, whether it is on big items or things with smaller significance.

As I mentioned in my written statement, I have major concerns about how we develop the testing and certification rule; how we have defined children's products; how we have justified dropping the lead content limits from 300 parts per million to 100 parts per million. That is 99.99 percent lead free.

I have concern about how our limited resources are being used. Did we really need to spend almost \$2 million on consultants to tell us how to rewrite our strategic objectives and our mission statement? Will we know how we are going to be spending our funds come the October 1st beginning of the fiscal year if we have yet to establish our priorities in an operating plan?

But more importantly than resources, it is how rules are being proposed, considered, and promulgated. If staff strongly suggests the Commissioners not move forward with finalizing the testing rule, but rather seek public input as directed by Congress, and the majority ignores that and puts a rush on the rule, how can we say that that is thoughtful and measured decisionmaking?

When Commissioners decry the use of cost-benefit analysis and say, well, the Regulatory Flexibility Act is all we need because that focuses the impact on the impact on small businesses, yet consistently turns around and disregards the information that is in the Regulatory Flexibility Act because it doesn't lead to a desired regulatory result?

When a claim is made that section 6(b) of our law is

ultrarestrictive and inhibits to the point of virtual prohibition releasing information to the public in a timely way, yet the agency in the past year three times has released inaccurate and misleading information, contrary to 6(b), that almost jeopardized the major recall in one case and caused the agency to do a public retraction in another?

We can all agree that each Commissioner here today has a strong commitment to safety, and that differences of opinion as to regulatory issues should not be viewed as a lack of commitment. And believe me, I am not looking for trouble from my colleagues, but I am very troubled about how we approach issues.

Interestingly, I note that one of my colleagues with whom I often disagree in the statement says, quote, "The necessary but delicate balance of new safety requirements with new burdens."

I agree it is necessary. I agree it is delicate. I think that the agency's actions, over the past 2 years in particular, fall quite wide of the mark and have created a great imbalance between safety and new burdens, and as a result American consumers are overpaying for safety. We cannot close our eyes to the harm that we are causing many businesses that produce perfectly safe products and pretend that that harm does not exist. I think we need to work harder to find the balance that is missing.

Thank you.

Mrs. Bono Mack. Thank you, Commissioner.

[The prepared statement of Ms. Nord follows:]

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Mrs. Bono Mack. And again, a welcome to our former colleague. It is great to have you here. And, Commissioner Northup, you are recognize for 5 minutes.

**STATEMENT OF HON. ANNE M. NORTHUP**

Ms. Northup. Thank you. I am delighted to be here, and as the Commissioner that the rotating off the Commission at the end of October, this will probably be my last opportunity to share with this committee some of my observations and concerns as we go forward.

I appreciate the remarks of my other three -- of the other three Commissioners that preceded me. I agree with Commissioner Nord, who talked about many of the accomplishments that we have done, the durable goods standards, the mandatory standards, our work at the borders and imports. All of those are claims that I think all of us are very supportive of.

But I am going to specifically talk about several examples of the impact of what this committee has done and share it with the committee so that they can judge whether or not that is what they anticipated when they passed the CPSIA and as they have funded this Commission.

The dropping from 300 parts per million to 100 parts per million was done last year. August 1st it took effect. That meant we reduced from 99.97 percent lead free, to 99.99 percent lead free. Our staff found -- and I am taking this right out of their proposed package -- that it contributed minimally to the overall lead exposure

of children. That is the benefit of it. Conversely, the Commission's economist concluded that mandating the lower lead limit would have significant adverse economic impacts, including the use of more expensive low-lead materials, costly reengineering of products to use lower-lead materials, increased testing costs, increased consumer prices, reduction in the type and quality of children's products available to consumers, businesses exiting the children's market, and manufacturers going out of business.

There is no question that these effects have been felt. Unfortunately the businesses that have left the market that have gone out of business are no longer here to testify to you and to provide information to you because they have left the market.

What did this do? This created an enormous new hidden tax on consumers and parents. Many, many manufacturers have shared with us the bells and whistles that they took out of their products, the lack of choices, the fewer models that they offer, the cost increases that they have had to pass on to consumers for something that has almost no measurable benefit to a child.

That is the kind of decision that has concerned me throughout my process, this sort of out-of-context rulemaking that we do. I know, as Members of Congress, that as you pass legislation, you consider what is good for consumers. At the same time you consider the unemployment rate, the cost of living, all of the other global impacts that you have that you bear on your shoulders. But when you are at the Commission, no one has to think about any of those other things. In the name of

safety, this Commission has taken actions that far overreach any necessary protection to consumers.

Probably the biggest decision that we made that I have found so discouraging, and I think it is important to share with you, is our reversal in unblockable drains. The Virginia Graeme Baker Act required that we protect children, protect the public from deaths in pools where -- it is called evisceration, where a blockable drain can trap a child or an adult so that they cannot become free, and they are eviscerated. And after you passed this law, you gave us a great deal of choice. We could have backup systems or any other technology that we thought was equal to that. In the meantime American inventors came up with several inventions of the ability to change a blockable drain to an unblockable drain. And the Commission found that that met the requirement.

After a year, and at great cost to many pools that adopted this new technology, the Commission reversed itself because one Commissioner changed their vote. And it meant that that unblockable drain cover no longer satisfied the law. And so now everyone has to have a backup system. A vacuum alert, which is the primary system they use, is not dependable. It goes off when it shouldn't. It doesn't go off when it is supposed to, as it didn't in Tennessee just last month. It is not available to private pools. It is much more expensive. We were overwhelmed with the number of letters that came into us and told us that this was a less safe direction to take, and yet we proceeded down that direction at great cost to the public.

We estimate over 1,100 pools have closed, not our agency, but the association that oversees pools. We know that many States have said they simply can't bring pools into compliance, and here there was a much less costly, much more available technology that could have been available to pools, but was reversed by our Commission. I can certainly answer more questions about this if there is more time.

In the end, though, this Commission has made many decisions, many rules, completely disregarding the cost, the lack of choice it is going to give consumers, the inability of small companies to comply with these regulations all in the name of children's safety despite the fact that our staff has told us many of these will not increase safety for children.

[The prepared statement of Ms. Northup follows:]

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Mrs. Bono Mack. Thank you, Commissioner, and again, I thank you all very much for your testimony and for your hard work and your dedication to these issues.

And now I recognize myself for 5 minutes for questioning and would like to direct my first question to Commissioner Tenenbaum. It might be a little bit outside of the ordinary question you get, but something that I have been looking at and you all came screaming to mind is the problem with bath salts. In recent months the news has been overflowing of the reports on the health implications of designer drugs that are sold and labeled as bath salts. The CDC has reports on file that date back to 2010 showing numerous instances of people being hospitalized and even dying from these substances. Despite the fact that the DEA has banned some ingredients, online pharmacies and small minimart-type stores continue to sell them. They are labeled bath salts, and they clearly say on them "not for human consumption." And it is an attempt to avoid the DEA ban. And despite that fact, there is no legitimate purpose as a bath salt.

Does the CPSC have any jurisdiction to regulate the sale of products like legitimate bath salts?

Ms. Tenenbaum. Thank you, Madam Chairman.

That may fall under the category of cosmetics under the Food and Drug Administration, but I would like to check with our legal staff when I return to the Commission and get you an answer for that. But it might be a cosmetic and, as such, would not be under our jurisdiction.

Mrs. Bono Mack. Has this ever risen to the level of your

interest? Have you seen it out there and seen the stories and said, can I take a look at that?

Ms. Tenenbaum. I have seen the stories. I don't believe our staff has investigated it because it might not fall under our jurisdiction.

Mrs. Bono Mack. Could you possibly take a look and see if there is -- I mean, these have very seriously --

Ms. Tenenbaum. Certainly, I certainly will.

Mrs. Bono Mack. -- dangerous substances that are out there, and I would hope that Commissioner Adler as well would take a strong look at that and see how we can throw the kitchen sink without these dangerous bath salts.

Ms. Tenenbaum. And we also could meet with the FDA to talk about how jointly we could address the hazards. So we will follow up on that for you.

Mrs. Bono Mack. I appreciate it very much.

Also something, I did send you a letter, Commissioner Tenenbaum, about the thought of launching a Facebook fan page. Can you tell me what the status of the Commission's plans are, and did you happen to send a letter back to me on this matter?

Ms. Tenenbaum. No. First of all, all the Commissioners have voiced support for the concept of having social media and using social media to educate the public on risks such as soft bedding, carbon monoxide, drowning, furniture tip-overs. There is an issue, however, on whether or not Facebook would violate section 6(b) of the CPSA, which

requires us that if we obtain information on a manufacturer, that we cannot give that information out publicly without obtaining the consent of the manufacturer. So the issue is can someone -- if we had a Facebook, and a person posted something about a manufacturer as a comment, would that mean we obtained information; as such would we have to scrub all of that information and ascertain its accuracy before it is posted? That would be too -- that would be too much -- that would require too much resources from the Commission.

So we have not made a decision. Our general counsel's office is continuing to work on all of the issues, and we will provide you with that memorandum when or if we decide to go forward with Facebook.

Mrs. Bono Mack. So to clarify, the general counsel just has not opined on that matter yet at all?

Ms. Tenenbaum. He and her staff have worked hard on that, and it is not completed. Other offices in the Commission, other Commissioners had raised other legal issues that required more legal research, and so they have not finished that memorandum.

Mrs. Bono Mack. Thank you.

And Commissioner Northup?

Ms. Northup. Madam Chair, I think it would mislead, misrepresent the position of at least myself and maybe Commissioner Nord that we are all in support of opening a Facebook page. While we acknowledge that we can understand the benefit, I, at least, and, I think, Commissioner Nord, believe it absolutely would violate the overarching rules in our Commission, and that 6(b) is not exactly as the chairman

described it. That sort of misrepresents 6(b)'s requirements.

But I would also point out to you that the database, in the database, that you all suspended the 6(b) requirements for the database, and when we wrote that rule, it is now under attack in the courts. Someone has filed suit against us that they have not -- that we have violated the laws. If we lose that case, it would almost certainly say that any putting up of Facebook would violate the protections of 6(b).

And I might say it will make -- if we lose that case, we could possibly undo millions of dollars of work we have done on this and have to rewrite the rule, something that I claimed all the way through the process.

Mrs. Bono Mack. Thank you very much.

At this point I will recognize Mr. Butterfield for 5 minutes.

Mr. Butterfield. I thank the chairman, and also thank the gentlelady from Illinois for sitting in the chair for me this morning. I have had a very busy morning, and I thank her very much.

In March 2011, I wrote a letter to Chairman Upton and to the chairman of this subcommittee asking that the subcommittee hold a hearing concerning questions about the level of protection new and used football helmets provide athletes of all ages. In particular, concerns had been raised around this time about what kind of injuries can be prevented with the football helmet, and about whether used helmets continue to provide a sufficient level of protection against the injuries they are designed to guard against.

So far this subcommittee hasn't acted to look further into these issues. I understand the CPSC has been engaged on these issues since they first drew scrutiny, and that you plan to become more engaged through a new initiative with the NFL and the CDC, among others. So I am going to ask the Chairman, Chairman Tenenbaum, can you please discuss all aspects of the work the CPSC is doing in this area, the status of that work, and where you plan or might like to see these efforts go?

Ms. Tenenbaum. Thank you. I would be happy to talk about our work with the NFL. Like you, I am very concerned with the brain injuries in football and sports, especially those that affect young people, high school and college athletes. Because these injuries have such devastating consequence, this issue has been a priority for me. And our efforts have a short-, medium-, and long-term focus.

In the short term, we would like to have a partnership with the NCAA, and the NFL, and the CDC, major manufacturers, and the voluntary standards to see what kind of reconditioning steps that we can take. All manufacturers with the exception of one have agreed to put a label on the new helmet which says the date that the helmet was manufactured, and gives a date that it should be reconditioned, optimally within 10 years.

We also have worked with the NFL and will be making announcements this weekend in order to drive a culture change and have education in terms of how to avoid head injuries when playing football. Also, the NFL has funded a program for four communities where they will give

helmets to schools where economically disadvantaged youth play. So these new helmets will help tremendously as well.

Mr. Butterfield. Well, thank you for your work in that area. Is there anything we can or should do legislatively to support what you are doing?

Ms. Tenenbaum. Well, we have -- the research on helmets is not complete in terms of we have not found that there is a helmet that will prevent concussions. So we hope to monitor that. We hope this committee will stay interested in that and work with us on it because that would ultimately --

Ms. Tenenbaum. Thank you.

Mr. Adler, is there anything that you can add to this conversation about helmets?

Mr. Adler. What I want to add is my personal thanks and commendation to the Chair for taking this on as a personal task and for dedicating a very valuable staff person to go around the country and work on this. I think what you have heard from the results that she has discussed are really wonderful results. I think she deserves almost total credit for doing that, and I think it is an important endeavor, and I hope it continues.

Mr. Butterfield. Well, when I met with her in my office a few months ago, she told me it was one of her priorities.

Mr. Adler. Well, it is, and I think she and her staff have done an excellent job.

Mr. Butterfield. Yes. All right.

Let's see. One of the biggest victories for consumers, consumer advocates, and those of us who believe in government transparency was the creation through CPSIA of the publicly available Consumer Product Safety Information Database. This database launched in March of last year at [www.saferproducts.gov](http://www.saferproducts.gov). There consumers can both file safety complaints about consumer products and view complaints by other consumers that have met the standards for inclusion in the database. And before Congress mandated creation of this database, the American public had almost no access to information provided by consumers to the CPSC about injuries from the products they use.

Let me ask the Chairman or Mr. Adler, can you please discuss some of the statistics and trends you are seeing related to the database, like how many complaints are being filed and what types of complaints, et cetera?

Ms. Tenenbaum. We receive on average 600 per month. In total we received a little over -- almost 9,600 reports of harm posted on the [saferproducts.gov](http://saferproducts.gov) as of July the 27th of this year. Over 1,000 of these reports have been assigned to follow-up by our investigators, resulting in 875 completed investigations to date.

There were some on the Commission that said this would be a place where trial lawyers would try to salt the database. We have found that 97 percent of all reports are of consumers who own the product and who have had experience personally with the product. The three top categories have been kitchen appliances, 33 percent; nursery equipment or supplies is about 8 percent; and toys is about 5 percent.

When you amended the CPSA to Public Law 1112-28 -- I mean, 112-28, you asked to us require the serial number. We found that the model of the serial number now, 88 percent are filling that portion in; 88 percent is nonblank. So we have used it to recall two products, and we think that it has been generally well accepted.

Mr. Butterfield. Thank you. I believe my time is expired. I thank you, and I thank you all of the Commissioners for the service that you render to our country.

I yield back.

Mrs. Bono Mack. Thank you, Mr. Butterfield.

The chair recognize Mr. Guthrie for 5 minutes.

Mr. Guthrie. Thank you, Madam Chairman, for the recognition, and thank you for my colleague from Kentucky here with us today, and who some of you may know, or may not know, her sister was one of our great Olympians in 1984. And so talking about swimming pools and athletes here today, it is really -- how proud she made Kentucky and how proud she made America.

There is another Louisvillian, I can tell this, Chris Burke. Many of you know about Chris, played at St. X. He hit the walk-off home run for Houston to beat the Braves. And somebody said about him, said when he was like 6, he was like out hitting the ball every day. And they said he lived a moment of the lifetime, but he spent a lifetime getting to that moment. So you know how hard our Olympic athletes are working to get there. So it is always great to praise your sister. Those great billboards in Louisville are always fun to see.

In Shelby County in my district. There is a table saw manufacturer, and I am not going to ask a question, I just want to bring up -- and their concern, you are going down -- the Commissioner is looking at table saw technology, and nobody is saying that what -- the technology you are looking at is not safer and makes things safer. Their concern is is it patented, and the expense of it. So just making sure that there is some -- as we look at new standards as opportunities for other types of technologies and things move forward, that creates the same kind of safety standards. So I just wanted to bring that forward.

But I want to talk to Commissioner Northup on the President has issued Executive Orders on regulations, and he talked in the State of the Union how the regulations are strangling the economy in a lot of ways, and putting forth opportunities to move forward. I think there were two Executive Orders, and I guess my question -- I can tell you what they are, but I think you guys are aware of them; if not, I can go through. But I just want to know what the CPSC has done to implement the Executive Orders of the President on reviewing regulations.

Ms. Northup. Well, we are considering a package right now, although it has been a couple of months. It has been sort of dangling out there without agreement.

Let me just say that the President and Mr. Cass Sunstein have both written extensively about it. They have both said their primary purpose, and I have a quote right here, is to insistence on pragmatic, evidence-based, cost-effective rules. They specifically talked about

looking at major rules, rules that affected a significant portion of the economy. They also talked about doing cost-benefit analysis.

You have seen both in the previous testimony of the Chair in the Senate and now Commissioner Adler today the sort of resistance to cost-benefit analysis, that the benefit has to justify the cost. And this has been something we have publicly debated. I think that in the name of safety, you can just about adopt the most expensive, as we have seen, new standards that drive businesses out of business. So I believe we ought to do some cost-benefit analysis on the rules that we look at.

The second thing is we need to look at major rules, and this year, for example, we have talked about two retrospective ones. One is the testing of toy caps. Toy caps, that is old standard, was -- has long been out of date. Nobody uses it. It was absolutely a nothing regulation. Nobody was using it. It has been overcome by the 963 toy standards, new testing standards. And so to say we used retrospective review to bring the toy cap standards into modern times is to ignore, in my opinion, the intention of the Executive Orders and the spirit of them.

And so as we talk about what our plan is going forward, I think if we could agree that we are going to look at major rules, rules that have a significant economic impact as the President and Mr. Sunstein have talked about in their articles and, secondly, agree that we will do some cost-benefit analysis, and the conclusion of cost-benefit is that the benefit will be in proportion to the cost.

Right now we have Reg Flex analysis. You will hear some of the Commissioners talk about, well, isn't that enough? But we have blown through rule after rule where it is clear that the analysis of the economic impact does not justify the new safety. It didn't matter. With Reg Flex analysis, all you have to do is the analysis; you don't have to create a finding that it is justified.

Mr. Guthrie. Well, thank you. I am about out of time. And I just want to say, as we look at the reg review process in your Commission and all over, in terms of just the number of regs that we were looking at, what is actually hurting the economy? And there is a cement plant, Louisville Cemex over on Dixie Highway, that is in my district actually that is threatened by some regulations coming forward. So we can look at numbers of regs to look at or what actually makes big impact, and we need to look at ones that make big impact on the economy.

I yield back.

Ms. Northup. Of course, I agree.

Mrs. Bono Mack. Thank you.

And, Ms. Schakowsky, you are recognized for 5 minutes.

Ms. Schakowsky. Thank you.

You know, I am looking at your testimony, Commissioner Nord -- no, I guess it was Northup -- and you have in there "the feverish regulatory pace." You know, we passed the CPSIA 4 years ago, and this idea that somehow we are in a feverish regulatory pace -- and it was in Mr. Adler's testimony that in the 31 years that -- since the CPSC was saddled with unique requirements, I think you are talking about the emphasis on

cost-benefit analysis, there were nine consumer product safety rules, over roughly one every 3-1/2 years. And so in the last 4 years, I am happy to say there is 10 safety rules that came out.

And, you know, I mean, I have worked with kids in danger on this crib stuff for a very long time, and the play yards for a very long time. I don't think that most consumers would think this is about a feverish regulatory pace of finally getting this done.

So I want to ask you, Chairman Tenenbaum, how would the old way have impacted your ability to improve the safety of durable infant and toddler goods? Would you have been able to promulgate the crib rule as quickly as you did, or the play yard rule, and what impact would that have had on the safety of our children, which ought to be, it seems to me, the chief focus of the hearing today?

Ms. Tenenbaum. Thank you, Congresswoman Schakowsky.

We would not have been able to promulgate the infant durable nursery equipment rules on the schedule that Congress mandated that we promulgate them. We are required under the CPSIA to put forth two rules every 6 months on durable nursery equipment. Since the CPSC -- CPSIA passed, we have written 41 rules, all of which were required by the law. We have not gone off afield and created rules. All of the rules were required of us under the CPSIA. So had we not been able to work with the standards committee and industry to write the standards for the crib and then adopt it as our rule, it would have taken years to do cost-benefit analysis.

I am not against cost-benefit analysis. I think sometimes it is

justified, but when you are looking at trying to have rules that protect the safety of children and infants as this Congress -- as Congress passed under CPSIA, having the Administrative Procedures Act helped us expedite the process, and we worked hand in glove with industry. Industry helped write these rules.

Ms. Schakowsky. Thank you.

Ms. Northup. May I respond?

Ms. Schakowsky. Actually I have a question for Mr. Adler on a totally different subject, and I just want to get it in, because I have a -- I am cochair of a seniors task force of the Democratic Caucus. And you briefly mentioned about older Americans and a particular vulnerability, and I am just wondering if you could explain that a little further.

Mr. Adler. Yes. One of the things that the Congress has been particularly sensitive to is vulnerable populations. And as it turns out, the vulnerable population we have been dedicating our attention and resources to over the years, properly so, has been infants. But as part of this growing, almost exploding demographic, I have been very concerned about the impact of dangerous products on the senior population.

If you look at the injury patterns for seniors, they almost always exceed the population at large. It is not as though -- and falls are a huge part of it, and fires are another huge part.

There are a number of products that we could probably take some measures to help the elderly with, and I will give you just one quick

example. The Commission just wrote a section 104 rule for infant bed rails. Well, as it turns out, the elderly suffer death at a much greater rate from bed rails than infants do.

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[10:32 a.m.]

Mr. Adler. And it may well be that the fix for adult bed rails is not too different from infant bed rails. In other words, there are many, many projects that we ought to be addressing ourselves to.

The CDC just came up with a national plan for dealing with childhood injuries, and I have called for a national plan with CDC for adult injuries as well. It is a very, very important issue, and I hope to convince my colleagues to pay more attention to it. And I thank you for asking.

Ms. Schakowsky. Thank you.

I am out of time, and I yield back.

Mrs. Bono Mack. Thank you, Ms. Schakowsky.

The chair recognizes the vice chair of the subcommittee, Mrs. Blackburn, for 5 minutes.

Mrs. Blackburn. Thank you, Madam Chairman; and thank you all for being with us this morning. Nice and timely. I will have to say you have created quite a little stir in the last week over an issue of Buckyballs. And I would just like to ask, Madam Chairman, how it is that you have taken such a hard-line stance against Buckyballs.

And I tell you, reading all this and looking at it after the information came out, and having two grandchildren, one that just turned four and one that just turned three, you can compare this to

toys like Hungry Hungry Hippo, which comes with all these marbles. It has been on the market for about 30 years. There is a Fishing Well that also comes with marbles. It has been on the market for a long time. These are toys that we play with.

So you know what I am having a hard time doing is understanding how you could come down against Buckyballs and Buckycubes when it is clearly noted that that is for children aged 14 and above and Hungry Hungry Hippo and Fishing Well are for children that are 3 and above. So it doesn't make a whole lot of sense to me as to what you are doing. So I was wondering: Why?

Ms. Tenenbaum. Well, I appreciate that question. It certainly is timely.

I want to explain to you why we cannot comment on the merits. We did not ban Rare Earth magnets, which is what Buckyballs and the category that they are. We referred the matter to an administrative law judge. That administrative law --

Mrs. Blackburn. I am going to stop you right there, if I may, please, ma'am.

You made the decision to go ahead with the recall, didn't you?

Ms. Tenenbaum. No, we did not. We made the decision to refer the matter to an administrative law judge. That judge will make the determination what to do with the product.

Mrs. Blackburn. What caused you to make that decision? We as Members of Congress have the right to ask you that question.

Ms. Tenenbaum. Well, we will be the appellate body if the

administrative law judge's decision --

Mrs. Blackburn. All right. Then let's talk about the administrative law judge.

Ms. Tenenbaum. I just wanted to lay the groundwork why I can't really get into the merits. Because we will be the appellate judges, so to speak.

So let me say that we have a well-documented record as being alarmed by the serious and hidden hazards to children. The difference between Rare Earth magnets and marbles is that marbles do not cling together in the intestine. Children have had -- a large number of children have had invasive surgery to remove these balls once they are in their intestine because they clamp, causing a huge blockage.

Mrs. Blackburn. They are clearly labeled "Not for Children." So let me ask you this. What about sparklers? We have just had July 4th. So why don't you outlaw sparklers?

Ms. Tenenbaum. We do set limits on sparklers in terms of the heat they can generate. We do have rules.

Mrs. Blackburn. But you have injuries. You don't issue recalls.

We have just built a playhouse for the grandsons. My husband engineered this great thing. He had all sorts of power tools out there, and they had their little Black & Decker play set. What about power tools?

Ms. Tenenbaum. There are a number of hazard in the marketplace. That is why the Consumer Product Safety Commission exists.

Mrs. Blackburn. What about alcoholic beverages?

Ms. Tenenbaum. There certainly are.

Mrs. Blackburn. You have always got these alcohol poisoning cases and things of that nature.

So let me go back to this administrative law judge. CPSC does not have an administrative law judge, correct?

Ms. Tenenbaum. No, we referred this to an administrative law judge for a hearing, and that judge will determine whether or not the product --

Mrs. Blackburn. Where is that judge going to come from?

Ms. Tenenbaum. That judge would be right here in Washington, D.C., probably, or it might be in Maryland.

Mrs. Blackburn. So when this case is filed, the lawyers who try the case have to be separated from those who advise the Commission, correct?

Ms. Tenenbaum. That is correct.

Mrs. Blackburn. Okay. Now that the lawyers all work together in the Office of the General Counsel, how will you ensure appropriate separation with these two groups of lawyers?

Ms. Tenenbaum. Our Office of Legal Counsel has set up a wall, and we are all abiding by that.

Mrs. Blackburn. A physical wall or an understood --

Ms. Tenenbaum. A wall within the legal context so there will be no communication.

Mrs. Blackburn. All right. And the Director of Compliance

recently left that position and is now working with the Office of General Counsel also, is that correct?

Ms. Tenenbaum. That is correct, but I can't comment on the involvement of that official.

Mrs. Blackburn. And who is now the Acting Director of Compliance?

Ms. Tenenbaum. Marc Schoem. But he has recused himself and has not been involved in this case.

Mrs. Blackburn. Is he a lawyer?

Ms. Tenenbaum. No, he is Acting Director.

Mrs. Blackburn. It is supposed to be a lawyer. The CPSA requires that a lawyer be the Director of Compliance.

Ms. Tenenbaum. We do. And it is in transition. And so we have, I believe, 90 days.

Mrs. Blackburn. So you have got 90 days to make that right.

Ms. Tenenbaum. We have 90 days in order to fill the position with a nonlawyer.

Mrs. Blackburn. Okay.

Ms. Tenenbaum. I am saying it is 90 days. It could be more. I have to look at the statute.

Mrs. Blackburn. The Commission authorized the filing of the complaint against Buckyballs last month, right?

Ms. Tenenbaum. Yes. It was a bipartisan decision.

Mrs. Blackburn. And it was signed by the executive director?

Ms. Tenenbaum. Yes.

Mrs. Blackburn. Is he a political appointee?

Ms. Tenenbaum. Yes, he is. An SES as well.

Mrs. Blackburn. We have got other questions. I am out of time. You have been generous. Thank you, Madam Chairman.

Mrs. Bono Mack. I thank the gentlelady.

The chair recognizes Mr. Kinzinger for 5 minutes.

Mr. Kinzinger. Thank you, Madam Chair.

Ms. Nord, if I have some time at the end, I will let you to respond to my colleague from Illinois.

I want to thank the commissioners for being here. I want to touch on a topic that has the potential to impact several manufacturing sectors, which is important to my district.

As the Commissioners are aware, thiolates are important components in products ranging from wire coverings, flooring, and in automobiles. The Chronic Hazard Advisory Panel's review of thiolates could set a precedent for the use of the product outside of children's toys, and I want to ensure the science that is used is transparent, properly peer-reviewed, and publicly available.

Chairman Tenenbaum, OMB has described peer review as one of the important procedures used to ensure the quality of published information meets the standards of the scientific and technical community. To ensure the scientific integrity of the document, the draft report should be released for public comment before it goes to peer review, stakeholder participation should be encouraged, and the peer reviewer should be provided with all the data and studies provided

to the CHAP.

Can you ensure us that the peer review of the CHAP's draft report will be conducted in accordance with current OMB guidelines for peer review of highly influential scientific assessments, with particular attention to the need for transparency and public participation?

I think this should probably be a fairly quick answer.

Ms. Tenenbaum. The Chronic Hazard Advisory Panel is continuing its work. We keep an arm's-length relationship with that panel because they operate independently. I would like to talk with our Office of General Counsel to see how they are proceeding in terms of the peer review and write you a letter and get back with you.

Mr. Kinzinger. That would be great. I would love to hear back. Because I think obviously to have that as an open and transparent process for something so big and so important is essential. We will stay on top of that, and I appreciate your responding to that, too.

[The information follows:]

\*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

Mr. Kinzinger. Do you believe that the CHAP should review all relevant data, including the most recent best available peer-reviewed scientific studies?

Ms. Tenenbaum. I certainly do.

Mr. Kinzinger. What procedures have you put in place to ensure that the CHAP and the Commission are weighing all relevant data and the best available science?

Ms. Tenenbaum. Again, the Chronic Hazard Advisory Panel was mandated under CPSA, and we created it to look at thiolates, the three that were temporarily banned and other thiolates if they so find that others should be in the report. We are awaiting their report. The commissioners do not interact with the CHAP because it has to be an independent body, but staff has been there to make sure they follow appropriate procedures.

If you have questions, if you will just submit them to us, we will write you and give you the full detail on how the CHAP has operated.

Mr. Kinzinger. You all specifically, though, comply with OMB's peer-review process and everything like that, right?

Ms. Tenenbaum. The peer-review process was vetted through the Office of General Counsel, and they were advising the CHAP on how to proceed with that.

Mr. Kinzinger. Can you assure me before the Commission issues its final rules under section 108 that you will publish a proposed rule for comment first?

Ms. Tenenbaum. I will have to get back with you on that. I don't

know that that is the procedure that we will follow. We will receive the report and then -- but we will answer your questions fully on the procedure.

[The information follows:]

\*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

Mr. Kinzinger. But prior to that what would be your concerns with publishing a proposed rule for comment?

Ms. Tenenbaum. Well, I want to first make sure that the CHAP operates independently and that it has no undue influence by any of the commissioners and that it makes its best scientific findings. And then we will also, in the spirit of transparency, which we operate at the Commission, we will follow what the advice is of counsel on how to proceed.

Mr. Kinzinger. We look forward to staying in touch with you.

Ms. Tenenbaum. We will certainly answer your questions in written form, too, so that you will have these.

Mr. Kinzinger. Ms. Nord.

Ms. Nord. Thank you.

In responding to the question about a feverish regulatory pace compared to what we were doing before, I just would like to draw the committee's attention to the information in Commissioner Adler's statement about all the accomplishments of the agency from 1972 through the 30 years following and how big an impact this agency has made. So I don't think that we were acting at a snail's pace.

With respect to the crib standard, first of all, I supported the crib standard. All of us did. In fact, I initiated when I was the acting chairman the AMPR that got the thing rolling. What I am concerned about is the manner in which we implemented the standard, and I think it flows directly from the fact that we didn't do the hard work

up front.

Just to give you a flavor of this, the staff came up with an effective date. The staff in their Reg Flex analysis said that they didn't anticipate that small retailers would be impacted. The retailers had worked out a deal with manufacturers for a retrofit kit. We did not even approve the use of that retrofit kit until about a month before the rule goes into effect. Another group comes in and says, oh, we can't meet the effective date; can we have longer time? We give them 2 years. Another group comes in 2 weeks before the effective date and says, we can't make this date. We give them another year.

It was just a very sloppy rollout of a rule. And that is of concern.

Mr. Kinzinger. Thank you.

Thank you, Madam Chair.

Mrs. Bono Mack. Thank you, Mr. Kinzinger.

Mr. Sarbanes, you are recognized for 5 minutes.

Mr. Sarbanes. Thank you. Thank you, Madam Chair.

Thank you, Chairman Tenenbaum and Commissioners, for being with us this morning.

There is a staggering number of products, obviously, that we import, and in certain categories of percentages it is equally staggering when you think of it. Apparently, as I understand it, 99 percent of toys, 96 percent of apparel, 95 percent of fireworks, 78 percent of electrical products sold in the U.S. are manufactured someplace else. So the task, the charge, the responsibility of the

Commission to kind of keep its eyes open as these imports are coming in to make sure that the standards we would like to see are being applied, obviously, that is an important part of what the Commission does.

And you have taken steps, I know, to improve that oversight and monitoring. In fact, as a result of the CPSIA and the increased authorization levels for the Consumer Protection Safety Commission, I think you have now increased the number of employees that are posted at U.S. ports of entry to do this kind of oversight, and monitoring has gone from zero, which, of course, was completely ineffectual, to now 20. The U.S. has more than 300 ports of entry.

So the question is, if you have got, as I understand, employees posted in only about 15 of them, how is this going? From what I have heard, you have made great strides in the oversight, but I would be interested, Chairman Tenenbaum, in your perspective on the effort and is having the kind of coverage you now have producing a kind of deterrent effect with respect to the other ports of entry so that you know that the things coming in meet the standards. What other things can we do on that front?

Ms. Tenenbaum. Well, thank you, Congressman.

You are right. We have 20 members of our Ports Surveillance Team. And we have over 300 ports of entry. That is why it is very important that we have the methodology to target succinctly products that we think are violative coming into the ports and also that we have a very strong relationship with Customs and Border Patrol.

CBP allowed us to be the first agency to have a memorandum of agreement. We now have live streaming data through their CTAC office, their Center, so that we know when shipments are coming into the port and what are in those containers before they reach the port.

With the pilot project that we have implemented, Risk Analysis Methodology, we are able to then look at repeat offenders, also products that are highly suspect or those that we monitor closely like electronics and fireworks, and we are able to with pretty great accuracy target those shipments before they are even into port and then interdict them and not let them be unloaded.

Mr. Sarbanes. Would your experience -- if you caught something at one of the 15 ports that you are monitoring, I guess what I am hearing is you are then in a position to be alerted to those kinds of imports coming into many other ports of entry and take action.

Ms. Tenenbaum. We are. We know repeat offenders. We also know if there is a company that doesn't have a record with us.

We are hoping to establish -- and we have already created this Importer Self-Assessment - Product Safety Program with CBP where we know those that are consistently in compliance, and we don't hold those shipments up. And we can let them go through the port and unload quickly. But those where you have suspect cargo or cargo that is repeatedly in noncompliance or repeat offenders, we are able to target them.

The most-stopped products are children's products. The largest categories are lead, continuing to see lead violations, flammability,

and small parts that pose a choking hazard. So we are able to, with our RAM and working with CBP, be highly effective.

Mr. Sarbanes. And over time is there a plan -- again, I don't understand your methodology, because I haven't studied it -- but would the ports of entry that you are covering with your personnel, would you rotate that? Or the ones that have been chosen ones that you want to continue to monitor always because of the nature of them? How does that work?

Ms. Tenenbaum. Well, with 20 people, we also rely on our field investigators. So we have 90 field investigators in 38 States. If we know a shipment is coming in, we can move those investigators to that port to work with CBP and the person already stationed there. So we can move people around.

And I think that is why it is so important that we get this data before the ships enter the port where this live streaming data that CTAC provides us, we know the contents of the container before it reaches us.

Mr. Sarbanes. Thank you.

I yield back.

Mrs. Bono Mack. Thank you very much.

The chair recognizes Mr. Pompeo for 5 minutes.

Mr. Pompeo. Thank you, Madam Chairman.

I am not surprised.

Now I will talk about the database a little bit. I still contend that it is happy hunting ground for the plaintiffs bar, in direct

contrast to what Ms. Tenenbaum said. She said in her written statement: I think the saferproducts.gov has gained wide approval and acceptance.

I know there is a lawsuit. Ms. Nord, do you agree with that statement, that it has gained wide approval and acceptance?

Ms. Nord. I don't. I have heard a number of concerns expressed that indicate that there is not wide approval and acceptance out there.

With respect to plaintiffs using the database, when this thing rolled out and I was given a briefing on it by a consultant, the consultant went into the database and very randomly pulled up a record. The consumer was listed as a law firm. And so that has since intrigued me. And just 2 weeks ago I asked our staff if they had any idea of how many of those so-called consumers were actually law firms, and they said they had no way of knowing, but they assumed quite a few.

When the chairman says 97 percent of the users of the database or submitters of the database are consumers, you should understand that consumer is defined so broadly to mean any living person. And you don't have to have a relationship with the product or any interaction with the product in order to file a complaint as a consumer.

Mr. Pompeo. I appreciate that.

Ms. Northup, there is a lawsuit filed by some businesses. Has the court yet ruled on whether the agency has misinterpreted the law? I certainly think that it did. But has the court ruled?

Ms. Northup. We don't have that information yet. As I said earlier, when we wrote the rule I wrote extensively at that time that

I thought that we were writing the rule in a way that we would be vulnerable to a lawsuit. The claims made in the lawsuit were litigated publicly, and the claims they made were the very ones that we made in our argument that I think will stand. I agree with them.

If we do lose that, it will mean that our rule will have to be rewritten. It means our software will have to be redesigned. It means we could be vulnerable to a class action lawsuit by other people that feel that it has been arbitrary and capricious was the idea what I wrote extensively about. And so this is why paying attention to the law and not rushing to regulate and glossing over facts is important.

Another fact that is important not to gloss over is that when you say 88 percent of the items have something in the model or serial number, you should know that in many cases it is not the model or serial number. And we know that. And it is important that we give that information honestly to you. It might say: yellow high chair. And so, of course, if good information is good for consumers, bad information is really harmful to consumers.

Mr. Pompeo. I appreciate you clarifying some of the responses Ms. Tenenbaum gave.

Ms. Tenenbaum, yes or no, if the Federal court rules against the CPSC in the pending database lawsuit, will the agency pledge to immediately take down the database?

Ms. Tenenbaum. Will you repeat your question?

Mr. Pompeo. Yes, ma'am, I certainly will.

Yes or no, if the Federal court rules against CPSC in the pending

database lawsuit, will the agency pledge to immediately take down the database?

Ms. Tenenbaum. No. That is not the scope of that lawsuit.

Mr. Pompeo. I appreciate the answer.

Ms. Tenenbaum. The lawsuit is under seal, and we cannot talk about it.

Mr. Pompeo. I understand. So your answer is no.

When we passed H.R. 2715 last year, it gave the CPSC authority to take steps to reduce the cost of complying with CPSIA and particularly the cost of third-party testing. I am very concerned about it. Why has the agency not done anything about that yet?

Ms. Tenenbaum. We have done something. In fact, under this Public Law 1228 we were required within 60 days to go out for comment, and we did. We went out for comment, we received those comments, and the staff is writing now the report, which we will receive any day now. So we have done that.

In terms of rule review, the executive orders ask us to look at any rule that has an impact of a hundred million dollars annually on the economy. That is one of the rules that we are going to look at in terms of rule review.

So we have followed what Congress passed.

And regarding the model numbers for the database, 73 percent have a numeric value. So 73 percent --

Mr. Pompeo. Is it an accurate numerical value?

Ms. Tenenbaum. Yes, I assume it is. If it is in there as

accurate. It doesn't say "yellow high chair." It gives the model number.

Mr. Pompeo. I appreciate that.

Ms. Nord, I hope you will encourage the Commission to do more under the authority to reduce the cost of third-party testing. Are there other things you all could be doing?

Ms. Nord. There are a number of things we could be doing. In fact, I submitted a whole list of about 40 items to the staff.

But I think the takeaway for you all should be that third-party testing is really, really expensive. So let's use that for the riskiest items. Let's have the most aggressive testing for the riskier items, and let's ease off for things that have less risk or where we know there is high compliance. We can adjust that under the statute as it exists now.

Mrs. Bono Mack. I hate to cut you off, but your time has expired, and we are trying to get in as many members and questions before we have a series of votes on the floor.

Just to let members know, it is my hope we can get everybody through. So if we try to stick to under the gavel even, that would be great.

The chair recognizes Mr. McKinley for 5 minutes.

Mr. McKinley. Thank you, Madam Chairman.

I think it is always broad looking at the consumer product safety. I am not always sure what all that incorporates. It is consumer product safety. Do those little compact light bulbs, do they fit under your

purview?

Ms. Tenenbaum. Are you talking about button batteries or the light bulbs?

Mr. McKinley. The compact fluorescent units, CFBs.

Ms. Tenenbaum. Yes.

Mr. McKinley. They have mercury in them. And we know that a typical household with 30 of those is the equivalent of a ton of coal being introduced inside your house. Same amount of mercury in a ton of coal as in 30 light bulbs. I just wonder, are people actually following the rules? They are taking them in a little bag and taking it up to a special disposal? Or how many of them are just throwing them in the trash can and they go to the landfill?

Ms. Tenenbaum. I don't have that data, but I share your concern. Commissioner Adler, did you have anything to add?

Mr. Adler. No, other than to say those definitely are our jurisdiction. Our jurisdiction is incredibly broad, as the chairman noted.

Mr. McKinley. I don't know where you are going with it, because I don't think anyone is adhering to the guidelines. And the fact that we have such a fear right now of the mercury poisoning from burning coal but yet we just put 30 light bulbs in our house that bring in as much mercury as -- I hope you will take it more seriously about the direction.

But let me add a couple of other things, if I could.

The lead in Chinese marbles, I understand that not too long ago

there were some lead -- lead was detected in some children's marbles, and those marbles obviously were rejected, appropriately. But the United States manufacturers who had never had marble detected in there now are going through some very draconian testing to see that they stay in compliance, but they have never not been in compliance. So they are being punished because of what China was doing.

Ms. Tenenbaum. The law, as passed by Congress, requires all children's products to undergo third-party testing to make sure that the lead content is below 100 parts per million, and that was set by statute as well. So domestic and imported --

Mr. McKinley. Do you determine the frequency of testing to make sure? Surely you are not going to test every marble.

Ms. Tenenbaum. No. You have to test a sample initially. You pull a sample and test that. If you have a material change in the manufacturing --

Mr. McKinley. Who pays for that test when you come into a plant?

Ms. Tenenbaum. The manufacturer has to pay for it.

Mr. McKinley. So here is a manufacturer that has never had a violation, but maybe once a quarter they have had someone come in and do some testing. But now we are up to less than once a month they are coming in, and it is costing you \$3,000-some for every one of those series of tests. And they have done nothing wrong. There has been no grounds for this other than the fact that China was trying to -- once again, like they did with drywall, now they have done it with marble, that has caused this company now to spend thousands of dollars. Is

that reasonable?

Ms. Tenenbaum. Well, under the law that Congress passed, all children's products must be third-party tested initially, if there is a material change, and periodically. And that is the law.

Mr. McKinley. Well, there is no change on this.

So let me go to the next, the indoor air quality. Would indoor air quality be a product safety -- the fact that we have carpet formaldehyde, resins, cleaning agents, other things that -- we seem to be so concerned with -- and rightfully so -- the health of our children and adults, and we put them in an indoor air quality that has -- 90 percent of your time you are spending indoors, and they are exposed to all these elements. And we say, but they get asthma when they go outside. They get asthma when they go near a coal-fired powerhouse. But they spend 90 percent of their time in a home.

Ms. Tenenbaum. That is the jurisdiction of the EPA, just as the disposal of the mercury containing lights.

Mr. McKinley. You just kind of wash your hands.

Ms. Tenenbaum. No, I don't. I respect the jurisdiction of other agencies.

Mr. McKinley. Then you support that? Of having -- you have some standard. You say it falls under your purview, but yet the disposal of it is not. You give that to the EPA.

Ms. Tenenbaum. The law gives it to the EPA.

Mr. McKinley. Would you change the law?

Ms. Tenenbaum. Well, we work in partnerships with many agencies.

Mr. McKinley. Would you change the law so that it stays under you so you can have control over it? Because it sounds like you --

Ms. Tenenbaum. No, you have to change the law. I am an executive branch. I follow the law.

Mr. McKinley. Would you change the law? Because you seem like you say I am ready to get rid of it.

Ms. Tenenbaum. No, that is not at all what I said. I was just trying to clarify the jurisdiction of EPA and our agency.

Mr. McKinley. Thank you.

I yield back my time.

Mrs. Bono Mack. The gentleman, Mr. Lance, you are recognized.

Mr. Lance. Thank you very much, Madam Chair; and Chairman Tenenbaum and distinguished members of the Commission, thank you for your service to the Nation.

I am interested in how we can explore ways to increase efficiency and decrease costs and reduce red tape burdens without compromising safety. Commissioner Nord, thank you for the suggestions that you have made regarding this, particularly for small-volume manufacturers.

Can you speak, Commissioner Nord, to the timeframe in which we might implement the changes you have suggested, considering the fact that Commissioner Northup may be leaving the Commission?

Ms. Nord. Yes. I am so sorry to see Commissioner Northup leave our body, because she has made such a contribution.

Mr. Lance. I certainly agree with that.

Ms. Nord. When we were considering the testing and certification

rule, the rule that was put out for comment had a low-volume exemption from testing in it. That was removed from what came up to the agency for a vote. I offered an amendment to put that back in. That amendment failed on a 3-2 vote. At that point, we had another commissioner.

And so certainly a low-volume exemption would certainly be a way to get at this. I have been talking with a number of people who have said we have just stopped doing low-volume manufacturing because we can't afford the testing costs. I was out in southern California talking to a clothing manufacturer, and they were very explicit about it.

There are a number of other things that we can do to help companies that are struggling with how to comply with this rule. It is a very broad -- overly broad, in my view -- rule that imposes costs without real benefits. So I hope that the agency will reconsider its position.

Mr. Lance. Thank you. I would urge the agency to do so. I would be happy to work with all members of the Commission on this issue, because I think it is important moving forward.

On recreational vehicles, off-highway vehicles, would you please comment, Commissioner Nord or Commissioner Northup, on the fact that if the CPSC is going to include a pass/fail test as the main criteria to evaluate the stability of these vehicles, this might cause some challenges. Shouldn't a test that is meant to pass or fail a vehicle be repeatable so that one can be assured that the same result is achieved?

Ms. Nord. Of course, any test that we would mandate, regardless of the product, has got to be repeatable. You can't put in place a testing method that nobody can predict the results from. So of course we must have repeatable tests.

Mr. Lance. Thank you.

Commissioner Northup, do you have an opinion on that as well?

Ms. Northup. No. I have not participated in the ATV because I have a conflict of interest with my husband's company.

Mr. Lance. Thank you.

Madam Chair, I will cede the minute and a half I have left to colleagues.

Mrs. Bono Mack. We thank you very much and recognize Mr. Harper for 5 minutes.

Mr. Harper. Thank you, Madam Chair, and thank you, Chairman, each of the commissioners, thank you for your time, your service.

Chairman Tenenbaum, if I may ask you a few questions, I was certainly pleased to read your op-ed in The Hill last week where you indicated that you were taking a more collaborative approach with the window covering industry regarding cord safety. I am further pleased that you have spent the time visiting manufacturing facilities to better understand the difficulties in eliminating cords for all products. Can you tell me, without revealing any proprietary information, about these visits and what you have learned?

Ms. Tenenbaum. Thank you.

It was my pleasure to travel across the United States and meet

with the three major manufacturers as well as the major retailers of window coverings. I have expressed concern about the strangulation hazard for children publicly, and the Window Covering Manufacturers Association and other stakeholders are in the process of rewriting a voluntary standard, which we will have in September.

But what I have learned is that there is concern from the industry about the strangulation hazard. There are many new technologies which would remove completely this hazard. However, the industry also is -- they are willing to work with us. However, they don't want to see a standard that completely does away with the cord. They can make the cord where it is not accessible to children and there are all kinds of technology that they share with us, but they don't want to eliminate having a cord entirely.

However, I am very optimistic, meeting with retailers and with the association, that everyone wants to do a massive education campaign. So that if you are buying shades and you have children at home, then you would go cordless. You would go cordless or have no shades. You could have shutters or draperies. But you remove the hazard if there are children in the home. So I am very encouraged by my conversations with them.

Mr. Harper. How are you proposing that we move forward from here?

Ms. Tenenbaum. In September, we will receive the standard from the Window Covering Manufacturers Association. They will have voted on it. And we will continue to work with them to see how we can more and more eliminate the hazard.

We also want to work with major retailers so they can train employees at the point of sale, so that there are kiosks online that have baby registries that can also bring to the attention of people that if you have a child in the home you need to go cordless. But see if we can't address some of the fatalities and reduce the number of fatalities by an educational program that was robust.

Mr. Harper. I am certainly a big supporter of cooperation between government and industry, particularly when it comes to some of these safety issues and how best to achieve the safest product possible.

You also discussed in your op-ed your efforts to better educate the consumer. With this in mind, can you tell me about your plans for the rest of this year and next with the Window Covering Safety Council and your efforts to educate new parents about potential hazards to children associated with window covering?

Ms. Tenenbaum. We are in the process of working with major retailers and also associations to draft that plan. So that is in process, Congressman. But we are committed. I am personally committed, because I think we can reduce the number of fatalities with a robust education program and collaboration with the industry.

Mr. Harper. Does the Commission plan on utilizing any of its funds towards this education effort?

Ms. Tenenbaum. Well, we have limited funds. Unlike the pool safety campaign, where Congress gave us a direct appropriation, we don't have one for this. But it would be a great help to us to have

one. But I think working with industry and with the retailers we can accomplish a lot without extra funding.

Mr. Harper. Are promoting education and raising awareness some of the best tools that you have in your arsenal?

Ms. Tenenbaum. No question about it. That is how social media fits in, as well as working with people, so that we can all have a strong education campaign on any hazard.

Mr. Harper. Thank each of you for being here, and I yield back, Madam Chair.

Mrs. Bono Mack. Thank you very much.

The chair recognizes Mr. Olson for 5 minutes.

Mr. Olson. I thank the Chair. I understand that votes have been called, so my comments will be brief.

But I want to thank the witnesses. Thanks for coming. Thanks for your expertise.

Chairwoman Tenenbaum, nice to see you again outside of a big storage facility outside the Port of Houston. Nice and cool here as opposed to the heat we had, even though it was the fall. Good to see you again.

As my nameplate says, I am from Texas. As you all know, Texans love the outdoors. They like to go tubing on the Hill Country rivers. They like to fishing on our lakes, the Gulf of Mexico. They like to go out there and do some hunting. Or just look at the bright stars of the Texas night sky. And one way to get access to all these great things is with ROVs. So I am very concerned when I hear that the Federal

Government may be threatening the quality of life in my home State.

And so my question is for you, Commissioner Tenenbaum. I would like follow up with the line of questions by my colleague from New Jersey about the pass/fail stability tests. I understand CPSC staff supports adoption of a pass/fail stability based on the CPSC methodology. In a recent meeting, however, CPSC revealed that it has conducted no repeatability testing of its methodology or results. Do you agree to it being appropriate to base a mandatory pass or fail standard on the sample size of a single test -- one test?

Ms. Tenenbaum. Well, let me premise this by saying I will need to get back with you on what the staff is talking to the Recreational Off-Highway Vehicle Association and manufacturers.

One of the things that has been brought to our attention is the number of deaths and injuries in 7 years, between 2003 and 2010. We had 165 deaths and 329 serious injuries from ROVAs is what we call, or ROVs. And 70 percent involve lateral stability turnover.

So we are looking and working with industry to develop a stronger lateral stability test. We have issues of under steerage and occupant protection. I do hope that the industry will work with us to develop a standard. My staff met with the ROVA representatives on July 19, and we are saying that we need to upgrade that standard to prevent the turnovers. And we could go to a mandatory standard, but it is always better if we can agree with industry and come up with a strong voluntary standard.

Mr. Olson. Yes, ma'am. I am sorry I cut you off. I am running out of time here.

Commissioner Nord, any comments on that line of questioning, ma'am?

Ms. Nord. Well, lateral stability has been just a really perplexing problem not only with ROVs but also with ATVs, and it has been something that we have been struggling with for years. So if we are going to be putting forward a standard that addresses lateral stability, we have got to make sure we have get it right, got to make sure we solve the problem, and we have got to make sure that we have a test that works and is repeatable. And I think that is where we are working forward.

I fully agree with my chairman when she says that it is best to try to work cooperatively with industry to come up with something in a voluntary mode, and I hope that we can do that.

Mr. Olson. In working cooperatively with industry, are we allowing the industry representatives to observe the testing to have some firsthand knowledge of what you are doing there so they can respond right on the scene?

Ms. Tenenbaum. Well, collaboratively means that we share information. They have shared their stability tests with us. They came in and shared it with us, and the staff had some issues with it. We need to be very open and collaborative in sharing these tests and also realize that the industry should realize and say, yes, we have a lot of lateral turnovers and we want to address it voluntarily.

Mr. Olson. Sharing is a two-way street. Industry shares with you. You share with them.

I yield back the balance of my time.

Mrs. Bono Mack. I thank the gentleman very much.

As you all have heard, our votes have been called. We are down to the wire. So to begin to sum things up, I ask unanimous consent that a letter from the National Association of Manufacturers be included in the record of the hearing. It has been previously shared with Democrat staff.

Without objection, so ordered.

[The information follows:]

\*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

Mrs. Bono Mack. And, again, I would like to thank all of the commissioners very much for your time today. I think you have shed a lot of light on some very important consumer product safety issues. I know that our committee looks forward to an ongoing and productive dialogue.

I would like to thank my colleagues, especially Mr. Butterfield and Ms. Schakowsky, for working together in a bipartisan fashion to pass H.R. 2715 last year. We enacted a very good bill that saved a lot of American jobs while providing important protections to U.S. consumers. We call that a win-win around here.

So I will be asking questions for you to submit back to us. Specifically, Ms. Northup, I had one all teed up for you. I will ask you in writing, if you could submit in return, simply to give us your conclusions in writing about your service. And thank you for your service as you leave the Commission. We are going to ask a big softball question for you. Say all you want. How would you improve the world of consumer product safety? So we look forward to that in my writing.

[The information follows:]

\*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

Mrs. Bono Mack. I remind members they have 10 business days to submit questions for the record. I ask the witnesses to please respond promptly to any questions that you receive.

I wish you all a very wonderful August and safe travels.

The hearing now is adjourned.

[Whereupon, at 11:16 a.m., the subcommittee was adjourned.]