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1 {York Stenographic Services, Inc.}

2 HIF097.170

3 HEARING ON ``H.R. _____, LEGISLATION TO REVISE THE CONSUMER

4 PRODUCT SAFETY IMPROVEMENT ACT''

5 THURSDAY, APRIL 7, 2011

6 House of Representatives,

7 Subcommittee on Commerce, Manufacturing, and Trade

8 Committee on Energy and Commerce

9 Washington, D.C.

10 The Subcommittee met, pursuant to call, at 10:05 a.m.,
11 in Room 2123 of the Rayburn House Office Building, Hon. Mary
12 Bono Mack [Chairman of the Subcommittee] presiding.

13 Members present: Representatives Bono Mack, Blackburn,
14 Stearns, Bass, Harper, Cassidy, Olson, McKinley, Pompeo,
15 Kinzinger, Barton, Butterfield, Dingell, Towns, Rush,
16 Schakowsky, and Waxman (ex officio).

17 Staff present: Gib Mullan, Chief Counsel; Shannon
18 Weinberg, Counsel; Paul Cancienne, Policy Coordinator; Brian

19 McCullough, Senior Professional Staff Member; and Alex
20 Yergin, Legislative Clerk.

|

21 Mrs. {Bono Mack.} Good morning. It is with a sense of
22 purpose as well as a sense of urgency that we gather here
23 today to consider some sensible ways to make the Consumer
24 Product Safety Improvement Act, also known as CPSIA, work
25 better for all Americans. There is bipartisan agreement that
26 CPSIA, while well-intentioned, has created a number of
27 serious problems for manufacturers and retailers. Today, we
28 will examine some ways to make a good law even better.

29 The chair will now recognize herself for an opening
30 statement. You can start me back at 5. Thank you.

31 In our first hearing of the year, we heard about many of
32 the problems associated with passage of CPSIA. Today, we
33 will focus on a preliminary discussion draft, which offers a
34 range of possible solutions.

35 One major area for reform relates to the regulation of
36 children's products. In this area, we have the benefit of
37 five unanimous recommendations from the CPSC. We also have
38 draft legislation from last year and other CPSC suggestions
39 in response.

40 The discussion draft aims to reduce the regulatory
41 burdens of the law without undercutting consumer protection.
42 A fundamental premise is that the Commission can actually
43 protect consumers far better when it is allowed to set

44 priorities and regulate based on risk. Where possible, we
45 should spare the Commission from having to make time-
46 consuming, case-by-case determinations, and let it spend more
47 time on its bigger problems. This is especially true in our
48 current budget climate where we have to make the best use of
49 agency resources.

50 We need to strike the right balance and that is seldom
51 easy. The discussion draft points to areas where we must
52 decide important policy questions. I hope our witnesses
53 today will help us to make wise choices by shedding light on
54 these issues.

55 In Section 1, for example, the draft leaves open the age
56 for defining the term ``children's product.'' At our last
57 hearing, my friend and colleague Mr. Dingell, the chairman
58 emeritus of the full committee, reminded us that a lot of the
59 problems with CPSIA originated in the Senate, but this is one
60 that did not. The Senate-passed bill applied the lead
61 content limits to products for children ages 7 and under.
62 That age would have kept the focus on children who are at
63 greater risk when it comes to lead, because very young
64 children, according to the CPSC, are much more likely to put
65 things in their mouth. The House set the top age at 12 years
66 old because of the so-called ``common toy box'' concern. But
67 by pushing the age to 12, we ended up regulating a huge

68 number of products that are never going to be mouthed or even
69 handled by young children. These include not only the well-
70 known examples of ATV's, bicycles, and books, but also band
71 instruments, scientific instruments, and clothes for older
72 children, among other things.

73 Another key area is third-party testing. Again, the
74 discussion draft tries to strike an appropriate balance. It
75 preserves third-party testing for lead paint, cribs,
76 pacifiers, small parts, and children's metal jewelry, all
77 priorities that Congress explicitly set in CPSIA. For other
78 standards, however, it gives the Commission discretion to
79 decide what standards should require third-party testing.
80 And it gives the Commission new authority and flexibility to
81 require testing for only some portions of a standard or only
82 for certain classes of products. It also asks the Commission
83 to make sure that the benefits of third-party testing justify
84 the costs before making it mandatory.

85 Another major area of reform is the CPSC's public
86 database, which just recently began to post complaints. The
87 discussion draft addresses some of the more significant
88 problems that were brought to light in our earlier hearing.
89 First, the draft spells out in greater detail who can submit
90 reports of harm for the public portion of the database.
91 Among consumers, only those who have suffered harm or a risk

92 of harm--as well as members of their family, legal
93 representatives, or any person authorized by the family--
94 could make public reports.

95 Second, the draft sets forth a process for improving
96 product identification. The database cannot help consumers
97 if they don't know which products have problems. The draft
98 enlists manufacturers to help consumers provide better
99 descriptions.

100 Third, the draft gives CPSC more options for solving
101 claims of material inaccuracy. The fundamental premise here
102 is that the database may do more harm than good if it
103 misleads consumers based on inaccurate information.

104 Finally, the draft would strengthen the Commission's
105 authority to investigate complaints. While some consumers
106 may benefit from the ability to see safety-related
107 complaints, a lot more consumers will benefit if the
108 Commission can investigate complaints more quickly.

109 Congress must move quickly, too, because the clock is
110 ticking. Unless we act soon, the 100 parts-per-million lead
111 limit will take effect retroactively in August, and once
112 again, millions of dollars worth of products will become
113 illegal to sell, donate, or export.

114 We have an opportunity and an obligation to make CPSIA a
115 law that benefits all Americans. And now I would like to

116 recognize the ranking member of the full committee, Mr.
117 Waxman, for his 5-minute opening statement.

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

119 ***** COMMITTEE INSERT *****

|
120 [The information follows:]

121 ***** INSERT 12 *****

|
122 Mr. {Waxman.} Chairman Bono, thank you very much for
123 recognizing me to give this opening statement and Mr.
124 Butterfield to allow me to go ahead of him.

125 I share your belief that some changes are needed to the
126 toy bill that we passed in 2008. That legislation was an
127 historic step forward for children's safety, but like most
128 legislation, it was not perfect. It has had some unintended
129 consequences and needs refinement. But the discussion draft
130 before us, which is the subject of today's hearing, takes a
131 wrecking ball to the law and would endanger young children.
132 As the chair of the Consumer Products Safety Commission wrote
133 us today, this draft would turn back the clock to an era when
134 harmful products made their way into the stream of commerce
135 and into the hands of innocent children.

136 In 2008 our committee led the way in passing a strong
137 toy safety law. We held hearings at which we learned about
138 children who died or were severely injured by lead in toys
139 and small charms. We learned that other children suffered
140 catastrophic internal injuries from magnetic toys that ripped
141 through their intestines. And we witnessed record recalls
142 and loss of confidence in the safety of children's products.
143 Despite strong bipartisan support for the new law,
144 implementation has not always been smooth. The ATV industry,

145 the bicycle industry, the publishing industry, and makers of
146 handcrafted toys have all raised valid compliance issues.

147 I know it is possible to address these concerns without
148 gutting the law. When I was chairman of the committee in the
149 last Congress, we initiated a stakeholders' process to
150 produce the draft bill that gave targeted relief to industry
151 while maintaining the most important health and safety
152 protections in the new law. That draft legislation was
153 supported by both industry and consumer groups. Although the
154 Republican staff were consulted at every step in the process,
155 Ranking Member Barton decided he would not support the bill
156 and we never acted on it.

157 The discussion draft before us is a very different
158 document. Democrats, consumer groups, and health experts
159 were not consulted. The result is a one-sided proposal that
160 provides relief to industry but sacrifices children's health
161 and safety. According to the Consumer Federation of America
162 and Consumers Union, this proposal undermines safety testing
163 for children's products, undermines lead protections,
164 undermines the effectiveness of the new crib safety standard,
165 and undermines the new public safety product hazard database.

166 According to Chairman Tenenbaum and Commissioners Adler
167 and Moore, this proposal would be a reversal of several of
168 the core safety provisions in the law. Not only are they

169 critical of the bill, but let me just state quite clearly,
170 there is no chance that a bill this extreme could ever become
171 law. It would not survive in the Senate, and if it did, it
172 would be vetoed by the President. The result would be a lost
173 opportunity. Many of the witnesses who will testify today
174 have identified legitimate concerns but they will receive no
175 relief if all we produce is a more partisan gridlock kind of
176 legislation.

177 If we work together, I am confident that we can find a
178 way to address most of industry's concerns without
179 jeopardizing the important safety advances we made in the toy
180 safety law. And I had a discussion with the chairman
181 yesterday. I think there is an opportunity for us to work
182 together and produce a product that will be a consensus
183 product. I hope that after this hearing is over we can start
184 fresh and we can produce a genuine bipartisan reform we call
185 can support.

186 Madam Chair, I would like to yield the rest of my time
187 and an additional 1 minute without any objection to Mr. Rush,
188 who chaired this subcommittee in the last Congress and I
189 think has an important statement to make.

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

191 ***** COMMITTEE INSERT *****

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192 Mrs. {Bono Mack.} Without objection, the gentleman is
193 recognized.

194 Mr. {Rush.} Thank you, Madam Chair, and I want to thank
195 the ranking member for the full committee for yielding this
196 time to me.

197 Madam Chair, consumer protection is one of the core
198 functions of this subcommittee, and I want to commend you for
199 convening this important hearing. However, I am surprised to
200 see that instead of talking about improving safety for our
201 children, making our new law's implementation possible, we
202 are focusing on undoing one of the legislative achievements
203 of this subcommittee historically. Demolition and
204 destruction, not creative solution seems to be the policy
205 agenda for our new Republican majority. I am still waiting
206 to see when we will talk about real policy solutions,
207 including the policy implementation issues as it relates to
208 this bill for the American people.

209 Regulations are not a problem. It is the constant
210 changes or the risk of changes that are difficult to manage
211 for our manufacturers, our consumers, and for the American
212 public. We need to agree once and for all and implement the
213 laws that we have developed. We need regulatory
214 predictability. There is a similar Product Safety

215 Improvement Act that the Republicans are attempting to revise
216 today represents demolishing the most comprehensive overhaul
217 of U.S. consumer protection oversight in a generation, one
218 that established policies which repaired our Nation's broken
219 product safety system.

220 And I must say, Madam Chairman, that I am very proud of
221 what we did with bipartisan input, with input from all the
222 stakeholders despite the political differences that we all
223 shared. We were able to reinvigorate the CPSC with
224 resources. We added additional commissioners. We authorized
225 a shiny new testing lab. And Madam Chair, may I ask for an
226 additional 30 seconds?

227 Mrs. {Bono Mack.} The clock--

228 Mr. {Rush.} All right. Well, Madam Chair, I just want
229 to conclude by saying that this hearing could be better spent
230 if we were really trying to--maybe we could solve some of the
231 problems--

232 Mrs. {Bono Mack.} All right--

233 Mr. {Rush.} --that we have implementing the bill.

234 Thank you.

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

236 ***** COMMITTEE INSERT *****

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237 Mrs. {Bono Mack.} All right. So the gentleman yields
238 back. And now--

239 Mr. {Rush.} I yield back the time I have.

240 Mrs. {Bono Mack.} Chairman Upton, in accordance with
241 the committee rules, yielded me his 5 minutes, and as his
242 designee, I would like to recognize the chairman emeritus of
243 the full committee, Mr. Barton, for 2-1/2 minutes.

244 Mr. {Barton.} Well, Madam Chairman, I really can't do
245 it in 2-1/2 minutes. So you are going to have to give me at
246 least 3 minutes or just go to somebody else.

247 Mrs. {Bono Mack.} Well, we were rather lenient with the
248 other side, so that is not a problem. Go ahead.

249 Mrs. {Blackburn.} Madam Chairman, I will yield the
250 chairman emeritus my time.

251 Mrs. {Bono Mack.} So the chairman emeritus is
252 recognized for 3-1/2 minutes.

253 Mr. {Barton.} There is an old joke about somebody
254 trying to get somebody to vote for him and the guy says I
255 would never vote for you if you were running unopposed. And
256 the man goes back and says well, how do we put that voter
257 down? He says put him down undecided. That is kind of what
258 we need to put Mr. Waxman down after what he said.

259 I participated as the ranking member when this bill was

260 passed. I participated in the last Congress when there was
261 an attempt to amend it. When Chairman Waxman said that the
262 Republicans and the staff were consulted, that is a true
263 statement, but we weren't listened to. In the last Congress,
264 Chairman Waxman and his allies were almost totally inflexible
265 in trying to come to some common ground on changes to the law
266 that was passed under Chairman Dingell's chairmanship back in
267 2008.

268 This discussion draft does not take a wrecking ball to
269 the law. It is a good-faith attempt to reconcile the law
270 that, in its current state, is literally unenforceable. We
271 have that in testimony from the Consumer Product Safety
272 Commission. They have basically--I wouldn't even use the
273 term basically--they have no flexibility at all. The
274 discussion draft that Chairwoman Bono Mack has crafted does
275 give flexibility. I think that is a good thing. It does
276 change some of the principles or modify some of the
277 principles from the law that was passed 2 years ago, but it
278 keeps the core of the law together and it does give the
279 Commission the flexibility and the industry that has to live
280 by it the ability to actually use a little common sense in
281 implementation. I think that is a good thing. I think this
282 discussion draft is a vehicle that can be a bipartisan
283 compromise. But a compromise means both sides have to come

284 together. And Chairman Waxman's statement indicates to me
285 that it is the bill or nothing. And I don't think that is a
286 position to take when we are trying to do something that
287 should be everybody's best intentions to actually protect the
288 children of America, but also gives those that provide the
289 products for our children the ability to provide them in a
290 safe and effective fashion.

291 I am the father of a 5-year-old and the grandfather of
292 five grandchildren that are under the ages of 13. There is
293 no way in this world that I want to do anything that would
294 put my 5-year-old child or my grandchildren in harm's way.
295 So Madam Chairwoman, I think the discussion draft is a good
296 starting point. It is a starting point. It is not an end
297 point. And if Mr. Waxman and Mr. Rush and our friends on the
298 minority side wish to work with us, we can come up with
299 something that improves the bill that is now the law and
300 gives the flexibility that is necessary.

301 So with that, I want to thank the Chairwoman for giving
302 me some extra time and thank the vice-chairwoman, Ms.
303 Blackburn, for giving me some of her time. And I yield back.

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

305 ***** COMMITTEE INSERT *****

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306 Mrs. {Bono Mack.} I thank the gentleman for his
307 statement and yield 1 minute to Ms. Blackburn.

308 Mrs. {Blackburn.} Thank you, Madam Chairman. I am only
309 going to take about 30 seconds because there are several
310 individuals that would like to speak on this issue. I want
311 to thank the chairman for bringing forward a discussion draft
312 that will encourage us all to listen to the science and to
313 use some common sense. I am a mother. I am a grandmother.
314 I am an aunt. I am a sister. There is no way I would want
315 to have products in the marketplace that are going to be
316 harmful to children and grandchildren, no way at all. And I
317 think it is important that we listen to the science. I think
318 that it is important that we apply some common sense. I have
319 also listened to a lot of the crafters and the small
320 producers in my area and have had good discussions with them.
321 Also, Mr. Howell, when we get to you, I am going to want to
322 talk about this database that I think is seriously flawed.
323 And I thank the chairman and yield back.

324 [The prepared statement of Ms. Blackburn follows:]

325 ***** COMMITTEE INSERT *****

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326 Mrs. {Bono Mack.} I thank the gentlelady and recognize
327 the gentleman from Florida, Mr. Stearns, for 1 minute.

328 Mr. {Stearns.} Thank you, Madam Chairman. Let me echo
329 what the Emeritus Chairman Joe Barton said. I was a conferee
330 on this. We had lots of recommendations. We in fact
331 specifically recommended what the CPSC did in January 2010
332 when they reported back to Congress and they identified some
333 of the problems. There was no flexibility. And they
334 recommended solutions. And we had these recommendations
335 under Joe Barton's leadership to provide the CPSC with this
336 kind of flexibility they need to grant exclusions to the lead
337 limits but they didn't listen. So I think, Madam Chair, what
338 you are doing here is the Lord's work. We need to have the
339 flexibility. And we heard from Commissioner Northrup, who
340 was a former Member of Congress. She also bought this out.
341 And so I am pleased to be here and to support you and I
342 appreciate what you are doing. Thank you.

343 [The prepared statement of Mr. Stearns follows:]

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

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345 Mrs. {Bono Mack.} I thank the gentleman. Last but not
346 least, the gentleman from North Carolina, the ranking member
347 of our subcommittee, Mr. Butterfield, is now recognized for
348 his 5 minutes.

349 Mr. {Butterfield.} Let me thank you very much, Chairman
350 Bono Mack, and especially thank you to all of the witnesses
351 who have come forward today to give us your testimony.

352 You know, Madam Chairman, my recollection--and I was
353 simply a ranking member of the subcommittee in the last
354 Congress--but my recollection of this is somewhat different
355 from my good friend from Texas, Mr. Barton. My recollection
356 is that CPSIA followed a long and well-considered road to
357 passage that included many, many hearings and extensive
358 conference with the Senate from introduction to enactment. I
359 recall that this legislation at all times remained a
360 bipartisan effort, and I am surprised to hear today that it
361 was not. The vote tally speaks volumes about the
362 bipartisanship nature of this law. Much of the law was taken
363 word-for-word from some of Mr. Barton's language that he had
364 authored. The House passed the conference report with a vote
365 of 424 to 1. And while I don't know it for a fact, I suppose
366 Mr. Barton may be the 1, but the vote was 424 to 1. And the
367 Senate passed it--

368 Mr. {Barton.} Could the gentleman yield?

369 Mr. {Butterfield.} Yes.

370 Mr. {Barton.} I voted for the bill.

371 Mr. {Butterfield.} You did vote, right.

372 Mr. {Rush.} He voted for it, yeah.

373 Mr. {Butterfield.} All right. And the Senate vote was
374 89 to 3. Today, however, it is apparent some portions of the
375 law need to be refined. The ranking member of the full
376 committee has acknowledged that and I do as well.
377 Unfortunately, the discussion draft does not seek to refine
378 the law. Rather, it seeks to undo nearly 2 years of close
379 consultation and careful compromise with Members of Congress,
380 industry--many of whom are here today--and consumer groups,
381 and potentially puts consumers and children at risk. The
382 minority was not consulted to my knowledge in the preparation
383 of the draft legislation. And I am confident the language
384 would look very different had we been invited to the table
385 and had an opportunity to participate. The draft language
386 would redefine what is considered a children's product to a
387 yet-to-be-determined age, possibly exposing both those who
388 would be classified as children and those who would not to
389 potentially dangerous products.

390 I ask my colleagues about households with multiple
391 children, if a 9-year-old has a toy intended only for ages 9

392 and older, is it not reasonable to expect that 9-year-olds
393 with a preschool-age sibling would also want to and will find
394 a way to play with that toy? But perhaps most alarming is
395 rolling back the current lead content limits in favor of risk
396 assessment. This is similar to the model that proved to be
397 inadequate prior to CPSIA but with the twist of creating
398 additional burdens for the Commission.

399 Since the model and the draft will require premarket
400 risk assessment, CPSC will have to determine for each and
401 every children's product how manufacturers should measure the
402 risk. I am troubled that the draft eliminates independent
403 third-party testing for all children's products with a very
404 narrow exception for five categories. I remind my friends of
405 the millions of toys that were recalled in '07 due not only
406 to high lead levels but design-related safety defects as
407 well. It was clear that manufacturers of children's products
408 and their suppliers had fallen asleep at the wheel and their
409 in-house safeguards were inadequate.

410 Finally, and I am going to yield to the gentlelady from
411 Illinois in just a minute--CPSIA required the CPSC to create
412 a Public Product Safety Information Database so that
413 consumers would have a convenient way to report and learn
414 about dangerous products. The draft language marginalizes
415 the efficacy of the database by limiting who can submit

416 information, as well as establishing a drawn-out process by
417 which the submitter, the Commission, and the manufacturer are
418 required to have ongoing contact. The more burdensome it
419 becomes to make a safety complaint, the less likely consumers
420 are to use the database. At this time I will yield my
421 remaining time, Madam Chairman, to the gentlelady from
422 Illinois.

423 [The prepared statement of Mr. Butterfield follows:]

424 ***** COMMITTEE INSERT *****

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425 Ms. {Schakowsky.} I thank the gentleman for yielding.

426 To say that I am concerned about the draft bill would be
427 a vast understatement. Here we are in the Subcommittee on
428 Commerce, Manufacturing, and Trade, and instead of looking at
429 ways that we can create jobs, good jobs for the American
430 people, we are examining a bill to undermine consumer
431 protection, words that used to be part of the subcommittee's
432 title. The draft bill is not a collection of small fixes.
433 It would fundamentally gut key pieces of the CPSIA, including
434 the provisions I authored to ensure that durable infant and
435 toddler products are subject to rigorous testing
436 requirements.

437 I want to read a letter I received from Danny Keysar's
438 parents, which I hope to submit for the record, along with
439 two other letters from parents who lost their children.
440 Danny's mom wrote, ``As parents who have paid the ultimate
441 price for unsafe products, we know you don't want to see more
442 children suffer as our son did.'' Giving flexibility to the
443 CPSC to enforce safety provisions is one thing, but this
444 wholesale reversal of crucial safety provisions sends us back
445 to a scenario we know leaves children at risk.

446 I yield back the balance of my time.

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

448 ***** COMMITTEE INSERT *****

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449 Mrs. {Bono Mack.} All right. And the chair
450 inadvertently overlooked the last 30 seconds on our side, and
451 I would like to recognize the gentleman from Texas, Mr.
452 Olson, for 30 seconds.

453 Mr. {Olson.} I will be brief. I am pleased to be here
454 and I thank the chair for her leadership in bringing forward
455 this important draft legislation to fix the unintended
456 consequences of CPSIA.

457 As a parent, nothing is more important to me than the
458 safety and health of my children. I think this draft
459 provides us with a balanced way forward that protects my
460 children from harmful products without devastating our
461 country's small businesses. If my children are protected,
462 your children are protected.

463 I thank the chair and looking forward to helping her
464 advance a commonsense fix to this law. I yield back.

465 [The prepared statement of Mr. Olson follows:]

466 ***** COMMITTEE INSERT *****

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467 Mrs. {Bono Mack.} I thank the gentleman. And now all
468 opening statements are concluded. And we have three panels
469 before us today. Each of the witnesses has prepared an
470 opening statement that will be placed in the record. Each of
471 you will have 5 minutes to summarize that statement in your
472 remarks. On our first panel we have, in reverse order, but
473 we have Robert Howell, Assistant Executive Director of Hazard
474 Identification and Reduction at the U.S. Consumer Product
475 Safety Commission. That is a mouthful. And then Dr. Barbara
476 Beck, a widely respected expert in toxicology and a former
477 EPA region chief and fellow at the Harvard School of Public
478 Health; and Dr. Dana Best, who is presenting on behalf of the
479 American Academy of Pediatrics.

480 Good morning. I would like to thank you all for coming.
481 You will each be recognized for 5 minutes. To help you keep
482 track of time, the little clock in front of you, when it
483 turns yellow, please recognize that is the 1-minute mark if
484 you could start wrapping up and when the light turns red,
485 your time is up. I would also ask you to remember to turn
486 the microphone on before you begin. And now I would like to
487 start with Dr. Best for your 5 minutes. Good morning and
488 welcome.

|
489 ^STATEMENTS OF DR. DANA BEST, MD, MPH, FAAP, AMERICAN ACADEMY
490 OF PEDIATRICS; BARBARA D. BECK, PH.D., DABT, FATS, PRINCIPAL,
491 GRADIENT; AND ROBERT JAY HOWELL, ASSISTANT EXECUTIVE
492 DIRECTOR, HAZARD IDENTIFICATION AND REDUCTION, U.S. CONSUMER
493 PRODUCT SAFETY COMMISSION

|
494 ^STATEMENT OF DANA BEST

495 } Dr. {Best.} Good morning. Thank you for this
496 opportunity to testify today. I am a pediatrician and
497 pleased to represent the American Academy of Pediatrics. The
498 AAP is deeply concerned that the subcommittee is considering
499 legislation that would profoundly alter the CPSIA and could
500 reverse the progress towards safer toys and children's
501 products. Today I will focus on four areas: the scope of
502 children's products, lead limits in children's products, risk
503 assessment, and the need for third-party testing.

504 First, the scope of children's products should protect
505 children up to age 12. The AAP recommended that the CPSIA
506 cover products for children up to age 12 years based on
507 developmental and pragmatic concerns. With regard to
508 developmental issues, the mouthing behaviors that cause the
509 most concern for exposure to hazards like lead peak in the

510 toddler years and taper off throughout school age, although
511 it is not unusual for school-age children to place toys and
512 other objects in their mouths or to mouth or suck on items
513 like jewelry and pens. For some groups, such as children
514 with developmental delays, mouthing behaviors may persist
515 until adolescence or later.

516 Another concern is that toys are often shared. While
517 most parents work hard to keep toys for older children away
518 from younger children, they may not always be successful. It
519 is therefore important to ensure that toys are as safe as
520 possible for all children in the household.

521 Second, the CPSIA's limits on lead in children's
522 products should not be relaxed. In the judgment of the AAP,
523 there is no scientific basis for establishing a de minimis
524 level for lead in children's products. To date, science has
525 not identified a threshold below which lead ceases to damage
526 a child's brain or body. There is no known safe level of
527 lead. During the development of the CPSIA, the AAP was asked
528 to recommend a limit for lead in children's products.
529 Following a rigorous scientific review, the Academy
530 recommended that lead in children's products be limited to 40
531 parts per million. The rationale behind this level is
532 explained in my written testimony.

533 The AAP is also concerned that the discussion draft

534 proposes to distinguish between lead exposure due to sucking
535 on an item from lead exposure due to licking an item. From a
536 scientific perspective, there is no basis for making this
537 differentiation. Both actions defined as ``mouthing'' in the
538 pediatric literature are associated with lead ingestion.

539 The AAP urges Congress to resist calls to set differing
540 standards for lead in children's products based solely on the
541 likelihood of sucking, licking, or swallowing. Given the
542 extreme toxicity of lead, its bioaccumulation, and the
543 irreversible nature of the damage it causes, the concept of
544 setting different levels of lead for various types of toys or
545 children's products is troubling.

546 Third, risk assessment is not an appropriate method for
547 limiting lead exposure in children's products. The draft
548 before the subcommittee appears to shift from measurement of
549 total lead in children's products to risk assessment
550 frameworks. The AAP urges you to leave intact the
551 straightforward, predictable total lead standard in the
552 CPSIA. The fundamental premise of risk assessment is that
553 some degree of risk is acceptable such as when the benefit of
554 receiving a drug is compared to its side effects. In the
555 case of lead, there is no benefit to exposure. While the
556 harms are numerous and significant such as decreased IQ, if
557 the CPSIA standard is altered, Congress would need to

558 determine what level of IQ loss is considered acceptable.

559 In addition, standards should protect not only the
560 average child, but also children at higher risk of lead
561 exposure and its consequences. This is best accomplished
562 using the lead limits currently in the CPSIA.

563 The AAP is deeply concerned that a risk assessment
564 framework would require the CPSC to perform or confirm risk
565 assessment on many different products. It is unclear who
566 would bear the ultimate responsibility for determining risk
567 or what the process would be for reconciling differences when
568 risk assessments differ between the agency and the
569 manufacturer.

570 Finally, third-party testing is necessary to ensure the
571 safety of children's products. The discussion draft proposes
572 significant changes to CPSIA's third-party testing
573 requirements, dramatically reducing the number and types of
574 products subject to independent testing. This would
575 essentially return us to the pre-CPSIA state of affairs in
576 which consumers were expected to guess which toys and
577 children's products were really safe.

578 The AAP would like to make one more comment on another
579 point made in the discussion draft and strongly recommend
580 that noncompliant cribs not be permitted in childcare
581 facilities.

582 In conclusion, the AAP urges you to not weaken the
583 CPSIA's protections against lead and other hazards as you
584 consider ways to improve the ability of manufacturers and
585 businesses to comply with this important law. Thank you.

586 [The prepared statement of Dr. Best follows:]

587 ***** INSERT 1, 1A *****

|
588 Mrs. {Bono Mack.} I thank the gentlelady and recognize
589 Dr. Beck for 5 minutes. Can you make sure your microphone is
590 on and close to your mouth, please?

591 Ms. {Beck.} Sorry.

592 Mrs. {Bono Mack.} Thank you.

|
593 ^STATEMENT OF BARBARA D. BECK

594 } Ms. {Beck.} My name is Barbara Beck. I am a
595 toxicologist risk assessor at Gradient, an environmental
596 consulting company and I have worked on issues of lead
597 exposure, toxicology, and risk for over 20 years, starting
598 from my time at EPA Region 1 where I was involved in
599 development of one of the first clean up levels for lead in
600 soil that I am aware of. I have evaluated exposures,
601 toxicology of lead in products, workplace, and in the
602 environment.

603 In its present version, the CPSIA Act has established a
604 concentration limit of 300 parts per million for lead, which
605 will go in August to 100 parts per million unless it is not
606 feasible. This is going to be problematic and is problematic
607 at present, especially for metallic alloys that contain lead
608 such as tire stem valves. My concern with the present
609 approach is that it doesn't consider the actual exposure, the
610 intake, the absorption, and the impact of lead releases from
611 such products on blood lead levels. Blood lead levels are
612 typically considered the appropriate metric for evaluating
613 exposures to lead.

614 Risk-based approaches have been used to establish limits

615 for lead for decades. It has been used to establish limits
616 for lead in air, water, and soil. Such approaches have been
617 beneficial. Blood lead levels of children in the U.S. have
618 declined by over a factor of 10 over the past 20 years as
619 lead has been removed or reduced from air, from food, and
620 from paint.

621 The proposed changes represent a step in the right
622 direction. Determination of a de minimis level of lead
623 exposure is consistent with what has been conducted with
624 other types of materials such as soil, air, and water, and it
625 also proposes the use of a methodology to identify how much
626 lead is released, what the actual exposure would be from a
627 children's product. This approach is not only consistent
628 with regulatory policy in other settings, but with
629 fundamental principles of toxicology. The dose is what
630 matters. The dose of a chemical--whatever the chemical is,
631 how hazardous it is--is really critical in determining
632 whether there would be a risk or no risk.

633 I am not here to propose a specific model or a specific
634 de minimis limit, but I do note that the approaches should
635 consider the age of the child: mouthing behavior peaks at age
636 2 to 3, absorption of lead from the gut peaks around that
637 age, and choosing a value of, say, 7 years old would be
638 protective of younger children. The method that is

639 considered should consider how a child actually interacts
640 with the product and risk-based methods are available to
641 evaluate mouthing behavior, contact by hand with products,
642 hand-to-mouth, as well as the potential swallowing of a
643 product and the impact that contact on blood lead. That can
644 be modeled.

645 My comments that are provided to the committee provide a
646 hypothetical example of how such an analysis could be
647 conducted. It is not meant to propose specific de minimis
648 values or the specifics of an approach but to demonstrate
649 that there are methods. In my particular example, I
650 demonstrate how a release of 1 microgram of lead from a
651 product per day every day for a 2- to 3-year-old child would
652 not have a discernible impact on blood lead. Some people may
653 consider that de minimis.

654 In conclusion, I strongly encourage the committee to
655 consider the use of such risk-based approaches in proposing
656 amendments to the CPSIA. Such approaches will allow for
657 health-protective risk-based limits that would be sound
658 public health policy, as well as sound risk management
659 policy. Thank you.

660 [The prepared statement of Ms. Beck follows:]

661 ***** INSERT 2 *****

|
662 Mrs. {Bono Mack.} Thank you, Dr. Beck. Mr. Howell, you
663 are recognized for 5 minutes.

|
664 ^STATEMENT OF ROBERT JAY HOWELL

665 } Mr. {Howell.} Good morning, Chairman Bono Mack, Ranking
666 Member Butterfield, and members of the subcommittee. My name
667 is Robert Howell. I am the assistant executive director for
668 the Office of Hazard Identification and Reduction at the
669 Consumer Product Safety Commission. I appreciate the
670 opportunity to testify before you this morning regarding
671 certain technical aspects of the discussion draft of
672 legislation that would revise the Consumer Product Safety
673 Improvement Act. The testimony that I will give this morning
674 represents my personal views and has not been reviewed or
675 approved by the Commission and may not necessarily reflect
676 the views of the Commission.

677 In my role at CPSC, I oversee the technical work of the
678 Agency within the Office of Hazard Reduction's directorates
679 for Engineering Sciences, Epidemiology, Economic Analysis,
680 Health Sciences, and Laboratory Sciences. My office is
681 responsible for the collection and analysis of death and
682 injury data associated with consumer products, the evaluation
683 of consumer products for potential safety hazards and
684 regulatory compliance, and the development of technical
685 solutions to product safety concerns.

686 Prior to joining CPSC in 2006, I served as vice-
687 president of manufacturing and operations for a multinational
688 corporation with responsibility for the management of global
689 manufacturing and logistics.

690 On January 15, 2010, the five members of the CPSC issued
691 a report to Congress regarding possible improvements to the
692 CPSIA. In suggesting those improvements, the commissioners
693 noted that the recommendations were focused on maintaining
694 the ``safety and welfare of consumers while minimizing
695 administrative burdens on the Agency or significant market
696 disruptions caused by the implementations of specific
697 provisions of the CPSIA.''

698 Specifically, the Commission listed the following
699 recommendations for improvement of the statute: that the
700 Commission ``needs additional flexibility within Section 101
701 to grant exclusions from the lead content limits in order to
702 address certain products, including those singled out by the
703 conferees;'' that ``Congress may, with some limitations,
704 choose to consider granting an exclusion for ordinary
705 children's books and other children's paper-based printed
706 materials; the Commission believes that a prospective
707 application of the 100 parts per million lead limits would be
708 helpful for our continued implementation of the law;'' and
709 that the ``Commission remains committed to working with

710 Congress to explore other ways to address the concerns of
711 low-volume manufacturers'' with regard to the testing and
712 certification requirements in Section 102 of the CPSIA.

713 From my perspective, the CPSIA has improved the health
714 and safety of consumers, particularly children. In
715 additional, industry has made substantial progress over the
716 past 2-1/2 years adapting to the requirements of the law.
717 For example, the children's product industry has made
718 progress in reducing the levels of lead since the enactment
719 of CPSIA. In a recent Commission hearing on the
720 technological feasibility of reducing the lead limits to 100
721 parts per million, a representative of SGS--a global
722 inspection, verification, testing, and certification company--
723 -presented a statistical analysis of lead content testing
724 data with close to 90,000 data points collected primarily
725 from its Shenzhen laboratory that specializes in the testing
726 of children's toys and other children's products.

727 In its analysis, SGS found that 96.3 percent of metal
728 components tested at or below 100 parts per million. The
729 analysis also determined that just over 97 percent of glass
730 and ceramic components tested at or below 100 parts per
731 million. Concerning plastic components, SGS found that 99.4
732 percent of those components tested at or below 100 parts per
733 million. However, there are certain provisions of the CPSIA

734 such as the current exceptions to the Section 101 lead limits
735 that can be improved in such a way as to reduce the burden on
736 the regulated community while maintaining an appropriate
737 level of safety for America's consumers. I personally
738 believe this balance is necessary to ensure efficient and
739 effective implementation of the CPSIA from the perspective of
740 both the regulated community and the regulators.

741 There are several approaches that could allow the CPSC
742 to address the unintended consequences of certain regulatory
743 requirements in the CPSIA. For example, the Commission has
744 heard from a number of Members of Congress that they did not
745 intend to cover all-terrain vehicles under the provisions of
746 Section 101. Accordingly, Congress could permit the
747 Commission to exempt certain products like ATVs from the lead
748 limits. This will allow the CPSC to weigh the risk of
749 possible lead exposure to a child riding a youth-sized ATV
750 against the risk to the child from riding a larger and more
751 powerful adult ATV.

752 Assuming that the exceptions would be made on a notice-
753 and-comment basis, the underlying analysis and support for
754 any exceptions would be public, allowing for transparency and
755 accountability for all stakeholders involved in the process.

756 Finally, allowing the Commission to regulate on a
757 timetable influenced by the seriousness of the actual risk

758 would allow for better priority-setting that will permit
759 Commission resources to be put towards the most serious
760 health risk.

761 Mrs. {Bono Mack.} If you could please sum up now.

762 Mr. {Howell.} Madam Chairman, thank you.

763 [The prepared statement of Mr. Howell follows:]

764 ***** INSERT 3 *****

|
765 Mrs. {Bono Mack.} Thank you. Oh, perfect. Thank you.
766 That worked out just well. I want to thank our panel of
767 experts. And now the chair will recognize herself for the
768 first 5 minutes of questioning.

769 And Mr. Howell, the first question to you. How does the
770 CPSC staff go about deciding whether a substance or a product
771 poses a risk to children? And briefly, what factors are
772 important?

773 Mr. {Howell.} As CPSC staff evaluates potential risk to
774 children, it involves several different teams within CPSC.
775 We have a human factors team that will actually age-grade the
776 product and determine what particular product characteristics
777 are important in age-grading to ensure that the product is
778 targeted to the correct group of children. If, for example,
779 we are evaluating that product with regards to lead, for
780 example, a complete risk assessment would be conducted taking
781 into account not only the intended consumer but any other
782 children that may be attracted to that particular toy based
783 on characteristics of the toy.

784 Mrs. {Bono Mack.} Thank you. Does the Commission have
785 information on the cost of third-party testing? For example,
786 do you know how much it would cost to have a bicycle tested
787 by a third-party laboratory to all the applicable standards?

788 Mr. {Howell.} We have heard from the bicycle industry
789 that the cost to test a \$50 bicycle for all the applicable
790 standards would run somewhere in excess of \$10,000.

791 Mrs. {Bono Mack.} Wow. Thank you. And the focus of a
792 lot of our attention, especially on this side of the aisle
793 and again, Mr. Howell, is the database. I actually think the
794 database is helpful and useful, but I think it has problems
795 and we should talk about it a great deal. My thinking is
796 that it is 100 percent negative derogator and that if the
797 manufacturer can respond that they are seen as defensive.
798 There must be a way--if you buy anything anywhere on the
799 internet now, Amazon, I mean even Zappos.com, you know, there
800 are comments on both sides. People can give the good and the
801 bad of a product. Yet this database is 100 percent negative.
802 Can it not be refined so that there is a more accurate
803 depiction of a product?

804 For example, if I complain about something potentially
805 hurting my child but this is one example out of 10,000--but
806 nobody else would have any way of knowing that--can't the
807 database be refined to be a more accurate depiction about a
808 product in society?

809 Mr. {Howell.} Chairman Bono Mack, I am quite certain
810 that either Congress or the Commission could--within CPSIA as
811 written--make modifications. But that is certainly more of a

812 policy matter and is beyond my responsibilities at CPSC.

813 Mrs. {Bono Mack.} Well, thank you. I think I made my
814 thoughts pretty clear there in my questions. So also, to you
815 Dr. Best, you state from a scientific perspective that there
816 is no basis for differentiating between a child licking
817 versus sucking on an object. In CPSIA however, Congress drew
818 that very distinction for purposes of phthalate limits. Do
819 you see a reason why this is changed? And I always do that
820 on that word. Do you see a reason why this distinction makes
821 sense for phthalates but not for lead?

822 Dr. {Best.} We didn't actually work on the phthalates
823 issue, and so I can do some research and perhaps offer you a
824 response. But again, I am an expert on lead, not on
825 phthalates.

826 Mrs. {Bono Mack.} All right. Thank you. And you
827 mentioned also that older children sometimes put ballpoint
828 pens or jewelry in their mouths. You also mentioned that
829 toys may be shared among multiple children in the same
830 household. But aren't there many other items which older
831 children do not mouth and to which younger children rarely,
832 if ever, have access?

833 Dr. {Best.} Of course. But we are talking about the
834 harms to children from lead-containing objects. And so, you
835 know, our focus is on those lead-containing objects that may

836 be dangerous to younger children.

837 Mrs. {Bono Mack.} But common sense would say, as a
838 parent--my kids are now 23 and 20 and my step-kids are 8 and
839 11--common sense would say to a parent their children don't
840 only come in contact with children's products whether it is a
841 2-year-old toy, a 10-year-old toy or an adult, say,
842 electronic component of some sort. Is that not a problem as
843 well? Is it common sense that we are trying to say that a--
844 from what I understand--a Hannah Montana DVD is under one
845 category and a Miley Cyrus DVD is on another category and
846 then a DVD player is entirely exempt? So parents ask
847 themselves these questions all the time. It is one of these
848 things, what are they thinking in Washington? Because it
849 makes no sense at all. As a pediatrician, how do you address
850 that?

851 Dr. {Best.} I am having trouble understanding the
852 question. So yes, there are products in the house that are
853 not intended for children that do not come under the CPSC's
854 purview in this context. And while there are other safety
855 groups that may work with those products, we are focusing on
856 the safety of children's toys here and products intended for
857 children. And that is our focus.

858 Mrs. {Bono Mack.} We are out of time. Just to make a
859 little more clear that it is common sense, sometimes, that

860 you can't protect from everything here. And that is the
861 question. Is the Commission focused on its highest
862 priorities? So I am sorry, but I need to yield now to Mr.
863 Butterfield for his 5 minutes of questioning.

864 Mr. {Butterfield.} Thank you, Chairman. Prior to the
865 enactment of this legislation, the Consumer Product Safety
866 Commission assessed the risk posed by children's products
867 containing lead by estimating the amount of lead intake from
868 the product and the subsequent effects of exposure on blood
869 lead level. For the most part, this was what I call an
870 after-the-fact assessment. That is the Commission mostly
871 looked at products for exposure to and risks from lead after
872 products had entered the marketplace and been put into the
873 hands of children. The discussion draft seems to create a de
874 minimis exception that makes the total lead content limits in
875 CPSIA more meaningless. Basically, any component part that
876 cannot be swallowed can contain any amount of lead so long as
877 a child isn't expected to ingest more than some amount to be
878 determined amount of lead. So rather than determining the
879 total amount of lead contained in a product, the discussion
880 draft would call on manufacturers to estimate the amount
881 likely to be ingested and takes it as a given that it is okay
882 for kids to take in some amount of lead from their toys.

883 Dr. Best, the de minimis exception in the discussion

884 draft is essentially a return to the approach that the
885 commission used prior to the legislation. As I read it, any
886 component part of a toy or other children's product such as a
887 crib would be allowed to release a de minimis amount of lead,
888 say 6 micrograms per day. Can you please explain what would
889 happen if a child played with more than one toy in one day?
890 Even a child who has one special toy plays with dozens of
891 toys in a day. Could that child be exposed to 6 micrograms
892 per day per toy? I do not read the de minimis standard as
893 requiring the consideration of other exposures to lead in a
894 given day. Can you help me with this?

895 Dr. {Best.} Well, the Academy is very much against the
896 de minimis standard for many of the points you raised. Lead
897 exposure doesn't come just from one individual product. It
898 comes from the environment. It can be found in our food, in
899 our air, certainly on paints, certainly in the water in
900 Washington, D.C., in the past. And so we are very concerned
901 about the bioaccumulation of lead through all these different
902 sources. Because lead doesn't immediately get passed out
903 through your body, you can actually store it. Some of these
904 stores persist for years, if not decades. And that is one of
905 the things we are very much concerned about.

906 Mr. {Butterfield.} Thank you. Many of us agree that
907 there are specific products that can't meet the lead content

908 limits and can't be made without lead--we acknowledge that--
909 and that some form of relief should be provided for the
910 narrow universe of products. We agree, some of us, that this
911 relief should be as simple to understand and apply as
912 possible while remaining protective of children's health and
913 safety. So far as I can tell, the proposed de minimis
914 exception in the draft fails on all of these counts.

915 Implementing the de minimis exception will require taking
916 into account very product-specific considerations, and on a
917 good number of instances, it will require applying varying
918 lead requirements for differing parts of the same product.

919 For example, say I manufacture a toy truck that contains
920 plastic and metal, some large enough not to be swallowed and
921 others that can be swallowed. For each plastic component, I
922 would have to ask is this small enough to be swallowed? If
923 the answer is no, then I would have to ask how do I expect a
924 child to interact with this component? Is lead likely to be
925 ingested from the interaction? How much lead can I expect to
926 be ingested from the interaction? What age is the child
927 doing the interacting? For the metal components, the
928 manufacturer would then have to ask, can I meet the
929 alternative 600 parts per million total lead count standard
930 in the draft? If the answer is no, the manufacturer would
931 again have to run through the analysis as I described. Can

932 it be swallowed? So forth and so on.

933 Mr. Howell, let me ask you this yes or no, sir, and I am
934 going to be out of time momentarily. Would the Commission
935 have to develop multiple methodologies given that children
936 interact differently with different products?

937 Mr. {Howell.} Yes.

938 Mr. {Butterfield.} Would requiring the Commission to
939 develop multiple methodologies to account for the different
940 ways children can interact with different products and parts
941 require substantial investment of the Commission's limited
942 resources?

943 Mr. {Howell.} No.

944 Mr. {Butterfield.} In your experience, sir, do
945 retailers and manufacturers prefer clear lines for compliance
946 over estimating the likelihood that their product might
947 behave in a certain way?

948 Mr. {Howell.} Many do.

949 Mr. {Butterfield.} Under current law, sir, enforcement
950 is simply the product meets the standard or doesn't meet the
951 standard. Under the draft that we have in front of us, the
952 Commission's enforcement seems to be more complicated. For
953 each product at the border where there might be a problem,
954 the Commission will have to do complicated testing. Couldn't
955 this slow down products and have them retain longer at some

956 of our ports?

957 Mr. {Howell.} Yes.

958 Mr. {Butterfield.} All right. Thank you very much. My
959 time is out.

960 Mrs. {Bono Mack.} All right. The chair recognizes the
961 vice chair of the subcommittee, Ms. Blackburn, for 5 minutes.

962 Mrs. {Blackburn.} Thank you, Chairman, and thank you to
963 our witnesses.

964 Mr. Howell, I would like to start with you if I may,
965 please. As I mentioned in my opening statement, the
966 database--as we hold our initial hearing on this issue, we
967 are very much aware that the database is incomplete; it has
968 problems. The chairman mentioned some of the problems that
969 are there with how information is recorded. And I want to
970 know two things from you if you would, please, sir. Number
971 one, would we be better off to take that thing down until the
972 problems are worked out? And number two, what needs to be
973 done to correct the problems that are around the database?
974 Very quickly, please. I have got other questions.

975 Mr. {Howell.} Ms. Blackburn, because the problems that
976 you cite are not clearly defined, I am going to respond to
977 your question clearly in a very broad way. You know,
978 certainly the decision whether to keep the database up or
979 down becomes a policy decision. It is not one that my

980 technical staff necessarily are the appropriate ones to make.
981 You know, the challenges of implementing anything that is new
982 certainly will require the attention of staff in order to get
983 it right. Many of the things that we see in the database,
984 regardless of the nature of the reports of harm would require
985 resources to get a handle on the appropriate way to respond.

986 Mrs. {Blackburn.} Okay. And I will help you with that
987 definition. The prior hearing that we had we heard from the
988 commissioners that if there is a complaint against, say,
989 Graco cribs, then all Graco cribs are--you know, you don't
990 define between that. So I would ask you to submit to us in
991 writing with a little bit more detail what you think needs to
992 be done. Because I think we need to take the thing down and
993 bring it offline, work out the kinks, and then bring it back
994 so that it is understandable to consumers so they know
995 exactly what the product is and so there is a method for them
996 to evaluate what actually is the problem and then if they do
997 or do not want to purchase that product. At this point right
998 now, people can just rail against a brand and not necessarily
999 a specific product or a part. And there is that problem of
1000 definition within that use.

1001 I want to come to Dr. Beck. Mr. Vitrano, who is going
1002 to testify on the next panel, submitted testimony. And thank
1003 you all for submitting your testimony in advance. And in

1004 there he talks about the lead intake from children's
1005 interaction with ATVs is less than the intake from drinking a
1006 glass of water. And I would like to know in your opinion do
1007 you agree with that? Do you find that to be an accurate
1008 statement and a little bit of definition around that and see
1009 if--what I am looking at is if the metal parts on an ATV
1010 contain higher lead than are permitted by the EPA for
1011 drinking water standards, I am sure you can understand our
1012 confusion with that issue.

1013 Ms. {Beck.} Yes. His statement is correct. It is
1014 based on analysis that we did in which we had wipe samples.
1015 Because the question is how does a child interact, say, with
1016 the valve stem? We had samples of wipes that rubbed the
1017 valve stem, and that was to mimic a child touching a valve
1018 stem when they fill their--

1019 Mrs. {Blackburn.} Okay. So Dr. Beck, it would be true
1020 that a child gets more lead content in drinking a glass of
1021 water than from playing with an ATV?

1022 Ms. {Beck.} They would get more lead from what is
1023 commonly found in drinking water but is permissible under EPA
1024 than they would get from contacting their hands with the
1025 valve stem on an ATV or from touching the handles.

1026 Mrs. {Blackburn.} Okay, now, let me ask you this. Do
1027 you find this with other products? Have you found this same

1028 association in other products that you have tested, maybe
1029 with the wipe test?

1030 Ms. {Beck.} We have also done wipe tests on scooters
1031 and we had similar results, that what came off in a wipe was
1032 relatively small, less than what a child might typically get
1033 from drinking water.

1034 Mrs. {Blackburn.} Okay. Thank you very much. I
1035 appreciate that. And I will go ahead and yield back.

1036 Mrs. {Bono Mack.} I thank the gentlelady. The chair
1037 recognizes Ms. Schakowsky for 5 minutes.

1038 Ms. {Schakowsky.} Thank you, Madam Chairman. Mr.
1039 Howell, in your testimony you note that an independent
1040 testing lab, SGS, has found that almost 90 percent of toys
1041 tested by it recently comply with the 100 parts per million
1042 lead limit. While I realize this is data from only one
1043 entity, it seems to provide at least some evidence that the
1044 children's product marketplace has largely adapted already to
1045 the 100-parts-per-million limit. Would you say that is true?

1046 Mr. {Howell.} Yes, I would. I would also add to that
1047 that it may also indicate that we are rapidly approaching a
1048 point of diminishing returns in that the effort to achieve
1049 the final reduction in lead may be much more costly than the
1050 incremental cost of getting to where we are today.

1051 Ms. {Schakowsky.} Certain members of industry have been

1052 very critical of fixed parts-per-million limits for lead in
1053 children's products and have advocated a move back--as we
1054 heard from Dr. Beck today--to risk-based standard. However,
1055 the American Society of Testing and Materials, ASTM's F-963
1056 toy standard, which has been drafted through a consensus
1057 process and is now a mandatory rule under the CPSIA, contains
1058 fixed parts-per-million limits for certain toxic metals and
1059 surface coatings of toys like cadmium--is it antimony?--and
1060 barium and in those areas--well, so I am asking why not lead?
1061 If they could go to a PPM for other things, why not lead?
1062 And let me pose the same question to Dr. Best. But Mr.
1063 Howell?

1064 Mr. {Howell.} You know, certainly you can regulate lead
1065 either on a fixed-content limit or on the extractable amount.
1066 You know, that becomes basically, you know, not a policy
1067 choice but a choice of economics and ease of test if you will
1068 that would facilitate compliance.

1069 Ms. {Schakowsky.} So would you say that it is easier to
1070 administer for many companies and for the Commission to go on
1071 a parts-per-million basis?

1072 Mr. {Howell.} Certainly, there are advantages to
1073 testing by content in the fact that it is that time is much
1074 faster. It certainly doesn't generate the level of hazardous
1075 waste than what chemistry does. But at the same time I

1076 believe another way to look at the problem, perhaps, would be
1077 a balance between both the parts-per-million content at some
1078 prescribed level and then a risk-assessment approach at
1079 levels above that to deal with, perhaps, products such as
1080 ATVs and bicycles where the exposure is, perhaps, much, much
1081 less of a concern than you might have in something that is
1082 mouthable or swallowable.

1083 Ms. {Schakowsky.} Thank you. Dr. Best, I wonder if you
1084 would comment on these issues.

1085 Dr. {Best.} One of the big differentiations between the
1086 CPSIA and the ATSM--or MS, whatever--their levels is that the
1087 ATSM's levels are soluble lead. And we are concerned not
1088 only about the surface coating but as the product wears, the
1089 surface coating may be worn off and so then you are getting
1090 deep into the content of whatever product we are talking
1091 about, and again, the swallowing question comes into play.

1092 Ms. {Schakowsky.} Right. But my question is if the toy
1093 manufacturers could go to a parts per million for these other
1094 things, why not with lead?

1095 Dr. {Best.} Well, we believe that they can go to a
1096 total lead content level and achieve that reasonably. And as
1097 some of these data have shown, many manufacturers--

1098 Ms. {Schakowsky.} Okay. One other question on lead
1099 content. You had mentioned that children with disabilities

1100 sometimes continue mouthing, you know, well past a little kid
1101 and yet products designated as--I am looking what it is
1102 called--special products for the disabled are not in the
1103 category that would require a mandatory third-party testing
1104 for almost all children's products. Do you think that is a
1105 mistake?

1106 Dr. {Best.} I can't say I know all of the definitions
1107 of special products for the disabled. Certainly, you know, I
1108 wonder if some of them are more adapted products such as
1109 adaptive listening devices and adaptive hearing devices, so
1110 they are not toys. And so we have been very focused on the
1111 toys and so that is where, you know, all of our evidence has
1112 been based.

1113 Ms. {Schakowsky.} Thank you.

1114 Mrs. {Bono Mack.} All right. The chair recognizes Mr.
1115 Barton for 5 minutes.

1116 Mr. {Barton.} Thank you. Mr. Howell, my recollection
1117 is that in the Congress and the hearing in this Congress that
1118 the commissioners who testified, testified that the current
1119 law doesn't give them the flexibility that they need to
1120 implement the law. Is my recollection correct?

1121 Mr. {Howell.} I recall the same thing.

1122 Mr. {Barton.} You recall the same thing? So that is a
1123 yes?

1124 Mr. {Howell.} That is a yes.

1125 Mr. {Barton.} Okay. Dr. Best, what is wrong with
1126 giving the CPSC some flexibility to implement the law?

1127 Dr. {Best.} It is my understanding that they already
1128 have some flexibility to--

1129 Mr. {Barton.} That is not their understanding.

1130 Dr. {Best.} Well--

1131 Mr. {Barton.} I mean they testified at least twice--

1132 Dr. {Best.} Right.

1133 Mr. {Barton.} --that they need more flexibility. So
1134 let us stipulate that they don't have flexibility. Why,
1135 then, would it not be prudent for Congress to give them some
1136 flexibility?

1137 Dr. {Best.} Well, the stipulation I would have to look
1138 at. But the concern we have is that children's health is not
1139 something that should be negotiated based on manufacturers'
1140 profit.

1141 Mr. {Barton.} Well, nobody is saying that the
1142 stipulation should be based on profit. That is a fairly
1143 obnoxious comment to make in reply to my question.

1144 Dr. {Best.} When we do a risk-based assessment or we
1145 allow great freedom in terms of how safe toys are, we go back
1146 to the days where children--

1147 Mr. {Barton.} Okay, well, look, I don't have time for a

1148 5-minute longwinded non-statement. Do you support any
1149 flexibility at all for the Commission? Yes or no?

1150 Dr. {Best.} I will support some--

1151 Mr. {Barton.} So that is a--

1152 Dr. {Best.} --very defined limited--

1153 Mr. {Barton.} Thank you.

1154 Dr. {Best.} --carefully protective flexibility.

1155 Mr. {Barton.} You do support some flexibility. That is
1156 a good thing. Let me go back to Mr. Howell. The House bill,
1157 when we actually passed the bill under Chairman Dingell's
1158 leadership, had a 12-year-and-under standard. The Senate
1159 bill had a 6-year-and-under standard for children. The
1160 Senate receded to the House to the 12-year. That is one of
1161 the changes in the draft before us is that we leave the age
1162 as undefined. If you split the difference between the Senate
1163 and the House, obviously it would be 9 and under. Is that a
1164 reasonable compromise or is that unfeasible in your opinion?

1165 Mr. {Howell.} To some degree it depends on the risks
1166 that you are trying to manage. I will say in that some work
1167 done several years ago in establishing lead limits for
1168 children's jewelry, which the work was terminated because of
1169 the CPSIA, staff had determined that 9 and under would be an
1170 appropriate age based on how children interact with a product
1171 such as jewelry.

1172 Mr. {Barton.} Let me ask that same question to Dr.
1173 Best. Is there some middle ground between 6 and 12?

1174 Dr. {Best.} We carefully reviewed this in 2007 and we
1175 believe 12 is the right age.

1176 Mr. {Barton.} Okay. What about Dr. Beck?

1177 Ms. {Beck.} I think that it is somewhat of a science
1178 policy decision that there really is no bright line. I do
1179 think what Mr. Howell has proposed, 7, 9, that they are
1180 reasonable compromises. Obviously, a young child might play
1181 with toys of an older child, but it will be less frequent.
1182 But as I said, ultimately, I think that there is need for
1183 some judgment in determining what the actual age should be.

1184 Mr. {Barton.} Okay. Mr. Howell, on third-party
1185 testing, the draft preserves third-party testing for certain
1186 priority standards and priority products and it gives the
1187 Commission the flexibility to require third-party testing for
1188 other standards. Is that something you think the Commission
1189 would support in this draft, the third-party testing
1190 amendments?

1191 Mr. {Howell.} Sir, I am unable to speak for the
1192 Commission.

1193 Mr. {Barton.} You work for the Commission. You are the
1194 only Commission representative we have.

1195 Mr. {Howell.} I work for the Commission but the

1196 question was do I believe the Commission, you know, would buy
1197 into this proposal and I cannot predict what the Commission
1198 might accept or not accept.

1199 Mr. {Barton.} So you just walk around in a daze when
1200 you are at the Commission even though you are the--

1201 Mr. {Howell.} No, sir, but I do not control the votes
1202 of the commissioners.

1203 Mr. {Barton.} Well, but you can have an opinion about
1204 what their position might be. You have got a better opinion
1205 than I do.

1206 Mrs. {Bono Mack.} The chair would recognize that we are
1207 out of time and with all due respect to my dear colleague,
1208 but recognize now for 5 minutes Mr. Towns.

1209 Mr. {Towns.} Thank you very much, Madam Chair. Let me
1210 ask discretion, first of all, I guess to you Dr. Best. Can
1211 you explain how lead buildup in bones throughout a lifetime
1212 can impact pregnant women and developing fetuses and why
1213 children are born with lead in their blood?

1214 Dr. {Best.} Yes. Lead is similar to calcium in that
1215 our bodies see lead as if it was a calcium molecule and then
1216 absorb it into our bones throughout our lives. And so if you
1217 are exposed to more levels of lead as you are developing
1218 bones or remodeling bones, which goes on throughout life, you
1219 are likely to absorb and store lead in your bones to a

1220 greater extent.

1221 During pregnancy, there is a very high calcium demand on
1222 the mother's body and the fetus actually steals calcium from
1223 the mother. And if the mother doesn't have enough daily
1224 dietary intake from calcium, the bones will be resorbed and
1225 calcium from the bones will then be used to help the fetus
1226 develop. And so if there is calcium being released from the
1227 bones and there is also lead in the bone, the lead is
1228 released at the same time and then transferred to the fetus.

1229 Mr. {Towns.} Thank you very much. Let me ask you this,
1230 Mr. Howell. When can a product that has shown consistent
1231 compliance, you know, through a third-party testing be
1232 relieved from testing? How many years?

1233 Mr. {Howell.} If the objective is to establish a
1234 prevention-based program, the answer to that would be that
1235 while the frequency of testing could certainly be extended, I
1236 would suggest that perhaps it could never be terminated if
1237 you will but just longer periods of time between third-party
1238 testing. In the industry that would be a skip-lot quality
1239 approach.

1240 Mr. {Towns.} Even if you test it and there is
1241 consistency and you still feel that you can't say 2 years, 10
1242 years, 20 years? You just would have to continue?

1243 Mr. {Howell.} Well, the assumption there is that things

1244 never change in the manufacturing process. And you know, for
1245 example, the lead in paint that some say was the beginning of
1246 the CPSIA discussion was a total surprise to the
1247 manufacturer. They thought they had their process totally
1248 under control and they had a supplier who brought material
1249 into their factory, they assumed it was correct, and in fact
1250 it was loaded with lead. So if indeed the goal is to measure
1251 compliance to assure the American public that the product is
1252 safe, I would suggest that while you could increase the time
1253 between testing that you might be accepting some risk if you
1254 chose to terminate the testing until such time as you
1255 determine there was another problem and then reinstitute the
1256 testing.

1257 Mr. {Towns.} Right. Thank you. Is there sufficient
1258 flexibility for the Commission to allow for--I am trying to
1259 see if there is anything on this side that we need to do.

1260 Mr. {Howell.} In my opinion and, of course, as has been
1261 stated many times by the Commission itself, there is
1262 certainly a need for additional flexibility for the
1263 Commission to act appropriately to implement the law and
1264 safeguard consumers.

1265 Mr. {Towns.} Dr. Best, is there anything that we need
1266 to do on this side as Members of Congress? Let us switch
1267 roles for a minute.

1268 Dr. {Best.} Besides pass a budget? Sorry. I think we
1269 need to remember that toys are not a requirement for life and
1270 we want children to have the best opportunity that they can
1271 possibly have. And, you know, the option is not between a
1272 drug that has side effects for a child. The option is
1273 between a toy that is safe and a toy that may not be safe.
1274 And so we need to remember that, you know, every toy is not a
1275 required product to help a child grow. They need toys but
1276 they need to know that those toys are safe. And we need to
1277 continue to remember that lead is dangerous at small levels.
1278 Even very small levels it causes IQ loss and the more we find
1279 out about the low levels of lead, the more harms we discover.

1280 Mr. {Towns.} Thank you. I see my time has expired,
1281 Madam Chair. Thank you very much.

1282 Mrs. {Bono Mack.} I thank the gentleman and recognize
1283 the gentleman from New Hampshire, Mr. Bass, for 5 minutes.

1284 Mr. {Bass.} Thank you very much, Madam Chairman, and I
1285 appreciate your holding this important hearing to discuss a
1286 piece of legislation which corrects a response to a problem
1287 which was clear and understandable and necessary which
1288 occurred during the period of time that I was not serving in
1289 the Congress. And I was thinking of saying I am not
1290 surprised that the response that was passed by Congress
1291 essentially endeavors to use a Howitzer to kill a mosquito

1292 and so here we are trying to make this necessary new law work
1293 better.

1294 However, my questions are for Mr. Howell, and they don't
1295 deal with the central controversy of the bill but rather with
1296 some equipment that the CPSC is using and whether or not its
1297 use should be expanded. I understand that the Consumer
1298 Product Safety Commission uses several dozen handheld x-ray
1299 fluorescence analyzers and they are used both in the
1300 laboratory and also in ports of entry. They quickly,
1301 effectively, non-intrusively, and accurately determine
1302 whether and how much lead is in a product. Can you give us a
1303 brief description of your experiences using this equipment
1304 and enforcing limits on lead?

1305 Mr. {Howell.} Certainly. The XRF scanners have
1306 certainly helped the efficiency and effectiveness of
1307 implementing the law. There initially were some limitations.
1308 The XRF is a good tool for detecting lead and other
1309 potentially toxic heavy metals and homogenous materials like
1310 plastics. However, there were some limitations early on in
1311 checking for lead in surface coatings, as in paint.

1312 Mr. {Bass.} Um-hum.

1313 Mr. {Howell.} However, just recently CPSC issued a
1314 Notice of Requirements recognizing that HD XRF technology had
1315 been developed, a testing protocol had been developed under

1316 ASTM and that is now an approved method to test for lead in
1317 paint. So it certainly is an efficient technology.

1318 Mr. {Bass.} As the lead individual for hazard
1319 reduction's support expanded use of these XRF devices by
1320 manufacturers, retailers, and porters as a means to ensure
1321 compliance with lead limits?

1322 Mr. {Howell.} I believe the cost savings, in my
1323 experience, has been motivation enough. Certainly, most
1324 manufacturers who can afford a unit, to my knowledge, have
1325 acquired one.

1326 Mr. {Bass.} So the expanded use of this equipment
1327 would, in your opinion, improve the safety and quality of the
1328 products on the market today?

1329 Mr. {Howell.} It certainly is an effective way for a
1330 manufacturer to monitor his incoming materials and his
1331 outbound materials.

1332 Mr. {Bass.} Okay. And lastly, as you may know, the EPA
1333 and HUD have used handheld XRF for decades to test for lead
1334 in homes and they are obviously protecting children. CPSIA
1335 includes a limit for lead in small painted areas on
1336 children's products. I think it is 2 micrograms per square
1337 centimeter of paint. Do you support making this limit
1338 applicable to larger painted areas as well?

1339 Mr. {Howell.} If you would allow me to respond to that

1340 question in writing, I would like to get with our chemist and
1341 give you an appropriate response.

1342 Mr. {Bass.} Okay. Fair enough. Thank you very much.
1343 And I thank the chairlady. I yield back.

1344 Mrs. {Bono Mack.} I thank the gentleman. And the chair
1345 recognizes we have a series of votes on the floor so it is my
1346 intention to have Mr. Dingell as his 5 minutes of questioning
1347 and then we will break and return to resume questioning after
1348 the series of votes. So Mr. Dingell, you are recognized for
1349 5 minutes.

1350 Mr. {Dingell.} Thank you, Madam Chairman. To the
1351 witnesses, these questions will require a yes or no answer
1352 only because of time.

1353 The draft legislation requires the Commission to
1354 establish procedures for estimating the amount of lead a
1355 child would ingest from a given child's product. However,
1356 while the Commission establishes such procedures, the draft
1357 legislation would permit the manufacturers to use ``any
1358 reasonable methodology to estimate the amount of lead a child
1359 would likely ingest from exposure to a component part.''

1360 Question: Is there any such reasonable methodology in use by
1361 manufacturers today for testing children's products?

1362 Starting with Dr. Best.

1363 Dr. {Best.} I am not familiar with what manufacturers

1364 can do.

1365 Mr. {Dingell.} Dr. Beck?

1366 Dr. {Best.} Oh, I am sorry.

1367 Mr. {Dingell.} Yes or--

1368 Ms. {Beck.} There is methodologies. I don't know if
1369 the manufacturers know about them.

1370 Mr. {Dingell.} Thank you. And if you please, Mr.
1371 Howell, yes or no?

1372 Mr. {Howell.} I am not aware.

1373 Mr. {Dingell.} Now, starting again, Dr. Best, is it
1374 possible the ambiguity of the term ``reasonable methodology''
1375 would lead to a wide variance in test results across the
1376 manufacturers of similar products? Yes or no?

1377 Dr. {Best.} Yes.

1378 Mr. {Dingell.} Okay. Dr. Beck?

1379 Ms. {Beck.} I don't know.

1380 Mr. {Dingell.} Mr. Howell?

1381 Mr. {Howell.} I do not know.

1382 Mr. {Dingell.} Could this--well, I will just defer on
1383 that particular question. Now, Mr. Howell, the draft
1384 legislation would allow CPSC, subject to conditions, to
1385 require a third-party testing of children's products. Under
1386 the draft bill, CPSC would require a third-party testing only
1387 if the Commission first verifies the testing capacity of

1388 ``accredited third-party conformity assessment bodies,'' as
1389 well as establishes and publishes Notice of Requirements for
1390 such accreditation of such assessment bodies. Does this
1391 include both national and international or domestic and
1392 international bodies? Yes or no?

1393 Mr. {Howell.} I believe it does, yes.

1394 Mr. {Dingell.} Okay. Now, if so, how many such
1395 assessment bodies are there worldwide?

1396 Mr. {Howell.} CPSC recognized conformity assessment
1397 bodies are currently in excess of 300 I believe.

1398 Mr. {Dingell.} Okay. Now, further, does the Commission
1399 have the resources with which to verify the testing capacity
1400 of all third-party conformity assessment bodies? Yes or no?

1401 Mr. {Howell.} I can't answer that question yes or no.

1402 Mr. {Dingell.} It means that you do not know they do
1403 have such capacity. Now, moreover, is it your understanding
1404 the draft legislation, the Commission would have to accredit
1405 all third-party conformity assessment bodies? Yes or no?

1406 Mr. {Howell.} No.

1407 Mr. {Dingell.} If so, do you believe the Commission has
1408 the resources with which to accomplish this purpose? Yes or
1409 no?

1410 Mr. {Howell.} Yes.

1411 Mr. {Dingell.} In summary, do you believe the practical

1412 effect of these requirements would be that the Commission
1413 would seldom, if ever, require third-party testing of
1414 children's products? Yes or no?

1415 Mr. {Howell.} No.

1416 Mr. {Dingell.} Now, Mr. Howell, CPSIA defines a
1417 children's product as one ``primarily intended for a child 12
1418 years of age or younger.'' The discussion draft would change
1419 this definition to ``intended for use by a child,'' then it
1420 leaves a gap, ``age to be determined--years younger.'' Would
1421 these words ``for use by'' limit the number and type of
1422 products covered by this definition? Yes or no?

1423 Mr. {Howell.} Yes.

1424 Mr. {Dingell.} Now, to Drs. Beck and Dr. Best. Would
1425 you care to comment briefly on Mr. Howell's response to the
1426 last questions? Starting with Dr. Best.

1427 Dr. {Best.} No.

1428 Mr. {Dingell.} You can if you wish. Dr. Beck?

1429 Ms. {Beck.} If the age decreases from 12 to some number
1430 less than 12, then the number of products to be tested, of
1431 course, would diminish because the products are defined for
1432 different age groups.

1433 Mr. {Dingell.} Ladies and gentleman of the panel, thank
1434 you. Madam Chairman, I thank you for your courtesy.

1435 Mrs. {Bono Mack.} I thank the distinguished gentleman.

1436 And it is my intention that we recess now for this series of
1437 votes and we return at high noon. So we will see you all at
1438 high noon if we are quick on the floor with votes. If not, a
1439 little wiggle room. See you guys at noon. Thanks.

1440 [Recess.]

1441 Mrs. {Bono Mack.} All right. The chair will recognize
1442 Mr. Pompeo for 5 minutes.

1443 Mr. {Pompeo.} Great. Thank you, Madam Chairman. Thank
1444 you, panelists, for hanging with us through the vote.

1445 You know, I heard Mr. Waxman say this was a wrecking
1446 ball and I heard somebody say we were comprehensively
1447 demolishing the CPSIA. I think there is lots more to do. I
1448 think this is a very good first step, but there is a lot more
1449 work to do.

1450 I wanted to ask you, Mr. Howell, just a couple questions
1451 about the database. We have been live now for almost a
1452 month, right? How many reports have we received since March
1453 11 under the database rule?

1454 Mr. {Howell.} The number is approximately 1,500 at this
1455 point.

1456 Mr. {Pompeo.} And other than those--so there is a 5-day
1457 period before it goes out to the manufacturer. How many of
1458 those have been sent on to the manufacturer of those 1,500?

1459 Mr. {Howell.} I would like to respond in writing with

1460 precise numbers. But at this point of those that we have
1461 received, I think approximately 50 percent at this point have
1462 been sent to manufacturers.

1463 Mr. {Pompeo.} And so how many of those are past the
1464 required time period to send on to the manufacturer
1465 approximately?

1466 Mr. {Howell.} Actually, once they pass the CPSIA check,
1467 which is the eight requirements to be considered, at that
1468 point they would be passed to the manufacturer and we are not
1469 late in sending the initial notice to the manufacturer.
1470 Those are happening on time.

1471 Mr. {Pompeo.} So everything is on time. Everything is
1472 good. You have got the resources to respond at the level of
1473 the reports that have come in so far and you are making all
1474 of the deadlines that were imposed by the rules that CPSC put
1475 in place?

1476 Mr. {Howell.} I believe for the most part, yes.

1477 Mr. {Pompeo.} And how is this being conducted? How do
1478 these come in? Who is reviewing them? Are you reviewing
1479 them along with staff and a committee? What kind of
1480 resources are being dedicated to that project?

1481 Mr. {Howell.} At this point in time, there are several
1482 different staff members involved in the review, part of that
1483 because it is a brand new process and we are trying to

1484 understand what we are getting in, making the appropriate
1485 decisions regarding reports of harm to ensure that they do,
1486 indeed, meet the qualifications. It is roughly a team of 10
1487 to 12 with representatives of technical staff, legal staff,
1488 and IT.

1489 Mr. {Pompeo.} Wow. 10 to 12 people. Wow, for 1,500
1490 across 30 days. So what do you have? 35 a business day, 50
1491 a business day, something like that?

1492 Mr. {Howell.} Probably somewhere in the neighborhood of
1493 50 a business day.

1494 Mr. {Pompeo.} Yeah. Can you keep up with it?

1495 Mr. {Howell.} At this point yes, but we are in a
1496 learning curve and we understand that as we get a better
1497 handle of the nature of these incoming reports, we expect
1498 efficiencies to increase.

1499 Mr. {Pompeo.} Why would you go through a learning curve
1500 when you have had this database running without it being
1501 public for such a long time? Why wouldn't we have done the
1502 learning curve before we went live?

1503 Mr. {Howell.} When we were in the soft launch, not
1504 every manufacturer necessarily felt compelled to respond
1505 knowing that those reports would not necessarily go live.
1506 Now that we are live, we are getting many more responses from
1507 manufacturers.

1508 Mr. {Pompeo.} My first question focused on the process
1509 internal to CPSC before forwarding on. Tell me how the
1510 process is going in getting a response from manufacturers to
1511 date that have had the deadline arrive for their response to
1512 be due?

1513 Mr. {Howell.} You know, the manufacturers receive
1514 notification that there has been a report of harm.
1515 Manufacturers can file a claim of material inaccuracy.

1516 Mr. {Pompeo.} How many have done that so far?

1517 Mr. {Howell.} I believe there has been less than 10
1518 percent have filed claims for material inaccuracy. They can
1519 also file claims for confidentiality, which is extremely rare
1520 at this point in time. And they are certainly free to file a
1521 comment without necessarily filing a claim of inaccuracy or
1522 confidentiality.

1523 Mr. {Pompeo.} How many have said ``not me, not my
1524 stuff?''

1525 Mr. {Howell.} The vast majority of the material
1526 inaccuracy claims tend to be just that nature. ``It is not
1527 my product.''

1528 Mr. {Pompeo.} And are those still online readily
1529 accessible to the public? So you all send it to the
1530 manufacturer and they say it is not my stuff, are you then
1531 putting it online?

1532 Mr. {Howell.} No, if they claim that it is not their
1533 product, that is a valid claim of material inaccuracy. And
1534 until such time as that is resolved and the problem clearly
1535 identified, it does not get posted.

1536 Mr. {Pompeo.} Thank you, Mr. Howell. Ms. Best, you
1537 talked about--she is not here. Let me ask you one more
1538 question, Mr. Howell. How many items from the punch list
1539 that Commissioner Tenenbaum gave me on the database have you
1540 all been able to work through since she was here? That is
1541 what is still left to fix?

1542 Mr. {Howell.} I am not familiar with that punch list.
1543 I will certainly respond to that in writing.

1544 Mr. {Pompeo.} Thank you. Madam Chairman, I yield back
1545 the balance of my time.

1546 Mrs. {Bono Mack.} I thank the gentleman and recognize
1547 Mr. Butterfield to explain the absence of the witness.

1548 Mr. {Butterfield.} Thank you, Madam Chairman. You will
1549 notice that Dr. Best is absent this afternoon. I want the
1550 record to show that she had prior obligations this afternoon
1551 and had to leave. I am told that she is seeing patients
1552 today and has scheduled those appointments with the
1553 understanding that we would convene this morning at 9:00 a.m.
1554 instead of 10:00 a.m. But please be assured that she will be
1555 available to answer any questions that any of the members may

1556 have. Thank you.

1557 Mrs. {Bono Mack.} I thank the gentleman and would
1558 remind the committee that we did delay the starting point of
1559 today's hearing to accommodate the Democrats. And it is
1560 unfortunate that the witness had to leave but remind members,
1561 too, you can submit further questions to her in writing
1562 later. And at that point, we will be happy to recognize Mr.
1563 Harper for 5 minutes.

1564 Mr. {Harper.} Thank you, Madam Chair. Mr. Howell and
1565 Dr. Beck, thank you for being here today. I am sure you can
1566 come up with a list of a dozen things you would rather be
1567 doing or maybe 100 things, but we welcome your attendance and
1568 appreciate what you are sharing with us.

1569 And Mr. Howell, just a couple of questions on some
1570 issues involving this. And I know that when we are talking
1571 about the common toy box theory applying, of course, to toys,
1572 it seems like there are a lot of other products that it
1573 really makes no sense at all. For example, infants and
1574 toddlers are not going to have access to motorized products
1575 like ATVs or at least we hope they are not. What is the
1576 situation with, say, ATVs and other things like that when it
1577 comes to these regs?

1578 Mr. {Howell.} One would certainly not expect that small
1579 children would have frequent access with those type of

1580 outdoor products, certainly.

1581 Mr. {Harper.} Okay. When we talk about, say,
1582 electronics, you know, the Commission set much higher lead
1583 limits for certain metal alloys. When the Commission granted
1584 a stay of the lead content limits for ATVs and bicycles, it
1585 set temporary limits at the same or very low or similar
1586 levels I mean. Why does the CPSC consider them to be safe or
1587 at least safe enough for now? What is the rationale for
1588 that?

1589 Mr. {Howell.} When the Stay of Enforcement was issued,
1590 it was simply a stay from the testing and certification
1591 requirements. There was not a stay of the requirement to
1592 conform to the law as written. So the limits that are
1593 established are the limits that were prescribed in law.

1594 Mr. {Harper.} Got you. Now, I will ask if the
1595 Commission is aware of any deaths in fixed-side cribs in
1596 daycares?

1597 Mr. {Howell.} Would you repeat that, please?

1598 Mr. {Harper.} Sure. Yes, sir. Is the Commission aware
1599 of any deaths involving fixed-side cribs in daycares?

1600 Mr. {Howell.} I am not aware of any but I will
1601 certainly take that question back and have our epidemiologist
1602 do a data-pull.

1603 Mr. {Harper.} In your testimony, Mr. Howell, you have

1604 suggested the Commission be allowed to regulate on a
1605 timetable influenced by the seriousness of the actual risk to
1606 allow for better priority-setting. Do you have specific
1607 suggestions that you can share on how you can do this or how
1608 we can do this?

1609 Mr. {Howell.} I believe any organization that has
1610 finite resources needs to ensure that they are allocating
1611 those resources to the highest priorities. You know,
1612 certainly there are various ways to rank those within the
1613 Commission. One might suggest that frequency and severity
1614 at-risk populations are all criteria that would help identify
1615 higher-priority projects versus those that might fall lower
1616 on the list. And it is really all about managing finite
1617 resources in a way that provides the greatest return on those
1618 efforts.

1619 Mr. {Harper.} Okay. Dr. Beck, Mr. Vitrano, who will
1620 testify on the next panel, submitted testimony that says you
1621 estimated the lead intake from children's interaction with
1622 ATVs is less than the intake from drinking a glass of water
1623 and I ask if that is true or any info on that statement.

1624 Ms. {Beck.} Yes, we did an analysis in which we used
1625 wipe tests from ATVs so we had actual data and we compared
1626 how much children would get from that scenario versus what a
1627 child might drink in a typical glass of drinking water, which

1628 may contain small amounts of lead. So that is a correct
1629 conclusion from our analysis.

1630 Mr. {Harper.} And when was that analysis done? How
1631 recently?

1632 Ms. {Beck.} It was, I believe, either 2008 or 2009.

1633 Mr. {Harper.} All right. But wouldn't it be true,
1634 though, that the metal parts of the ATVs contain much higher
1635 lead than permitted by EPA drinking water standards?

1636 Ms. {Beck.} It is a little bit apples and oranges
1637 because the drinking water standards based on what is in the
1638 water--

1639 Mr. {Harper.} Right.

1640 Ms. {Beck.} --that is a very low concentration in the
1641 water. And then if you were to say what does that mean in
1642 terms of--you could compare it to PPMs in a valve and, of
1643 course, that would be much, much higher. But it is a little
1644 bit of an apples-and-orange comparison.

1645 Mr. {Harper.} But based on that analysis, your concern
1646 about ATVs as it concerns infants and toddlers, you would not
1647 be overly concerned with that at all, would you?

1648 Ms. {Beck.} No, because it is really not a plausible
1649 scenario.

1650 Mr. {Harper.} Sure. Okay. I yield back.

1651 Mrs. {Bono Mack.} I thank the gentleman and recognize

1652 Dr. Cassidy for 5 minutes.

1653 Dr. {Cassidy.} I really enjoyed this panel. All of you
1654 attempted to be very fact-based and referenced-based. So let
1655 me just first compliment you. And my compliments to Dr.
1656 Best, who is no longer here.

1657 First you, Mr. Howell. Clearly it is common sense that
1658 a kid is not going to chew on an ATV and probably not on the
1659 stem of a bicycle. On the other hand, I can understand that
1660 if there was some other product that the varnish wore off
1661 that the child could gnaw down to and actually have some lead
1662 exposure. So I guess my question to you is are we able to
1663 come up with a definition that which is absurd that the kid
1664 would ever chew on is moved over here and that which it is
1665 plausible is moved over there? Is that something within the
1666 Commission's ability to accomplish?

1667 Mr. {Howell.} Certainly in the Commission's traditional
1668 risk-based evaluation of consumer products, that would be an
1669 evaluation that would be conducted. How a child interacts
1670 with the product is important in determining the level of
1671 risk that that child may be subjected to from that certain
1672 product. In the case of ATVs, we would find it less likely
1673 the child would swallow or mouth an ATV. Certainly you would
1674 expect that there could be some migration of lead from
1675 contact with the hand on an ATV.

1676 Dr. {Cassidy.} Now, I gather from Dr. Best--and I am
1677 sorry she is not here because I just wanted to explore this
1678 because all three of you know so much more about this issue
1679 than I. That is why you are the panel members and I am not--
1680 that there was some dissatisfaction from the risk-based
1681 assessment. So now I am sure there are many aspects of risk-
1682 based assessments, but was one of the areas that folks were
1683 unhappy with, did that include your ability to differentiate
1684 lead paint peeling off a wall from an ATV, one is a great
1685 risk, one is a minimal risk for lead exposure?

1686 Mr. {Howell.} You know, I have certainly heard the
1687 arguments against risk-based but I am not fully aware of all
1688 the underlying rationale behind that criticism.

1689 Dr. {Cassidy.} So it sounds like you feel like risk-
1690 based is a practical thing for the Commission to implement?

1691 Mr. {Howell.} The Commission has been using a risk-
1692 based approach for decades now.

1693 Dr. {Cassidy.} Now, you mentioned in response to Mr.
1694 Harper, the last line of your testimony to ``effectively
1695 prioritizing Commission resources towards those of the most
1696 serious health risk.'' Now, I have learned in life that if
1697 you attempt to monitor everything, you end up monitoring
1698 nothing. But on the other hand, if you monitor a few things,
1699 you often can monitor them well. And I have also learned

1700 that there is oftentimes, you know, 99.9 percent risk with
1701 this subset of activities and .1 percent with this subset.
1702 Is that so clearly broken out in lead exposure? Can you say,
1703 listen, this is really high-risk stuff. We need to focus our
1704 resources even more so than now if we were so allowed, as
1705 opposed to this, which is incredible low-risk. We are kind
1706 of killing our time over here.

1707 Mr. {Howell.} You know, certainly the Agency is
1708 extremely concerned with those lead-bearing items that can be
1709 swallowed. Acute exposure to lead is certainly a very
1710 serious, serious thing. One would expect that the risk
1711 decreases as you move from swallowing to mouthing, from
1712 mouthing to touching. And the management of that risk at
1713 that point then becomes a decision on how the child interacts
1714 with the product and what you--

1715 Dr. {Cassidy.} So you mean by risk-based would make
1716 some differentiation between high- and low-risk and it would
1717 all be upon how the child interacts and the relative amount,
1718 et cetera, et cetera?

1719 Mr. {Howell.} Yes, that is a basis of--

1720 Dr. {Cassidy.} Now, the other thing occurs to me is
1721 that we have heard last time from a previous panel about the
1722 craft-makers and you know, somebody in Oregon who makes these
1723 nice little airplanes that apparently needs a--I shouldn't

1724 laugh--but you know, it would make probably 100 planes a
1725 year, sells them out of their shop and now has to get a
1726 third-party assessment as to the lead content of the paint.
1727 Now, in your risk assessment, do you also say listen, if it
1728 is below a certain production value or quantity per year--I
1729 mean the ability of something that is produced on the scale
1730 of 100 a year, as one example, is really unlikely to have a
1731 significant impact, do you have any such sort of evaluation
1732 like that?

1733 Mr. {Howell.} Our evaluation is from a risk approach is
1734 a product evaluation and the consideration of the volume of
1735 the product produced is not relevant to the assessment of the
1736 risk that that particular product may present to the consumer
1737 who is using that product.

1738 Dr. {Cassidy.} Yeah, it wouldn't be for the particular
1739 consumer, but it would be for the epidemiology of it in terms
1740 of a population issue, correct?

1741 Mr. {Howell.} Absolutely. And when it comes to
1742 prioritizing the Agency's work, that is where the frequency
1743 severity factors come into play.

1744 Dr. {Cassidy.} So you do incorporate the population
1745 aspect to it. Okay. Well, thank you. Ms. Beck, I am sorry,
1746 no questions for you. It was just mine were more oriented to
1747 Mr. Howell. Thank you.

1748 Mrs. {Bono Mack.} The chair recognizes Mr. Kinzinger
1749 for 5 minutes.

1750 Mr. {Kinzinger.} Let me see if I can get this to work
1751 here. Well, maybe. Well, how are you doing today?
1752 Hopefully well. I don't need to take a lot of time because I
1753 think you guys have been very good at answering the
1754 questions. I appreciate your time and I appreciate the
1755 chairwoman for organizing the hearing.

1756 You know, one of my concerns when we get to government
1757 involvement in areas is something that I affectionately refer
1758 to--as many other do--as the law of unintended consequences.
1759 You know, it is obviously when somebody does something that
1760 looks great on paper and then in actuality has a completely
1761 different effect.

1762 So Mr. Howell, my question, speaking in terms of the law
1763 of unintended consequences to you, do you agree with the
1764 past-acting Chairman Nord's statement of April 3, 2009, that
1765 the ``application of the lead content mandates of this act
1766 may have actually the perverse effect of actually endangering
1767 children by forcing youth-sized vehicles off of the market''
1768 and in a result actually children riding vehicles that are
1769 bigger or, in essence, too big for them, adult-sized ATVs if
1770 you will.

1771 Mr. {Howell.} I agree with that statement.

1772 Mr. {Kinzinger.} Okay. So you do agree with that.
1773 Madam Chairwoman, I would like to ask unanimous consent to
1774 insert two documents into the record.

1775 Mrs. {Bono Mack.} Without objection.

1776 Mr. {Kinzinger.} The first, a statement from acting
1777 Chairman Nancy Nord of the CPSC from April 2009 requesting
1778 exclusions from the lead-content limits of the Consumer
1779 Protection Safety Improvement Act of '08. The other is a
1780 letter from Edward Moreland, Senior Vice President of the
1781 American Motorcyclists Association to Chairwoman Bono Mack
1782 and Ranking Member Butterfield regarding the discussion
1783 draft.

1784 [The information follows:]

1785 ***** COMMITTEE INSERT *****

|
1786 Mr. {Kinzinger.} The next question I have, common sense
1787 seems to support the notion that youth model OHV should not
1788 be subjected to the lead content provisions of this act.
1789 Would one of the solutions to this conundrum be an outright
1790 categorical exemption, like the one provided in H.R. 412. It
1791 is called the Kids Just Want to Ride Act. It is one I am a
1792 cosponsor on.

1793 Mr. {Howell.} As a policy decision, that certainly
1794 would be an option.

1795 Mr. {Kinzinger.} Okay. Well, like I said, those are
1796 basically my two big questions I had. You all have done a
1797 great job here in front of us today. I appreciate your time.
1798 And I would yield back my time.

1799 Mrs. {Bono Mack.} I thank the gentleman. And at that
1800 point I am happy to thank our panelists for staying and for
1801 your expert testimony. We appreciate everything you have had
1802 to offer today and hopefully we will craft some great
1803 legislation. So thank you for your time and we will spend a
1804 quick 30 seconds or a minute seating the new panel and get
1805 started right away. Thank you again.

1806 All right. Thank you. Our second panel is comprised of
1807 four witnesses. Welcome. And thank you for staying with us
1808 this morning. Our first witness, again, but not in the order

1809 of recognition, but to introduce Erika Jones. She is a
1810 partner at Mayer Brown here representing the Bicycle Product
1811 Suppliers Association. Welcome. Our second witness is Paul
1812 Vitrano, General Counsel for the Motorcycle Industry Council.
1813 Also testifying today is Sheila Millar, a partner at Keller
1814 and Heckman, LLP. And our fourth witness on this panel is
1815 Caroline Cox, Research Director for the Center for
1816 Environmental Health. Welcome to each of you.

1817 You all know the drill now, the 5 minutes and the clocks
1818 and how they work. So if you could just pay attention to
1819 those, we appreciate it. We will have some floor votes again
1820 eventually, so if we can move it along, that would be
1821 terrific.

1822 So now we are going to begin with our first witness and
1823 recognize Ms. Cox for 5 minutes.

|
1824 ^STATEMENTS OF CAROLINE COX, RESEARCH DIRECTOR, CENTER FOR
1825 ENVIRONMENTAL HEALTH; SHEILA A. MILLAR, PARTNER, KELLER AND
1826 HECKMAN, LLP; PAUL C. VITRANO, GENERAL COUNSEL, MOTORCYCLE
1827 INDUSTRY COUNCIL; AND ERIKA Z. JONES, PARTNER, MAYER BROWN,
1828 ON BEHALF OF THE BICYCLE PRODUCT SUPPLIERS ASSOCIATION

|
1829 ^STATEMENT OF CAROLINE COX

1830 } Ms. {Cox.} Thank you very much for the opportunity to
1831 testify today. My message is that CPSIA, as written, has
1832 been an enormous success and I am really privileged today to
1833 be able to provide research data to document that success.

1834 You heard earlier that health professionals agree that
1835 there is no safe level of exposure to lead for children. So
1836 I am discouraged to see the proposed revisions in the CPSIA
1837 that would weaken a law that has worked so well to protect
1838 American children from unnecessary lead.

1839 For the last 15 years, my organization, the Center for
1840 Environmental Health, has worked to protect children and
1841 families from harmful chemical exposures. Our experience
1842 before and after passage of the CPSIA demonstrates that the
1843 law has been highly successful. Prior to adoption of the
1844 law, we found high lead levels in dozens of children's

1845 products sold to millions of American families by major
1846 retailers. At that time there was no federal law to protect
1847 children from lead so we relied on California State Law.
1848 Since the lead limits under CPSIA went into effect, our
1849 experience shows a dramatic change in the marketplace for
1850 children's products.

1851 In the last year and a half, we purchased over 1,200
1852 children's products from major national retailers and
1853 screened them for lead. These were stuffed animals, toys,
1854 games, lunch boxes, backpacks, jewelry, toy sporting
1855 equipment, lots of other things. As far as we know, it is
1856 the largest independent monitoring of compliance with CPSIA
1857 to date.

1858 Out of these 1,200 products, we found only 46 that did
1859 not comply with CPSIA lead standards based on tests by a
1860 CPSIA-certified lab. In other words, more than 96 percent
1861 were in compliance. And because we intentionally purchased
1862 products that were likely to have lead problems, we believe
1863 overall compliance is even higher.

1864 This data contrasts with what we found in 2007 and 2008.
1865 Our results show that over the 4-year interval, the
1866 prevalence of lead hazards in children's products was reduced
1867 by a factor of about 3. Given the immense size of the U.S.
1868 market for children's products, this is a major

1869 accomplishment.

1870 We do understand that CPSIA requirements can be a
1871 hardship for small business and we would support amendments
1872 to help with that. We believe that the CPSIA has been
1873 effective because one, the lead standards are comprehensive.
1874 They cover virtually all children's products and all
1875 accessible parts of those products. And that has created a
1876 huge market for complaint materials and components.

1877 The standards are straightforward, and because they are
1878 based on a total content standard, testing is accessible,
1879 consistent, and affordable. Lead content standards are the
1880 only kind of standards that allow materials and components to
1881 be tested upstream in a supply chain. When you have
1882 exposure-based standards or risk-based standards, the testing
1883 can only be done on finished products after it is already
1884 made.

1885 And the third point I would like to make is that the
1886 lead standards apply to a really meaningful definition of
1887 ``children,' ' up to age 12. Because lead is a cumulative and
1888 persistent toxicant, it is particularly important to maintain
1889 this requirement. Protect children as they move into their
1890 teenage years and girls move into childbearing years.

1891 I wanted to just give a quick visual demonstration of
1892 the success of the CPSIA. Here is Curious George from 2007.

1893 His face contains lead at a level 20 times the current CPSIA
1894 standard. Don't kiss this George. And I think most kids
1895 probably wanted to. Here is the current post-CPSIA George.
1896 George is lead-free and sold at the same price. I think this
1897 really shows how successful the law has been.

1898 We respectfully recommend that this committee support
1899 the public health success that the CPSIA has been. Crucial
1900 support includes the lead content standards, as well as the
1901 definition of a child as 12 years old and younger. Thank you
1902 so much.

1903 [The prepared statement of Ms. Cox follows:]

1904 ***** INSERT 4 *****

1905

|

Mrs. {Bono Mack.} Thank you, Ms. Cox. Ms. Millar?

|
1906 ^STATEMENT OF SHEILA A. MILLAR

1907 } Ms. {Millar.} Thank you, Chairman Bono Mack and Ranking
1908 Member Butterfield, members of the subcommittee. I
1909 appreciate the invitation to appear here today.

1910 As a longtime consumer protection attorney--and I think
1911 all of the members of the panel here and everybody in this
1912 room share the same view. We need and want a strong and
1913 effective CPSC that has both the authority and the resources
1914 necessary to adopt and enforce national consumer product
1915 safety standards. Where we differ is that some of us favor
1916 revisions to CPSC's arbitrary one-size-fits-all limits that
1917 apply irrespective of the type of product, material, age of
1918 the user, or actual risk of exposure, its illusory or
1919 nonexistent exemption scheme, its retroactive effect and
1920 burdensome testing requirements, which have cost money and
1921 jobs.

1922 Based on my experience with many different federal
1923 agencies, if I have learned one thing over the years, it is
1924 that sound public policy should be based on facts and science
1925 and risk. So I want to focus on a few key points from my
1926 written testimony.

1927 First, the lead and substrate limits were derived from

1928 the unfounded assumption that presence equals risk. It
1929 doesn't. And I think Dr. Beck illustrated that point
1930 carefully this morning. The CPSC's own research has
1931 demonstrated that materials that are high in lead may
1932 sometimes yield less migratable lead or about the same amount
1933 of migratable lead as products that comply with 600 or 300
1934 parts per mission. Exposure is the key to risk. And so we
1935 do believe that revisions that are more targeted to exposure
1936 keying off of proven things that the CPSC has done for years
1937 makes a lot of sense.

1938 In terms of the lead exemption process, the proposal
1939 here offers a good step forward but remains unnecessarily
1940 complex. In addition, the limited exemption scheme is
1941 coupled with a general provision that gives the CPSC new
1942 authority to adopt 600 ppm limits on older children's or even
1943 adult products. Because I support a risk-based approach, I
1944 favor neither the current exemption process as drafted, nor
1945 giving CPSC general authority to simply adopt the 600 ppm
1946 limit on any product, irrespective of risk.

1947 In contrast, the phthalates provision offers an
1948 elegantly simple view that could be applied more generally.
1949 It tracks the CPSIA exemption for inaccessible component
1950 parts but gives the Commission authority to adopt health-
1951 based exemptions, exemptions from the prohibition that are

1952 not necessary to protect children's health. Why not adopt a
1953 consistent science-based exemption process for both lead and
1954 phthalates predicated on the simple basic rule: that the
1955 government should not be in the business of banning safe
1956 products.

1957 I do want to spend a couple minutes talking about
1958 testing. Let me be clear. Testing has an important role in
1959 compliance. And as Mr. Howell referenced this morning, there
1960 may be ways to look at how to dovetail testing regimes with
1961 supplier assurances, self-certifications, and other proven
1962 techniques that help confirm safety.

1963 Let us also be clear that the prospect of \$15 million
1964 penalties offer very powerful incentives to comply to say
1965 nothing of the prospect that your products will simply be
1966 rejected by your customers.

1967 From the standpoint of total content testing, I differ
1968 with Ms. Cox in that we have seen over and over again the
1969 total content lead tests are not so uniform as you might
1970 expect. There is considerable variability and the absence of
1971 any definitive inter-laboratory variability factor is a key
1972 problem, particularly as levels drop lower and lower. So
1973 when we look at these differences in terms of inter-
1974 laboratory variability, a material--which may have residual
1975 lead content, let us say, a plated piece of metal where you

1976 are building on a piece of tin coupled with a nickel-plating,
1977 a copper-plating, a silver-plating--at the end of the day,
1978 the addition of those added metals, each of which could have
1979 residually low total content, could put you above 100 ppm.
1980 And I think we have seen the need for exemptions to perhaps
1981 look at a broader array of material to address that naturally
1982 occurring problem.

1983 I would also caution against assuming that component
1984 testing is the solution to all ills with certification
1985 testing here. I represent many raw materials suppliers of
1986 plastics, chemicals, and other materials, and they are simply
1987 not willing to subject themselves to the jurisdiction of the
1988 CPSC to provide component-test certifications in the rigid
1989 scheme required by CPSIA.

1990 I strongly support a national safety net for consumers.
1991 I also strongly support reducing unnecessary burdens on the
1992 regulated community by restoring the CPSC its authority to
1993 make sound risk-based decisions. Thank you again for the
1994 invitation and I look forward to responding to any questions.

1995 [The prepared statement of Ms. Millar follows:]

1996 ***** INSERT 5 *****

|
1997 Mrs. {Bono Mack.} Thank you very much. Mr. Vitrano, 5
1998 minutes.

1999 ^STATEMENT OF PAUL C. VITRANO

2000 } Mr. {Vitrano.} Chair Bono Mack, Ranking Member
2001 Butterfield, and distinguished members of the subcommittee,
2002 thank you for the opportunity to testify. I am Paul Vitrano
2003 of the Motorcycle Industry Council, which represents nearly
2004 300 manufacturers of motorcycles and ATVs, aftermarket
2005 companies, and allied trades. We appreciate the
2006 subcommittee's efforts to address the unintended consequence
2007 of the CPSIA, which has effectively banned the sale of youth
2008 ATVs, motorcycles, and snowmobiles. The act has actually
2009 created unsafe situations for young riders by reducing the
2010 unavailability of appropriately-sized speed-restricted youth
2011 models.

2012 As you noted during the last hearing, Chair Bono Mack,
2013 the CPSC has made the judgment that the risk of lead exposure
2014 to children is outweighed by the risk that children face if
2015 youth ATVs are not available. The act also has cost
2016 manufacturing and dealership jobs.

2017 We urge Congress to fix this unintended ban and
2018 appreciate the subcommittee has offered an initial draft
2019 reform bill. Within the framework of the draft bill, the
2020 only way to fix the ban on youth vehicles with certainty and

2021 without imposing further needless costs and burdens on our
2022 industry and its customers is to amend the range of
2023 children's products at least for these vehicles to age 6 and
2024 under.

2025 Alternatively, we ask you to consider adding a
2026 categorical exemption to the bill. There already is
2027 widespread support for this approach. Representative Rehberg
2028 has authored the Kids Just Want to Ride Act, H.R. 412, which
2029 currently has 61 bipartisan cosponsors. And just last week,
2030 Senators Klobuchar and Tester offered a categorical exemption
2031 as an amendment to the small business bill currently before
2032 the Senate.

2033 ATVs and motorcycles do not present any lead-related
2034 health risk to young riders and Congress has made it clear
2035 that it never intended the lead content restrictions for toys
2036 to apply to these vehicles. We ask that you keep in mind the
2037 following points as you work to provide young riders in our
2038 industry with much-needed relief.

2039 First, the lead content in metal parts of ATVs and
2040 motorcycles poses no risk to kids, as Dr. Barbara Beck
2041 testified earlier this morning. The estimated lead intake
2042 from kids touching metal parts is less than the lead intake
2043 from drinking a glass of water.

2044 Second, everyone agrees that the key to youth safety on

2045 ATVs and motorcycles is ensuring they ride the right size
2046 vehicles. By reducing the availability of these vehicles,
2047 the CPSIA has created--in the CPSC's own words--a ``more
2048 serious and immediate risk of injury or death'' than any risk
2049 from lead exposure.

2050 Third, in 2009 MIC estimated that a complete ban on
2051 youth-model vehicles would result in about 1 billion in lost
2052 economic value in the retail marketplace every year.

2053 Fourth, motorcycles and ATVs are motor-powered machines,
2054 not toys or other articles kids wear or play with. So the
2055 extent and nature of the children's interaction with our
2056 vehicles is materially different. As you know, kids do not
2057 mouth tailpipes or swallow battery terminals. Young riders
2058 typically only touch a few parts of the vehicles like
2059 handlebars and clutch levers and often with gloved hands.

2060 Finally, ATVs and dirt bikes are stored outside the
2061 house, usually in garages, sheds, or barns and thus are much
2062 less likely than household items to be touched by young
2063 children. In addition to being remotely located, the
2064 vehicles have keys and use is controlled and supervised by
2065 parents.

2066 There are two commonsense ways to fix this problem once
2067 and for all and without imposing further unnecessary testing
2068 and certification costs and burdens on our industry and

2069 customers. We urge you to exclude these youth vehicles from
2070 the lead content provisions by lowering the age range to
2071 primarily intended age 6 and under or adding a categorical
2072 exemption.

2073 We also support the recommended changes to the CPSIA
2074 database provisions. One of our members recently received a
2075 report of harm where a rider who had been drinking prior to
2076 riding rode off a cliff at night in the dark. Nothing in the
2077 report indicated any problem with the ATV, but because the
2078 CPSIA database on its face only accepts reports of ``unsafe''
2079 products, the inclusion of this report will result in the ATV
2080 implicitly being classified as an unsafe product. Unless
2081 Congress acts, the database will become a repository of
2082 inaccurate information that defames manufacturers and
2083 misleads customers. We believe the modest changes proposed
2084 in the draft legislation will result in a more useful
2085 database with accurate and relevant information for
2086 consumers. Thank you. I am happy to answer any questions.

2087 [The prepared statement of Mr. Vitrano follows:]

2088 ***** INSERT 6 *****

|
2089 Mrs. {Bono Mack.} Thank you, Mr. Vitrano. Ms. Jones,
2090 you are recognized for your 5 minutes.

|
2091 ^STATEMENT OF ERIKA Z. JONES

2092 } Ms. {Jones.} Good afternoon, and thank you for inviting
2093 me to be with you this afternoon. I am Erika Jones, and I am
2094 counsel to the Bicycle Products Suppliers Association, which
2095 represents most of the manufacturers and importers of
2096 children's bicycles and adult bicycles offered for sale in
2097 the United States.

2098 The bicycle industry has taken very seriously the
2099 expectations of Congress when the CPSIA was enacted. The
2100 bicycle industry has made substantial progress toward
2101 reducing lead in children's bicycle products or making the
2102 lead inaccessible to children and appreciated the Stay of
2103 Enforcement that was enacted by the Commission and used that
2104 time productively to make these design changes and material
2105 substitutions in their products.

2106 Nevertheless, the industry is facing another brink of
2107 uncertainty as later this year a new standard of 100 parts
2108 per million looms on the horizon and presents a number of
2109 feasibility and practicability challenges for the industry.
2110 The industry presented data to the Commission in February of
2111 this year and again last month in written comments providing
2112 data from testing of a bicycle that was specced by its

2113 manufacturer to be below 100 parts per million because
2114 retailers are beginning to demand that level of achievement.
2115 And despite this effort to reach that goal, over 38 of the
2116 over 100 parts that were tested by the laboratory exceeded
2117 100 parts per million, and that is attributable to the
2118 variability that is present, inherent, and we think at this
2119 point, can no longer be worked out of the system. These were
2120 metal parts. The bicycle industry has solved the issue with
2121 respect to plastic and other non-metallic parts but continues
2122 to have a problem with those components on bicycles that are
2123 made from metal alloys.

2124 A witness at the CPSC regulatory hearing last month, who
2125 was retained by the bicycle industry and who runs a CPSC-
2126 certified lab, testified that he has in his experience seen a
2127 shrinkage in the number of children's bicycle models that are
2128 offered for sale and the number of manufacturers willing to
2129 engage in this sector, which means a loss of choice for
2130 consumers. And this, we believe, is attributed to the cost
2131 of testing for the over 100 parts of a bicycle that are
2132 accessible and therefore have to be tested.

2133 Bicycles provide safe, affordable, and environmentally
2134 friendly transportation. They provide children with an
2135 enjoyable means of outdoor exercise, which we think is far
2136 more important for the health of children than protecting

2137 them from the theoretical risks from touching metal bicycle
2138 components with their hands. If lead testing costs make
2139 children's bicycles too expensive for average families to
2140 afford or if affordable used bicycles are difficult to
2141 obtain, the health of America's children could be affected
2142 far more than from the presence of lead in a tire valve stem
2143 that they may touch only on occasion.

2144 I would like to address a comment made by the previous
2145 panel, by Dr. Best, who made a comment that there is no
2146 benefit to lead and therefore it should be inherently
2147 unnecessary. We disagree with that. Lead in the quantities
2148 that we see it in metal alloys that are used in bicycles
2149 provide a tremendous benefit. They provide corrosion
2150 resistance. Lead alloys provide strength and durability that
2151 is needed for appropriate performance of a bicycle. And it
2152 would not be socially useful or desirable to produce a
2153 bicycle that may meet a lead-free standard but which falls
2154 apart or which cannot be operated in an outdoor environment
2155 where it is intended to be used.

2156 The industry applauds your subcommittee for convening
2157 this hearing today. We believe there is a need to reform the
2158 CPSIA to reverse these unintended consequences and eliminate
2159 the unnecessary regulatory requirements that are driving up
2160 the cost of children's bicycles making them less available

2161 and we urge prompt action on sensible reforms of the CPSIA.

2162 Thank you.

2163 [The prepared statement of Ms. Jones follows:]

2164 ***** INSERT 7 *****

|
2165 Mrs. {Bono Mack.} Thank you, Ms. Jones. You get the
2166 record for coming in 45 seconds short, so I am going to
2167 recognize myself for the first 5 minutes of questioning and
2168 direct my question to you.

2169 You made reference several times in your written
2170 testimony to the August time frame. What happens in August
2171 that this time frame is of such concern that we need to do
2172 something about it in this amendment that we are looking at?

2173 Ms. {Jones.} On August 11 of this year the lead
2174 standard for substrate will drop to 100 parts per million,
2175 and under the current interpretation of the statute that will
2176 have immediate effect at the retail level, meaning it will
2177 really be retroactively applied to products that are on the
2178 retail shelves that are being built right now as we speak.
2179 And that has a devastating effect on product planning and as
2180 I testified a few minutes ago and as we have submitted data
2181 to the CPSC, the 100-parts-per-million standard is
2182 technically not feasible right now for the bicycle industry
2183 to meet.

2184 Mrs. {Bono Mack.} Thank you. And you also state that
2185 ``except in the rarest of circumstances, new government
2186 standards should apply prospectively to products that are
2187 manufactured after the effective date of the standard.'' Can

2188 you give us examples of circumstances in which new standards
2189 have been applied immediately and retroactively? And how do
2190 those examples differ from the instance we have before us?

2191 Ms. {Jones.} Well, the best example is the one we were
2192 just discussion of the 100 parts per million, which will
2193 apply immediately on August 11, not to products built after
2194 that date but to products on retail shelves as of that date,
2195 the same process applied when the 300 parts per million
2196 standard took effect in 2009. And it had the same effect and
2197 disruptive effect at the retail level.

2198 This is not the norm for product regulation in other
2199 government agencies where normally--even at the CPSC as well--
2200 -normally, manufacturers are given lead time to plan for the
2201 new regulation, to redesign their products, to absorb the
2202 costs in a more orderly fashion, and to work out their
2203 inventory so that products sold after the effective date
2204 reach retail shelves in a compliant fashion. That is the
2205 proper, orderly way to regulate products for safety
2206 improvement, not to disrupt the market with these very abrupt
2207 changes that do not permit that kind of orderly transition.

2208 Mrs. {Bono Mack.} Thank you. Ms. Cox--

2209 Ms. {Cox.} Could I make a brief comment there?

2210 Mrs. {Bono Mack.} No, I would like to move on. I have
2211 limited time and I do have a question for you, though. And

2212 you do mention that the FDA's warning about lunchboxes
2213 containing lead claiming that FDA interpreted CPSC's data
2214 differently than CPSC itself. How many lunchbox recalls did
2215 FDA order after it reviewed CPSC's data?

2216 Ms. {Cox.} This happened a long time ago but my
2217 recollection is there were not recalls but just a warning
2218 letter sent to lunchbox manufacturers telling them to fix the
2219 problem.

2220 Mrs. {Bono Mack.} I guess you mentioned this in your
2221 testimony that your discussion of lunchboxes suggests that
2222 FDA would disapprove of a risk-based lead standard and insist
2223 on a total lead content standard, but in fact they don't have
2224 any total content standard for lead, do they?

2225 Ms. {Cox.} I actually think the example of the
2226 lunchboxes shows that, you know, one of the big advantages of
2227 the total content standard, it provides a clear, consistent
2228 number which manufacturers, retailers, regulators, everybody
2229 knows what the threshold is. I mean one of the issues with
2230 the lunchboxes was that it occurred pre-CPSIA, and so
2231 different agencies interpreted the results of the risk-based
2232 testing in different ways. And what we have now with CPSIA
2233 is a clear standard and lunchboxes all across the country--I
2234 have tested a lot of them over the last couple of years, and
2235 they are great.

2236 Mrs. {Bono Mack.} All right--

2237 Ms. {Cox.} They comply with the standards.

2238 Mrs. {Bono Mack.} Thank you. Ms. Millar, why isn't a
2239 total lead standard as health-protective as an exposure-based
2240 standard?

2241 Ms. {Millar.} The risk to a child or to any consumer is
2242 based on actual handling and use. One of the assumptions
2243 that is incorrect that is underlying CPSIA is the notion that
2244 100 percent of lead and substrate will migrate out of the
2245 product. That is actually not true and the CPSC's own data
2246 demonstrates that actual migration rates are generally very
2247 low, even in worst-case, 24-hour acid ingestion test
2248 conditions. That is why we think that total content--and I
2249 think Mr. Howell expressed it this morning--can be useful as
2250 a benchmark screen, but absolute limits that ban products
2251 that actually don't result in exposure of the sort that Mr.
2252 Vitrano and Ms. Jones talked about this morning do serve to
2253 essentially ban products that are objectively safe because
2254 they don't result in significant harmful exposure to the
2255 consumer who is handling the product.

2256 Mrs. {Bono Mack.} Thank you. Mr. Butterfield, you are
2257 recognized for 5 minutes.

2258 Mr. {Butterfield.} Thank you very much. Let me go to
2259 you if I can, Ms. Cox. In your testimony you state that

2260 exposure assessment testing is a subjective process, open to
2261 interpretation and manipulation. Is that a fair
2262 characterization of your statement, that it is subjective as
2263 opposed to objective?

2264 Ms. {Cox.} It is definitely subjective, yeah.

2265 Mr. {Butterfield.} All right. And the gentlelady on
2266 the first panel, Dr. Beck, testified and supports the risk
2267 assessment, seems to provide support for your view as well.
2268 Her written testimony that she submitted indicates that
2269 assessing risk is highly contextual and hinges on a number of
2270 factors.

2271 Dr. Beck testified that you would want to know a lot of
2272 different things. You would want to know what the product
2273 is, how frequently a child interacts with the product, the
2274 duration of the interaction, will the child likely bite or
2275 suck on the product, will the child touch the component, how
2276 large an area the child will touch, and so forth and so on.
2277 That is about seven separate pieces of information that Dr.
2278 Beck identified. And I can add a couple more. How old is
2279 the child and in what stage of development is that particular
2280 child? What is the nutritional status of the child? Does
2281 the child have certain genetic traits that will lead to
2282 greater absorption? And so forth. It seems to me that
2283 perhaps the only person who could know all of these things

2284 and come up with that type of risk assessment would be
2285 someone who is superhuman.

2286 Let me start with one simple question. Is it correct
2287 that with a lead content limit, a manufacturer or a retailer
2288 only has to know the answer to one simple question, how much
2289 total lead is in the component?

2290 Ms. {Cox.} Yes, that is correct. And just to reinforce
2291 what I said earlier. That allows the manufacturer or anyone
2292 in the supply chain to specify to their suppliers the type of
2293 material that they need.

2294 Mr. {Butterfield.} Dr. Beck also in her testimony
2295 asserted that a standard based on soluble lead is generally
2296 preferable to a standard based on total lead. And as I
2297 understand it, total lead is a measure of how much lead is in
2298 a component, period. This is the measure required by the
2299 legislation. Solubility, on the other hand, refers to the
2300 amount of lead released from a component under certain
2301 specified conditions. Is it correct, Ms. Cox, that the
2302 conditions for measuring solubility are not consistent? That
2303 is they could choose to vary the time, temperature, and the
2304 solution that is used, whether to agitate the solution and so
2305 on. Would you elaborate on that, please?

2306 Ms. {Cox.} I think I could just say that I have
2307 actually heard people in the laboratory and testing industry

2308 say that if something complicated like a solubility test or
2309 other exposure-based testing was required that there actually
2310 wouldn't be lab capacity enough to be able to do these tests
2311 because they are so much more complicated and time consuming
2312 than a simple test for lead content.

2313 Mr. {Butterfield.} Will changing even one of these
2314 conditions affect the amount of lead that will be released
2315 during the test?

2316 Ms. {Cox.} I think--yeah, I am not a lab specialist but
2317 that is my understanding, yes.

2318 Mr. {Butterfield.} All right. My next question is--I
2319 guess I have time to do it. Let me try this. In your
2320 testimony, Ms. Cox, you point out that a total lead content
2321 limit allows companies to specify materials that meet the
2322 standards when contracting with suppliers. If I understand
2323 you correctly, a manufacturer can tell his or her metal
2324 supplier, I want to buy metal from you but only metal that
2325 contains no more than 300 parts per million and a supplier
2326 would be able to easily fill that order as specified. Could
2327 you respond?

2328 Ms. {Cox.} Correct. In the exposure-based testing you
2329 can't do until the product is completed, so that would happen
2330 at the very end of the manufacturing process, whereas with
2331 the total content, you can specify the content of all the

2332 materials and components that are used in a product. So it
2333 allows you to do it sort of pre-manufacture rather than
2334 having to potentially reject a product after it is already
2335 made.

2336 Mr. {Butterfield.} All right. All right, Madam
2337 Chairman, I yield back.

2338 Mrs. {Bono Mack.} Thank you, Mr. Butterfield. And now
2339 I would like to recognize Ms. Blackburn for her 5 minutes.

2340 Mrs. {Blackburn.} Thank you so much. And thank you all
2341 for your patience today.

2342 Ms. Cox, I enjoyed listening to your testimony and
2343 especially that you used Curious George. I have got a 3-
2344 year-old and a 2-year-old grandchild and that is one of their
2345 favorites. Let me ask you something. Do you find more lead
2346 in products that we import or products that are domestically
2347 manufactured?

2348 Ms. {Cox.} I think probably everybody here is aware
2349 that virtually all the products on the shelves of major
2350 national retailers are products that are not made in this
2351 country. So, you know, when we find products that exceed
2352 CPSIA limits, it is not surprising that that is also true.

2353 Mrs. {Blackburn.} Okay. In listening to your testimony
2354 and the testimony of others, it has been kind of curious--and
2355 Mr. Vitrano and Ms. Jones, I will ask you. With motorcycles

2356 and bicycles, do you all find more lead in those that we
2357 import or those that are domestically produced?

2358 Mr. {Vitrano.} All the major manufacturers of ATVs
2359 actually produce many of the models in the U.S. itself.

2360 Mrs. {Blackburn.} Okay.

2361 Mr. {Vitrano.} Some models are made by those companies
2362 from outside the U.S. and--

2363 Mrs. {Blackburn.} Well, maybe that they are
2364 domestically produced is one of the reasons we have less lead
2365 in a wipe test than in a glass of water. Ms. Jones,
2366 bicycles?

2367 Ms. {Jones.} Most children's bicycles are not made in
2368 this country any longer.

2369 Mrs. {Blackburn.} Okay. And so you don't see that as
2370 being pertinent to what you all do?

2371 Ms. {Jones.} We do not see that as being pertinent.

2372 Mrs. {Blackburn.} Okay. That is fine. You know, I
2373 have wondered if maybe since we have driven manufacturing out
2374 of this country is one of the reasons we are here having this
2375 hearing today and talking about the amount of metals that are
2376 there and some of the environmental litigation that has been
2377 brought forward and has driven manufacturing away from our
2378 shores. Maybe that is one of the reasons that we are here.

2379 And I know, Ms. Cox, that the Center for Environmental

2380 Health uses litigation quite frequently under California's
2381 Prop 65 warning requirements. And I know that you all do
2382 some work and wanted to ask you, do you all get a bounty for
2383 identifying violations under Prop 65 labeling laws?

2384 Ms. {Cox.} Proposition 65, for those of you who don't
2385 know, was a ballot initiative in California in 1986--

2386 Mrs. {Blackburn.} Yes, but you identify violations
2387 under that, so do you all get a bounty?

2388 Ms. {Cox.} The statute, as passed by the voters,
2389 provides for if the statute is violated, there are civil
2390 penalties that are paid to the State--

2391 Mrs. {Blackburn.} Yeah, I have got some of them in
2392 front of me--

2393 Ms. {Cox.} --and the plaintiffs who identify the
2394 violation is entitled to 25 percent of those civil penalties.

2395 Mrs. {Blackburn.} Okay. So I have got an exhibit in
2396 front of me that identifies some of these. So if one type of
2397 fashion accessory listed above is checked, it would be
2398 \$45,000 in that identification. So you all would get 25
2399 percent of that if you identified those.

2400 Ms. {Cox.} 25 percent of the civil penalties.

2401 Mrs. {Blackburn.} Okay. All right. So 25 of the
2402 45,000. So, okay, is this a funding revenue stream for your
2403 organization?

2404 Ms. {Cox.} My organization has a diverse source of
2405 revenue. Like most nonprofit organizations, we receive
2406 grants from foundations. We also have a strong committed
2407 group of individual supporters who support us financially.
2408 And then we do get some money from our litigation as well.

2409 Mrs. {Blackburn.} Is that with the Lexington Law Group?
2410 Is that under a consent decree?

2411 Ms. {Cox.} Could you repeat the question? Sorry.

2412 Mrs. {Blackburn.} I said is that with the Lexington Law
2413 Group, your litigation? Okay. Let us move on. So then you
2414 get some money that comes to you through identifying these
2415 violations and most of the product, I guess, that you are
2416 looking at is things that are imported and they are on the
2417 shelves of major retailers, is that correct?

2418 Ms. {Cox.} Yes.

2419 Mrs. {Blackburn.} And how many lawsuits have you
2420 partnered with the Lexington Law Group?

2421 Ms. {Cox.} Let us see. There were a lot of questions
2422 there.

2423 Mrs. {Blackburn.} Yeah, let me help you out with this.
2424 My time is nearly out. What I would like to know--and you
2425 can submit in writing--I would like to know what percentage
2426 of your funding relates to litigation? I would like to know
2427 how many lawsuits you have partnered with the Lexington Law

2428 Group. And I would like to know how much money you have
2429 made, what your revenue stream is from Prop 65 lawsuits in
2430 violations since the passage of CPSIA. And with that, Madam
2431 Chairman, I yield back the balance of my time.

2432 Ms. {Cox.} Yeah, I think it probably would be best for
2433 me to provide that information in writing since it is a lot
2434 of numbers.

2435 Mrs. {Blackburn.} Yes, ma'am, I was asking for it in
2436 writing.

2437 Ms. {Cox.} I would be happy to do that.

2438 Mrs. {Blackburn.} For the record.

2439 Mrs. {Bono Mack.} Thank you. The chair is happy to
2440 recognize Mr. Pompeo for 5 minutes.

2441 Mr. {Pompeo.} Thank you, Madam Chairman. Following up
2442 on Ms. Blackburn, would you submit all of the sources of
2443 funding for your organization when you put that in writing to
2444 us, not only that that you get for Prop 65 but other sources
2445 for funding for the center, the CEH?

2446 Ms. {Cox.} Yeah, I would be happy to.

2447 Mr. {Pompeo.} Thank you.

2448 Ms. {Cox.} And just to clarify, the work that I talked
2449 about in my testimony, monitoring for CPSIA compliance, that
2450 money came from the California Department of Justice,
2451 California Attorney General.

2452 Mr. {Pompeo.} So governmentally funded, is that right?

2453 Ms. {Cox.} Sorry?

2454 Mr. {Pompeo.} Government funding from the State of
2455 California?

2456 Ms. {Cox.} It went through a private foundation but the
2457 source of the money was the attorney general's office.

2458 Mr. {Pompeo.} Thank you. Ms. Millar, this is
2459 fascinating to me. I am new here. This is all very
2460 fascinating. You, on the other hand, you get paid by your
2461 clients and you are here today trying to avoid them paying
2462 you by reducing the regulatory burden. I find that
2463 fascinating to see the charitable effort you are making here
2464 today. Yeah, no, I truly meant it that way. I meant it as a
2465 compliment.

2466 Ms. Jones, you said that you have a problem with metal
2467 alloys in the bicycle industry?

2468 Ms. {Jones.} Yes, sir.

2469 Mr. {Pompeo.} Why do you use metal? Just why don't you
2470 stop using it?

2471 Ms. {Jones.} Metal alloys add a great deal of important
2472 value to bicycles. They help the bicycle be corrosion-
2473 resistant, they help them be strong and durable, and we
2474 really couldn't make bicycles without them.

2475 Mr. {Pompeo.} So there is no substitute?

2476 Ms. {Jones.} Well, no, that is not true. There are
2477 substitutes, for example, carbon fiber. Some very high-end
2478 racing bikes for adults are made of carbon fiber but they
2479 would be way too expensive--

2480 Mr. {Pompeo.} But I am not going to buy that for my
2481 son?

2482 Ms. {Jones.} You are not going to buy that. It would
2483 be too expensive.

2484 Mr. {Pompeo.} Yeah. Yeah, my son might like it but I
2485 am not going to buy it.

2486 Ms. {Jones.} There is no affordable, practical
2487 substitute.

2488 Mr. {Pompeo.} Thank you. That is what I figured. We
2489 were talking before about these different tests. Mr.
2490 Butterfield, Ms. Cox, asked you about some different tests
2491 and you said boy, the testing would just be really hard. He
2492 was describing these testing would be very difficult,
2493 soluble, non-soluble, it would be really hard and
2494 inconsistent. Is that right? And so you then said yeah,
2495 that would be hard, so let us just take a simpler test that
2496 probably doesn't really accomplish what we are trying to do.
2497 So it is a proxy at best. The perfect testing would be hard
2498 and difficult so what everybody defaults to is this simple
2499 test that really doesn't get to the true risk of exposure to

2500 a consumer of a product. Did I understand your response
2501 correctly?

2502 Ms. {Cox.} I would prefer to phrase it as--

2503 Mr. {Pompeo.} I am sure you would.

2504 Ms. {Cox.} --the goal--

2505 Mr. {Pompeo.} I would prefer if you would not rephrase
2506 it but simply answer my question.

2507 Ms. {Cox.} The goal of CPSIA was to remove a toxic
2508 metal from children's products. And there had been a long
2509 history prior to CPSIA of risk-based approaches not being
2510 successful and the lead content standard has been very
2511 successful at changing the marketplace and getting lead out
2512 of these products.

2513 Mr. {Pompeo.} I have no doubt. And banning lots of
2514 things would make them successful, too. We can always create
2515 a test that is over-inclusive and solve a problem. But as
2516 you can see from Ms. Jones' comment earlier, we create
2517 another one. My son doesn't get to exercise on his bicycle.
2518 Ms. Millar, do you have a view on the testing that Mr.
2519 Butterfield asked Ms. Cox about?

2520 Ms. {Millar.} Yes. As I said earlier--and I think Mr.
2521 Howell alluded to this as well this morning in his testimony--
2522 --the ability to use total content as screening is an
2523 important tool. There is no question about it. And I think

2524 it is true that people do try to target where they can meet a
2525 certain limit. It does help in the supply chain. It is not
2526 true that total lead tests are always uniform and never
2527 varied. We see a lot of different variability in total
2528 content test. And I think the problem becomes that when you
2529 establish an absolute ban, what we have seen for bikes, for
2530 ATVs, for certain, you know, pearlized buttons, for example,
2531 have agents in them that are metallic, you can have
2532 violations of total content limits where objectively applying
2533 standard accepted procedures that the CPSC uses, whether it
2534 is a wipe test, a saline test to mimic mouthing, which is a
2535 6-hour-test procedure--they have an established procedure--or
2536 their updated 24-hour acid exposure test, you can establish
2537 whether or not that product is going to pose a risk. And so
2538 the manufacturers are going to always target to some
2539 objective limit where they can. The problem is that you are
2540 going to ban them where they exceed it where there is not a
2541 risk.

2542 Mr. {Pompeo.} It makes sense. I have got one more
2543 question, just 20 seconds. Mr. Vitrano, Ms. Jones, have any
2544 of you had any experience responding to a CPS database
2545 complaint at this point? There has only been a month. Have
2546 any of you had experience responding to--

2547 Ms. {Jones.} Yes.

2548 Mr. {Pompeo.} How did it go?

2549 Ms. {Jones.} We still have a couple in process but, you
2550 know, it is certainly something that people pay attention to.
2551 They take it seriously. In no case, however, has a client to
2552 date had a materially inaccurate incident report submitted to
2553 them.

2554 Mr. {Pompeo.} But they have had to spend a bunch of
2555 money talking to you? Thank you. I yield back my time.

2556 Mrs. {Bono Mack.} I thank the gentleman and recognize
2557 the distinguished chairman emeritus, Mr. Dingell, for 5
2558 minutes.

2559 Mr. {Dingell.} Madam Chairman, thank you. The
2560 questions are to all witnesses and I would very much
2561 appreciate it if they would be answered yes or no.

2562 First of all, beginning with Ms. Cox, are you aware of a
2563 uniform reasonable methodology in use by manufacturers of
2564 children's products to find what is the amount of lead in a
2565 product? Yes or no?

2566 Ms. {Cox.} Yes.

2567 Mr. {Dingell.} Ma'am, Ms. Millar?

2568 Ms. {Millar.} Yes.

2569 Mr. {Dingell.} And you, sir?

2570 Mr. {Vittrano.} Yes.

2571 Mr. {Dingell.} Ma'am?

2572 Ms. {Jones.} Yes.

2573 Mr. {Dingell.} Okay. Now, is it possible the ambiguity
2574 of the term ``reasonable methodology'' could lead to a wide
2575 variance in test results across manufacturers of similar
2576 products? Yes or no? Ms. Cox?

2577 Ms. {Cox.} Yes.

2578 Mr. {Dingell.} Ms. Millar?

2579 Ms. {Millar.} No.

2580 Mr. {Dingell.} Sir?

2581 Mr. {Vitrano.} I don't know.

2582 Mr. {Dingell.} Ma'am?

2583 Ms. {Jones.} No, we are not seeing that.

2584 Mr. {Dingell.} The next question, if it wouldn't lead
2585 to a variance, do you believe that this could pose a risk to
2586 the health of the children who use such products? Yes or no?
2587 In other words--

2588 Ms. {Cox.} I don't think I am able to answer that
2589 question.

2590 Mr. {Dingell.} --is that variance going to put the
2591 children at risk? Well--

2592 Ms. {Cox.} Well, certainly, we need consistent testing.

2593 Mr. {Dingell.} Ms. Millar?

2594 Ms. {Millar.} I don't see the variability, so my answer
2595 is no.

2596 Mr. {Dingell.} And you, sir?

2597 Mr. {Vitrano.} It would depend on the variability.

2598 Mr. {Dingell.} Ma'am?

2599 Ms. {Jones.} And we are not seeing the variability.

2600 Mr. {Dingell.} Ms. Cox, do you want to take another
2601 shot at it? All right. We will go to the next set of
2602 questions because time is very limited here.

2603 We have the term ``accredited third-party conformity
2604 assessment bodies.'' I assume that this includes both
2605 domestic and international bodies that would do this kind of
2606 testing? Am I correct? Yes or no, Ms. Cox?

2607 Ms. {Cox.} Yes.

2608 Mr. {Dingell.} Ms. Millar?

2609 Ms. {Millar.} Yes.

2610 Mr. {Dingell.} Sir, if you please?

2611 Mr. {Vitrano.} Yes.

2612 Mr. {Dingell.} Ma'am?

2613 Ms. {Jones.} Yes.

2614 Mr. {Dingell.} All right. Now, if so, how many such
2615 assessment bodies are there worldwide? I don't expect you to
2616 know but give me a shot in the dark, the best count you can
2617 give. How many do you think there are? Ms. Cox?

2618 Ms. {Cox.} I don't know.

2619 Mr. {Dingell.} Ms. Millar?

2620 Ms. {Millar.} A couple of hundred, I believe.

2621 Mr. {Dingell.} Sir?

2622 Mr. {Vitrano.} For youth model ATVs there currently is

2623 1.

2624 Mr. {Dingell.} Ma'am?

2625 Ms. {Jones.} For bicycles there are only two in the

2626 U.S. and about a half-dozen outside of the U.S.

2627 Mr. {Dingell.} Thank you, my friends. Does the

2628 Commission have the resources with which to verify the

2629 testing capacity of all of these third-party conformity

2630 assessment bodies? Yes or no? Ms. Cox?

2631 Ms. {Cox.} I don't know.

2632 Mr. {Dingell.} Ms. Millar?

2633 Ms. {Millar.} I don't know.

2634 Mr. {Dingell.} Sir?

2635 Mr. {Vitrano.} I don't know.

2636 Mr. {Dingell.} Ma'am?

2637 Ms. {Jones.} I don't know.

2638 Mr. {Dingell.} Now, is it your understanding of the

2639 draft legislation that the Commission would have to accredit

2640 all third-party conformity assessment bodies? Yes or no?

2641 Ms. {Cox.} I don't know.

2642 Mr. {Dingell.} In other words, would they have

2643 discretion under the legislation to decide who they would

2644 accredit and how and why they would accredit? Yes or no?

2645 Ms. {Cox.} I don't know.

2646 Mr. {Dingell.} Ma'am?

2647 Ms. {Millar.} I don't know.

2648 Mr. {Dingell.} Sir?

2649 Mr. {Vittrano.} I don't know.

2650 Mr. {Dingell.} Ma'am?

2651 Ms. {Jones.} I don't know.

2652 Mr. {Dingell.} All right. Now, in summary, do you
2653 believe that the effect of these requirements would be that
2654 the Commission would seldom, if ever, require third-party
2655 testing of children's products? Yes or no?

2656 Ms. {Cox.} I don't know.

2657 Mr. {Dingell.} Ma'am?

2658 Ms. {Millar.} I don't know.

2659 Mr. {Dingell.} Sir?

2660 Mr. {Vittrano.} No.

2661 Mr. {Dingell.} Ma'am?

2662 Ms. {Jones.} No.

2663 Mr. {Dingell.} Now, here are some questions about the
2664 database which are troubling us. And everybody, I think, is
2665 troubled. Is it your understanding that CPSIA requires all
2666 information submitted to the consumer complaint database to
2667 be published online within 10 days of its receipt, regardless

2668 of the accuracy of the information? Yes or no? Ms. Cox?

2669 Ms. {Cox.} I don't know.

2670 Mr. {Dingell.} Ms. Millar?

2671 Ms. {Millar.} Yes.

2672 Mr. {Vittrano.} Yes.

2673 Ms. {Jones.} Generally, yes.

2674 Mr. {Dingell.} Thank you. Now, should a manufacturer

2675 be given the opportunity to contest the accuracy of a

2676 consumer complaint before it is published? Yes or no? Ms.

2677 Cox, please? What is your opinion, just your best judgment

2678 on the matter, please?

2679 Ms. {Cox.} These questions are outside my expertise.

2680 Mr. {Dingell.} All right. Then I will not press you on

2681 it, ma'am. Ms. Millar?

2682 Ms. {Millar.} Yes.

2683 Mr. {Dingell.} Mr. Vittrano?

2684 Mr. {Vittrano.} Yes.

2685 Mr. {Dingell.} Ms. Jones?

2686 Ms. {Jones.} Yes.

2687 Mr. {Dingell.} All right. Now, if a manufacturer is

2688 allowed to dispute the accuracy of the information in a

2689 consumer's complaint, how should the dispute be resolved and

2690 by whom? If you please, Ms. Cox?

2691 Ms. {Cox.} I don't know.

2692 Mr. {Dingell.} Ms. Millar?

2693 Ms. {Millar.} I think the CPSC should resolve the
2694 inaccuracy before posting the complaint to the database.

2695 Mr. {Dingell.} Mr. Vitrano?

2696 Mr. {Vitrano.} CPSC should resolve it before posting.

2697 Mr. {Dingell.} Ms. Jones?

2698 Ms. {Jones.} CPSC should resolve it before posting.

2699 Mrs. {Bono Mack.} The gentleman's time has expired.

2700 Mr. {Dingell.} I thank you, Madam Chairman. I have one
2701 more great question. Could I ask unanimous consent to ask
2702 it, please?

2703 Mrs. {Bono Mack.} Yes, without objection.

2704 Mr. {Dingell.} Thank you. The draft legislation amends
2705 CPSIA to permit only persons directly harmed by a consumer
2706 product, their family, their legal representative, or another
2707 person authorized on their behalf to submit a complaint to
2708 the database. Previously, CPSIA permitted anyone to submit
2709 complaints about a consumer product. Do you believe that the
2710 draft legislation's narrowing of eligibility to submit the
2711 complaints is necessary? Yes or no?

2712 Ms. {Cox.} Not necessary.

2713 Mr. {Dingell.} Okay. Ms. Millar.

2714 Ms. {Millar.} Necessary.

2715 Mr. {Dingell.} Mr. Vitrano?

2716 Mr. {Vitrano.} Yes, it is necessary.

2717 Mr. {Dingell.} Ms. Jones?

2718 Ms. {Jones.} Yes, it is necessary.

2719 Mr. {Dingell.} Madam Chairman, you have been most
2720 courteous. May I have an additional unanimous consent
2721 request? I have a splendid statement that I have labored
2722 long and hard on.

2723 Mrs. {Bono Mack.} I have nothing but fondness and
2724 admiration for the distinguished chairman, but we still have
2725 another member and another panel to go and votes on the
2726 floor. So I will--

2727 Mr. {Dingell.} I am not delaying--

2728 Mr. {Butterfield.} Madam Chair--

2729 Mr. {Dingell.} --Madam, I have a statement I would like
2730 to put in the record.

2731 Mr. {Butterfield.} Whenever the chairman emeritus talks
2732 like that, he has a pleasant surprise for us. I would ask
2733 unanimous consent to yield to the chairman emeritus.

2734 Mr. {Dingell.} Thank you very much. No, it is just a
2735 statement that I want to put in the record, Madam.

2736 Mrs. {Bono Mack.} Of course. Without objection.

2737 [The information follows:]

2738 ***** COMMITTEE INSERT *****

|
2739 Mr. {Dingell.} And I do thank my good friend for his
2740 kindness to me. Thank you, Madam Chairman.

2741 Mrs. {Bono Mack.} Thank you. And reminder, I am new at
2742 this chairmanship, so I appreciate the kindness of the
2743 distinguished chairman emeritus but will recognize Dr.
2744 Cassidy for 5 minutes.

2745 Dr. {Cassidy.} I don't know. I am sorry. I was out
2746 when you all were making testimony so I don't know if anyone
2747 can address what I am about to ask. As I look at the
2748 epidemiology of lead poisoning, it seems to be not generally
2749 distributed, but it seems to be in certain populations.
2750 Those which are recent immigrants, for example, appear to
2751 have a disproportionate amount of lead toxicity. And in fact
2752 I was looking at something from a hospital in Los Angeles
2753 that found even within the Hispanic community there, there
2754 was three ZIP codes which were particularly impoverished ZIP
2755 codes in which there was even more. Now, assuming that toys
2756 are generally distributed but that the people who have
2757 problems with lead toxicity are concentrated in certain
2758 areas, it suggested to me that the culprit for those children
2759 who have increased lead, it may be geographic or related to
2760 how recently they came from another country without standards
2761 than it is almost anything else.

2762 I toss that out not knowing if anyone can answer that or
2763 if these are just musings. Anybody want to take a crack at
2764 that?

2765 Ms. {Cox.} I will take a crack at it. Exposure to old
2766 lead-based paint in homes is the primary source of lead
2767 exposure to children, and that has been the case for several
2768 decades. Current statistics are about 70 percent of elevated
2769 blood lead levels in children are caused by exposure to
2770 paint. The other 30 percent are not. Further--

2771 Dr. {Cassidy.} Now, wait. I am sorry. Just so I
2772 understand, so if you have a blood level of 100, just to pick
2773 a number, does that mean that 70 percent of that 100 is
2774 related to paint exposure and 30 percent to another
2775 environmental factor or does it mean that 70 percent of the
2776 children that have elevated lead levels have it due to paint?

2777 Ms. {Cox.} 70 percent of the children with elevated
2778 blood lead levels, they are able to trace back that exposure
2779 to paint.

2780 Dr. {Cassidy.} So the 30 percent, is that those for
2781 whom no point source can be identified or those for whom
2782 another point source is identified?

2783 Ms. {Cox.} In general, when there is a child with an
2784 elevated blood lead level, there is a huge effort to identify
2785 the source. So the number of unidentified ones is really

2786 small.

2787 Dr. {Cassidy.} And so again, as I look at this
2788 concentration among recent immigrants, it suggests to me that
2789 recent immigrant status is a separate factor. I did my
2790 medical residency in Los Angeles and we used to see all these
2791 diseases from other countries in Los Angeles, very odd
2792 diseases that we wouldn't see in Washington, D.C., for
2793 example, even though this is also a place of immigrants. So
2794 I guess to what is the impact of immigrant status? Is there
2795 exposure to lead that is occurring south of the border that
2796 we are importing?

2797 Ms. {Cox.} I am not aware of any statistics about
2798 immigrant status and lead exposure. I do know that because
2799 the deteriorating paint is a factor, you know, living in
2800 older housing or housing--

2801 Dr. {Cassidy.} Okay, I got that.

2802 Ms. {Cox.} --that is not well maintained--

2803 Dr. {Cassidy.} The 30 percent of folks for whom paint
2804 is not a factor--and I should know this but I have been
2805 trying to track it down and I apologize--what percent of
2806 those have a point source identified and what are those point
2807 sources?

2808 Ms. {Cox.} The point sources tend to be lead in soil,
2809 lead in water, and then lead in various kinds of consumer

2810 products.

2811 Dr. {Cassidy.} What, for example?

2812 Ms. {Cox.} Examples of consumer products?

2813 Dr. {Cassidy.} With lead that have been identified as a
2814 risk for children.

2815 Ms. {Cox.} Jewelry, toys, there is some lead-containing
2816 makeup that has been a problem. There is lead-containing
2817 food-ware that has been a problem--

2818 Dr. {Cassidy.} I assume that some of this, though, must
2819 be older stuff. I mean I can remember playing with lead when
2820 I was a kid. Obviously, my mother didn't care for me. I am
2821 assuming that much of what is now available with or without
2822 these regulations that lead is gone. Is that a fair
2823 statement? I am looking at all of you all now because I can
2824 only imagine that my pencil that I used to chew on in third
2825 grade probably had lead in it.

2826 Ms. {Cox.} The regulation of lead over the last 40
2827 years has been, you know, one of the country's greatest
2828 public health successes. So removing lead from paint,
2829 removing lead from gasoline, and then removing lead from
2830 other consumer products has had a dramatic reduction in the
2831 number of children with elevated blood lead levels. The goal
2832 of CDC was to get that level to 0 by 2010. It hasn't quite
2833 happened but--

2834 Dr. {Cassidy.} And if it is true that immigrants are
2835 the cause of a lot of this, it will never happen. I just say
2836 that because our tuberculosis problem will never go to 0 as
2837 long as we have people immigrating from Mexico because it is
2838 just endemic there. I am just trying to understand to what
2839 degree can we attribute products, you know, toys for this as
2840 opposed to everything else? Thank you for your time. Thank
2841 you.

2842 Mrs. {Bono Mack.} I thank the gentleman and that
2843 concludes the panel. And I would like to thank Ms. Cox and
2844 Ms. Millar, Mr. Vitrano, and Ms. Jones for your time and
2845 testimony today. And I am sure we will be working together
2846 in the future on refining this legislation.

2847 Mr. {Butterfield.} Madam Chairman, may I be recognized
2848 before the panel leaves?

2849 Mrs. {Bono Mack.} Yes.

2850 Mr. {Butterfield.} Earlier Ms. Blackburn requested Ms.
2851 Cox, if she would furnish financial information for her
2852 nonprofit organization, and at first I had a little heartburn
2853 about that, but after I thought about it, it is an
2854 appropriate request. It goes to her credibility as a witness
2855 today. As a former judge I guess I should know that. But I
2856 was wondering if it would be appropriate to ask the other
2857 three witnesses if they would similarly furnish the sources

2858 of their revenue for their organizations that they represent.

2859 Mrs. {Bono Mack.} Well, I will remind the gentleman
2860 that you can submit any question you would like to any
2861 witness and that you have 10 days to do so and remind the
2862 gentleman also that Members of Congress are allowed to ask
2863 any question that they would like of any witness and again
2864 remind you that you have that prerogative to do that in
2865 writing to the witnesses. And with that, again, if the
2866 gentleman will yield back.

2867 Mr. {Butterfield.} He will. Thank you.

2868 Mrs. {Bono Mack.} I thank the panelists again and would
2869 call for the third panel if we can get seated. We are going
2870 to have votes shortly on the floor so we would love to get
2871 started and see how much progress we can make. So a short
2872 break and then we will roll into the third panel.

2873 Thank you. That was a quick transition. Thank you,
2874 staff. So now the third panel, I would like to thank you all
2875 very much for being here. We have the final four witnesses.
2876 First up, we have Frederick Locker of Locker, Greenberg, and
2877 Brainin, P.C. Our next witness is Charles Samuels of Mintz,
2878 Levin, Cohn, Ferris, Glovsky, and Popeo, P.C. Also
2879 testifying will be Dan Marshall, Vice President of the
2880 Handmade Toy Alliance. And our fourth panelist today is
2881 Rachel Weintraub, Director of Product Safety and Senior

2882 Counsel for the Consumer Federation of America. Welcome
2883 everybody. You know the drill, 5 minutes, and you know where
2884 the lights are so we are going to begin, Mr. Samuels, with
2885 your 5 minutes. Thank you and welcome.

|
2886 ^STATEMENTS OF CHARLES A. SAMUELS, MEMBER, MINTZ, LEVIN,
2887 COHN, FERRIS, GLOVSKY, AND POPEO, P.C.; FREDERICK LOCKER,
2888 LOCKER, GREENBERG, AND BRAININ, P.C.; DAN MARSHALL, VICE
2889 PRESIDENT, HANDMADE TOY ALLIANCE, AND CO-OWNER, PEAPODS
2890 NATURAL TOYS AND BABY CARE; AND RACHEL WEINTRAUB, DIRECTOR OF
2891 PRODUCT SAFETY AND SENIOR COUNSEL, CONSUMER FEDERATION OF
2892 AMERICA

|
2893 ^STATEMENT OF CHARLES A. SAMUELS

2894 } Mr. {Samuels.} Thank you, Chair Bono Mack, and members
2895 of the subcommittee. Thank you for the opportunity to
2896 testify. I have the privilege of serving as general counsel
2897 of the Association of Home Appliance Manufacturers, as well
2898 as representing companies on product safety matters.

2899 I support a fully resourced, focused, and effective
2900 Commission with the tools to protect Americans from unsafe
2901 products. I supported the revamping of the federal product
2902 safety laws and I respect the hardworking and dedicated
2903 officials at the Commission. Unfortunately, parts of the law
2904 are overreaching, over-prescription, and distort the Agency's
2905 mission to the detriment of consumers and industry. The
2906 discussion draft makes great strides towards remedying the

2907 imbalances and deficiencies in the current law without doing
2908 violence to the core public policies.

2909 I will focus on the database provision. Technology
2910 should be used to disseminate good and easily accessible
2911 information to consumers about product safety. It makes no
2912 sense, however, for so much of the resources of the
2913 Commission to be invested in this effort unless it provides
2914 useful and accurate information to the extent feasible. We
2915 cannot expect perfection, but we now have a database that can
2916 be manipulated for purposes other than that intended. Vague,
2917 useless, and incorrect information can be placed online.
2918 This not only harms manufacturers, retailers, and importers,
2919 but harms consumers who receive bad information and cannot
2920 focus on truly unsafe products. Discrete changes can be made
2921 to the law, which will greatly improve the operation,
2922 utility, and fairness of the program.

2923 First, the intent of the law is that posted reports of
2924 harm will come from those who suffer the harm, their family
2925 and legal and medical representatives. The database should
2926 not be a platform for manufacturers, trade associations,
2927 trial lawyers, or consumer groups who are trying to make
2928 policy points or enhance their economic status.

2929 I support the tighter definition of ``consumers'' to
2930 restrict it to the persons who actually suffer the harm

2931 related to the use of the product and their representatives.
2932 I also support revising the term ``public safety entities''
2933 that make clear that you are referring to public safety
2934 officials.

2935 The requirement that the Commission ascertain the
2936 location and availability of a product is important for the
2937 manufacturer to evaluate the complaint or for the
2938 Commission to look further at the allegations. The
2939 Commission also should know the identity of the person who
2940 allegedly was harmed.

2941 A major deficiency of the database is the agency
2942 decision to publish the report regardless of whether a good
2943 faith, substantial claim of material inaccuracy has been
2944 submitted but has not been resolved within 10 days. This is
2945 unfair, a lack of due process and absolutely not what we
2946 should be expecting from our Federal Government. We have
2947 great freedom in this country to blog and publicly report
2948 about almost anything without much legal restriction, but the
2949 government should show more prudence and responsibility.

2950 The draft properly provides that if a manufacturer
2951 claims a material inaccuracy and the Commission determines
2952 that the claim is ``potentially valid,' ' the Commission must
2953 resolve that inaccuracy before posting by communicating with
2954 the reporter, investigating the incident, or providing the

2955 manufacturer a reasonable period of time to investigate.
2956 This does not need to be a lengthy process. It is likely the
2957 vast majority of database reports will receive little or no
2958 response and, at most, there will be a response suitable to
2959 be placed on the database along with the consumer report.
2960 But in those cases where a company has gone to the trouble to
2961 evaluate and provide proof that a report is materially
2962 inaccurate, that ought to be resolved before the report is
2963 posted. Once it is posted, pulling it from the database
2964 later is of very limited utility and great harm can be done.

2965 The existing database also is deficient in that it
2966 allows reports which are so unspecific as to a particular
2967 model that the information is useless, even deceptive. I
2968 support the language in the discussion draft that a
2969 manufacturer may respond that the report is insufficient for
2970 determining which of its products are the basis of the
2971 complaint and that that must be determined before the
2972 complaint is posted.

2973 The present 10-day limitation for companies to evaluate
2974 and respond to a report and the Commission to resolve any
2975 issues is extraordinarily short and unreasonable. Even well-
2976 organized companies will have difficulty dealing with this
2977 time frame. Therefore, I recommend that the 10 days be
2978 increased to at least 15 days, which will have no material

2979 impact on the timing of postings or the value of the
2980 database.

2981 Also, there is an indication that the Commission may be
2982 limiting its review of material inaccuracy only to those
2983 situations where there has been a misidentification of the
2984 product. That is definitely not the extent of material
2985 inaccuracy. The Commission's regulations state that material
2986 inaccuracy includes all relevant facts which significantly
2987 impact a consumer's decision on whether to purchase a product
2988 and that includes causation.

2989 Congress should make clear to the Commission that
2990 second- and third-hand reports do not constitute reports of
2991 harm eligible for the database. And simple consumer
2992 complaints of dissatisfaction about the quality or
2993 performance of the product which are not safety-related
2994 should not be posted.

2995 I hope that these comments are helpful. I would be
2996 pleased to answer your questions. Thank you.

2997 [The prepared statement of Mr. Samuels follows:]

2998 ***** INSERT 9 *****

|

2999 Mrs. {Bono Mack.} Thank you. Briefly, we are going to
3000 go through Mr. Locker and then we are going to run to vote.
3001 So 5 minutes, Mr. Locker, please.

|

3002 ^STATEMENT OF FREDERICK LOCKER

3003 } Mr. {Locker.} Okay. Thank you. And I will try to make
3004 sure you don't waggle the gavel.

3005 Chairman Bono Mack, Vice Chairman Butterfield, members
3006 of the subcommittee, thank you for the opportunity to appear
3007 before you on this important subject matter of practical,
3008 commonsense solutions--and I emphasize ``solutions''--to
3009 unintended consequences involved in the implementation of the
3010 Consumer Product Safety Improvement Act of 2008, or as it has
3011 been come to be known as CPSIA.

3012 Now, our firm works as safety counsel to the Craft and
3013 Hobby Association, Toy Industry Association, Juvenile Product
3014 Manufacturers Association, Halloween Industry Association,
3015 apparel makers, publishers and retailers. And for better and
3016 for worse, we have had a lot of experience in the last 2-1/2
3017 years with the problems with implementation of the law.

3018 Now, we have been involved in developing product safety
3019 standards over many decades and we have also worked in
3020 collaboration with many foundations and consumer
3021 organizations to advocate the need for uniform product safety
3022 standards and initiatives, both in the United States and
3023 globally. We keenly recognize that sometimes in this rush to

3024 regulate, attention may be focused on relatively small risks
3025 associated with products while some very big risks remain
3026 unappreciated and unaddressed. In a world where perception
3027 is reality, where misinformation often drives perception, and
3028 where new, scary, and uncertain hazards can receive enormous
3029 amounts of attention very quickly, it is important to
3030 understand context for managing children's risks and for
3031 regulating them.

3032 We understand, however, that there is no more important
3033 theme than protecting our population of consumers and in
3034 particular our children. As much work as we all do, there is
3035 always room for improvement in this regard. We may not
3036 always agree with everyone appearing before you today on how
3037 to achieve our common goals, but we always stand willing,
3038 ready, and able to work with everyone for the betterment of
3039 children's lives.

3040 Now, in the past appearances before this committee, we
3041 have supported the legislative initiatives, including the
3042 concepts embodied in CPSIA. However, to the extent that
3043 implementation of provisions have resulted in regulations
3044 that depart from sensible risk-based decision-making, it has
3045 become clear to all involved on both sides of the aisle that
3046 Congress needs to act to restore a commonsense regulatory
3047 framework. The CPSC has strained under the burden, but

3048 despite admonitions from Congress that the agency was
3049 empowered with discretion to implement practical commonsense
3050 regulations on at least five or six separate occasions in the
3051 past, the Commission in a bipartisan fashion has readily
3052 acknowledged, as it has today, that its discretion has been
3053 limited without statutory changes.

3054 CPSIA adopted an unduly prescriptive regime and as often
3055 happens, Congress can act with a sledgehammer instead of a
3056 scalpel when trying to deal with issues. CPSIA adopted a set
3057 of absolute total limits on lead and phthalates. This House
3058 body, I note, didn't even consider the phthalate legislation
3059 that was grafted in the Senate and in conference. These
3060 wholesale limits were coupled with an exemption process that
3061 we all had hoped would work better but had proved to be
3062 impractical for lead and phthalates regulation.

3063 In effect as a result and direct result of that, the
3064 stream of commerce and business suffered significantly as the
3065 imposition of these requirements was further deemed to apply
3066 in a retroactive manner to any previously produced goods
3067 entered into commerce when the laws and step-down levels went
3068 into effect. These confusing and burdensome testing schemes--
3069 --which have yet to be fully and clearly enunciated as we sit
3070 here today--have resulted in additional marketplace confusion
3071 and cost.

3072 So let me share just a few of the comments and proposals
3073 on the law that is before us today. Our comments are for the
3074 record--but in terms of the budget, it is clear that an era
3075 of restrained budgets and limited resources, the CPSC will
3076 need to allocate funds based upon risk/hazard analysis and
3077 sound scientific principles. In terms of lead, Congress
3078 recognized this approach when they adopted as a regulatory
3079 requirement, for example, the toy safety standard ASTM F-963
3080 to which Congressman Schakowsky referenced. That standard,
3081 by the way, is a soluble migratable standard. It is not a
3082 total limits standard and has proved to be remarkably
3083 effective both in the United States--which is why Congress
3084 adopted it--Europe, and the rest of the world.

3085 Exemptions for certain materials have been adopted by
3086 the CPSC but they have not gone far enough. So we favor the
3087 types of processes that have been adopted and proposed in the
3088 draft resolution in phthalates. In terms of phthalates, they
3089 need to have an inaccessibility recognized. There needs to
3090 be action on the Chronic Hazard Advisory Panel when they come
3091 to conclusions that action has to be quick.

3092 [The prepared statement of Mr. Locker follows:]

3093 ***** INSERT 8 *****

|
3094 Mrs. {Bono Mack.} That is the red light and we have to
3095 run to the floor for a vote. And we will recess and
3096 reconvene immediately following the last vote in the series.

3097 Mr. {Locker.} Okay. Sorry.

3098 Mrs. {Bono Mack.} I don't have the time. I tried last
3099 time and I was off by 20 minutes. So immediately following
3100 the last vote, we will return. We have a five-vote series.

3101 Mr. {Locker.} Thank you.

3102 [Recess.]

3103 Mrs. {Bono Mack.} We are ready to begin. So we left
3104 off with Mr. Marshall and so we will recognize you for your 5
3105 minutes.

|
3106 ^STATEMENT OF DAN MARSHALL

3107 } Mr. {Marshall.} Thank you very much. Hello. My name
3108 is Dan Marshall. I am the founder and vice president of the
3109 Handmade Toy Alliance. The HTA represents 644 small
3110 businesses affected by the unintended consequences of the
3111 Consumer Product Safety Improvement Act. I would like to
3112 mention also that we receive no outside funding whatsoever.
3113 We are funded entirely by our members and some small
3114 donations that folks have made along the way. We are kind of
3115 a shoestring operation.

3116 My wife and I own Peapods Natural Toy Store in St. Paul,
3117 Minnesota. I am here today with my daughter Abigail and
3118 fellow HTA Board members Rob Wilson of Challenge and Fun in
3119 Massachusetts and Randy Hertzler of euroSource in
3120 Pennsylvania.

3121 The HTA began in November of 2008 after I began to
3122 understand how the newly-passed CPSIA will decimate the
3123 small-batch manufacturers who supply our store. Since then,
3124 I have been working with hundreds of other small business
3125 owners to save small-batch manufacturers from regulatory
3126 burdens of the CPSIA, the greatest of which is the cost of
3127 mandated third-party testing. These fixed costs, which are

3128 easily bourn by mass-market manufacturers, who make tens of
3129 thousands of units at a time, are simply impossible for small
3130 businesses that make toys, children's clothing and
3131 accessories in batches of a few dozen at a time, often in
3132 home-based studios.

3133 These required tests are not limited to lead testing.
3134 Toys, for example, will be subject to mandatory ASTM F-963
3135 testing, which requires the destruction of multiple units of
3136 each toy. The CPSC's current schedule would mandate ASTM
3137 testing as soon as this October. Unless the CPSIA is
3138 reformed, hundreds of small American toymakers will not
3139 survive that date.

3140 Unlike similar product safety legislation such as the
3141 Food Safety Modernization Act, FDA food labeling rules, or
3142 California's Proposition 65, the CPSIA makes no allowances
3143 whatsoever for small businesses, nor does it allow the CPSC
3144 any discretion in how it applies third-party testing
3145 requirements to various types of products. Bicycles, books,
3146 hand-knit sweaters, and wooden toy cars are all tested the
3147 same.

3148 As a result, the CPSIA, as it stands now, is basically
3149 unenforceable. Key provisions have been stayed numerous
3150 times. The CPSC is slowly being transformed from a public
3151 safety guardian into an enforcer of procedures and

3152 technicalities dictated by Congress at huge cost.
3153 Congressional action has dramatically undermined the CPSC, an
3154 agency which has effectively protected the American public
3155 for almost 40 years.

3156 Meanwhile, we have watched numerous trustworthy
3157 businesses fold because of the CPSIA. Untold others have
3158 decided not to pursue their dreams as toymakers or crafters.
3159 We have even begun to see secondary effects such as the end
3160 of Mothering Magazine, which closed this February after 35
3161 years, citing reduced ad revenues due to the CPSIA's impact
3162 on their advertisers. If the CPSIA is not amended, hundreds
3163 more small family businesses will perish for no good reason.

3164 Thanks to the work of this committee, we have a way
3165 forward. Our alliance endorses the draft amendment because
3166 of the relief it provides to our members. This bill requires
3167 either an exemption from third-party testing or alternate
3168 testing procedures, such as XRF screening for lead in
3169 substrates, for products that are produced in small
3170 quantities. This is exactly what we have been asking for
3171 since the formation of our organization. Small-batch
3172 manufacturers would be given a safety valve which was
3173 originally left out of the CPSIA.

3174 We desire a thoughtful and measured reform worthy of
3175 meaningful bipartisan discussions. These issues deserve a

3176 full hearing to ensure that a high degree of consumer
3177 protection is maintained. We do not wish to create loopholes
3178 that would benefit the types of irresponsible companies that
3179 created the toy safety scare in the first place.

3180 We urge you to reach out to your colleagues in the
3181 Senate to reach a bipartisan agreement. The CPSIA was the
3182 product of a strong bipartisan effort in 2008 and its reform
3183 requires the same effort. We believe this discussion draft
3184 is a suitable foundation for that discussion. We urge both
3185 Houses of Congress to set aside differences and find a way to
3186 see this reform process through. Our family businesses are
3187 watching the process closely and we are depending on you.

3188 In conclusion, on behalf of our members, I would like to
3189 thank this committee for addressing this important issue and
3190 urge you to quickly pass meaningful reform of the CPSIA.
3191 Thank you.

3192 [The prepared statement of Mr. Marshall follows:]

3193 ***** INSERT 10 *****

|
3194 Mrs. {Bono Mack.} Thank you very much. Ms. Weintraub,
3195 your 5 minutes.

|
3196 ^STATEMENT OF RACHEL WEINTRAUB

3197 } Ms. {Weintraub.} Chairman Bono Mack, Ranking Member
3198 Butterfield, Representative Schakowsky, I am Rachel
3199 Weintraub, Director of Product Safety and Senior Counsel for
3200 Consumer Federation of America. I offer this testimony on
3201 behalf of CFA as well as Consumers Union, Kids In Danger,
3202 National Research Center for Women and Families, Union of
3203 Concerned Scientists, and the U.S. Public Interest Research
3204 Group. I thank you for inviting me to testify today.

3205 The CPSIA institutes the most significant improvements
3206 to the Consumer Product Safety Commission since the Agency
3207 was established. The millions of recalls of toys for
3208 excessive lead and tiny powerful magnets, children's jewelry
3209 because of high lead levels, and cribs because of durability
3210 problems cause consumers to question the effectiveness of our
3211 Nation's safety net. The CPSIA has restored consumer
3212 confidence by requiring children's products to be tested for
3213 safety by banning lead and certain phthalates and toys and by
3214 creating a publicly accessible consumer complaint database
3215 and authorizing necessary resources to CPSC.

3216 The consumer community has stated previously that any
3217 changes made to the CPSIA must not weaken product safety

3218 standards and must not weaken public health protections. The
3219 current discussion draft fails this litmus test
3220 unfortunately. This discussion draft is not narrowly
3221 tailored, but rather carves gaping loopholes in the consumer
3222 protections created by the CPSIA. It covers fewer children's
3223 products, undermines the lead and phthalate standards,
3224 substantially weakens the third-party testing requirements,
3225 and makes the consumer complaint database vastly less useful
3226 for consumers. I will highlight some of the most critical
3227 provisions of the discussion draft in my testimony.

3228 We oppose an effort to weaken the scope of the
3229 protections of the CPSIA. The discussion draft implies that
3230 only those products for children of some younger age, we
3231 presume, should be afforded protections by the CPSIA.
3232 Congress embraced the belief that there is a shared toy box,
3233 which we know reflects the reality of what is true in many
3234 homes across this country. School-age children are at risk
3235 from lead exposure and from hazards posed by powerful magnets
3236 in toys, for example. If those toys are not required to meet
3237 any lead limit or meet the standard for magnetic toys, the
3238 potential for harm is large. Further, the voluntary standard
3239 for toys, ASTM F-963, covers toys intended for children under
3240 age 14 years of age.

3241 The third-party testing provision of the CPSIA will be

3242 eliminated almost entirely by the discussion draft. Third-
3243 party testing is necessary to confirm compliance with safety
3244 rules and prevents hazards before they enter the marketplace.
3245 While the discussion draft preserves third-party testing for
3246 lead in paint, full-size cribs, non-full-size cribs,
3247 pacifiers, small parts, and children's metal jewelry, the
3248 fact that all infant durable products other than cribs will
3249 not be subject to third-party testing is untenable. And
3250 there is even ambiguity about the crib standard.

3251 The provision makes it very difficult for CPSC to
3252 require third-party testing for other products. The rule-
3253 makings required in this section require a cost analysis
3254 while ignoring the benefits of lives saved, injuries avoided,
3255 or healthcare costs reduced as a result of the testing
3256 requirement. And no time frame is established for these
3257 rule-makings. This section lists products that can never be
3258 required to undergo third-party testing but fails to define
3259 them. While we understand that a narrowly-targeted exemption
3260 for third-party testing provisions may be the only solution
3261 for small-batch manufacturers, the lack of definition and an
3262 alternative testing mechanism to ensure safety makes it
3263 impossible to determine the appropriateness of this relief.

3264 The discussion draft puts babies at risk in childcare
3265 facilities by allowing fixed-side cribs to remain in use if

3266 there is required supervision. Slowly removing the drop-side
3267 cribs misses numerous other hazards that the new crib
3268 standard addresses such as hardware failures, material
3269 integrity problems, mattress support failures, slat hazards,
3270 and corner posts. This provision drastically weakens the
3271 consumer protections of the CPSIA and will keep babies in
3272 known unsafe cribs.

3273 The consumer complaint database will give consumers
3274 access to lifesaving information and will help CPSC to more
3275 nimbly identify and act upon safety hazards. CPSC's rule is
3276 responsive to the public interest needs for disclosure and
3277 protective of a manufacturer's effort to protect their brand
3278 and confidential business information. The database includes
3279 more checks on the information and more opportunities for a
3280 manufacturer to comment than other similar government agency
3281 databases.

3282 The discussion draft tips the balance that the database
3283 rule has achieved by limiting who can report to the database,
3284 unnecessarily increasing the types of information consumers
3285 must report before their complaint can be considered for
3286 posting, requires consumers to unwittingly engage in a
3287 dialogue with a manufacturer about the reported harm rather
3288 than simply reporting the incident to the CPSC, stays the
3289 reporting of information until final decisions about the

3290 sufficiency and accuracy of the information are made, and
3291 will substantially increase the time it will take for
3292 information to be posted publicly. This will discourage
3293 reporting by consumers to the database and decrease the
3294 utility of this important consumer protection.

3295 I thank you for your consideration and am happy to take
3296 questions.

3297 [The statement of Ms. Weintraub follows:]

3298 ***** INSERT 11 *****

|
3299 Mrs. {Bono Mack.} Thank you very much. All right. The
3300 chair recognizes herself for 5 minutes for the first round of
3301 questions.

3302 And I would like to ask Mr. Marshall, please, would you
3303 be willing to register with the Commission in order to
3304 qualify for this small-batch exemption to the third-party
3305 testing requirements?

3306 Mr. {Marshall.} I think that would be a fair tradeoff
3307 so that the CPSC would know who the small-batch manufacturers
3308 are and it would be consistent with how the FDA approaches
3309 food labeling laws. So yes.

3310 Mrs. {Bono Mack.} Thank you. And you also mentioned
3311 the other laws that have provisions to accommodate the
3312 different circumstances of small-batch manufacturers. Can
3313 you say more about the approaches that you believe are the
3314 best?

3315 Mr. {Marshall.} Well, the issue with third-party
3316 testing is cost, so I think it makes sense to create
3317 exemptions based on the number of units produced per year.
3318 That seems like the most logical way to us to get at the cost
3319 versus the output of a particular manufacturer.

3320 Mrs. {Bono Mack.} Thank you. Ms. Weintraub, first of
3321 all, your testimony--you and I have not read the legislation

3322 at all in the same way--but you testified that the CPSIA
3323 became law as a result of ``a period of record numbers of
3324 recalls of hazardous products that injured, sickened, or
3325 killed children.'' What I remember most are the lead-in-
3326 paint recalls and no one here will ever argue that lead-in-
3327 paint restrictions should ever be loosened. ``However, the
3328 most significant problems with this bill relate to lead in
3329 substrate.'' Putting aside metal jewelry, again,
3330 restrictions for which we do not intend to loosen, were there
3331 any children injured, sickened, or killed by lead in
3332 substrate, and if so, how many and can you provide verified
3333 statistics of those injuries?

3334 Ms. {Weintraub.} I can't provide verified statistics of
3335 those injuries because many of those injuries are silent.
3336 They could cause--and likely have caused but we just don't
3337 know--neurological impairments, decreases in IQ--

3338 Mrs. {Bono Mack.} You are saying they are all
3339 speculative injuries that you--

3340 Ms. {Weintraub.} No, I wouldn't say that they are
3341 speculative--

3342 Mrs. {Bono Mack.} But they are speculative?

3343 Ms. {Weintraub.} --but they are very difficult to
3344 document.

3345 Mrs. {Bono Mack.} All right. And--again, you and I

3346 read the legislation entirely differently--contrary to what
3347 you said in your testimony, the discussion draft does not
3348 deprive consumers of third-party testing. It gives the
3349 Commission authority to decide what should be third-party
3350 tested. You know, what I have heard from the commissioners
3351 is that they need a little bit more common sense, the ability
3352 to apply common sense. You completely disagree with that
3353 notion and what I see in the legislation and what you see are
3354 entirely different?

3355 Ms. {Weintraub.} Well, I am not entirely sure what you
3356 see, but what I see is a system where there is a list of
3357 products that are subject to third-party testing, a list of
3358 products that can never be subject to third-party testing,
3359 and then a very rigorous rule-making without any timelines
3360 that is required in order for other products to be third-
3361 party tested.

3362 Mrs. {Bono Mack.} You are saying that there are
3363 products that can never be tested?

3364 Ms. {Weintraub.} My understanding was that there is a
3365 list in this discussion draft that includes--

3366 Mrs. {Bono Mack.} Have you seen the discussion draft?

3367 Ms. {Weintraub.} Yes, I have seen it.

3368 Mrs. {Bono Mack.} Okay, but your understanding--I am
3369 sorry. You confused me right there. You said your

3370 understanding is that--

3371 Ms. {Weintraub.} Well, you are disagreeing with my
3372 interpretation so--

3373 Mrs. {Bono Mack.} Well, and you disagreed with mine so
3374 I--

3375 Ms. {Weintraub.} Well, the way that I read the
3376 discussion draft is that there are a list of products which
3377 are undefined, products for children with disability, one-of-
3378 a-kind products, works of art, and products manufactured by
3379 small-batch manufacturers that would never be subject to--

3380 Mrs. {Bono Mack.} Well, nothing is excluded from
3381 testing and the Commission can decide to impose the testing.
3382 But just moving on a little bit to Mr. Samuels.

3383 You state that the Commission has made some unfortunate
3384 interpretations in implementing the database. What
3385 interpretations are you referring to and are they corrected
3386 by this legislation?

3387 Mr. {Samuels.} Thank you very much. Two very
3388 troublesome interpretations is their unnecessary--in fact, I
3389 think really improper--increase of the number of parties that
3390 can make reports of harm. So that includes trial lawyers; it
3391 includes consumer groups that may not be direct
3392 representatives of someone that is harmed. It is totally
3393 improper and your draft limits it to those people really

3394 harmed and their representatives, which is what the database
3395 is supposed to be all about.

3396 The second thing is a very unfortunate interpretation
3397 that even if a manufacturer has claimed a material inaccuracy
3398 in a report that it isn't even their product, that if the 20-
3399 day clock runs out, they are going to post it anyway, even if
3400 they have failed to resolve it. That is unfair and
3401 unnecessary and your draft does a very good job on dealing
3402 with that.

3403 Mrs. {Bono Mack.} Thank you. I just want to finish my
3404 last 9 seconds by saying that I believe the database has room
3405 for improvement and we can do all of these things. But I
3406 also want to go on the record that I support the database. I
3407 think there is some consternation from the other side that I
3408 don't. But I think it is very flawed and we should make sure
3409 that it serves both the public and make sure that we continue
3410 to make ``made in America'' matter again. So with that I am
3411 happy to recognize Mr. Butterfield for his 5 minutes.

3412 Mr. {Butterfield.} Thank you, Madam Chairman. Ms.
3413 Weintraub, well, you are probably well aware that the
3414 existing law that we passed a couple of years ago sets clear
3415 lines on total lead content that becomes increasingly
3416 stringent over time. The purpose of decreasing the amount of
3417 lead allowed in children's products over time was to

3418 gradually get these products closer to a total lead level
3419 that would not result in at least one form of neurological
3420 damage, and that is the loss of IQ. Some manufacturers,
3421 however, have been complaining ever since the law went into
3422 effect, many of whom were at the table when the law was being
3423 written, that there is no way they can make their products
3424 without certain components that exceed the limits and that
3425 those components don't put children's health at risk.

3426 The discussion draft that we have seen and that you
3427 acknowledge that you have seen attempts to give these
3428 manufacturers relief from the lead content limits. However,
3429 it does so in a very broad and far-reaching way that not only
3430 lets those who claim they need lead for their products to
3431 function properly to exceed the limits, but lets anyone who
3432 wants to continue using lead to do so as long as they are
3433 willing to play a game of risk with children's health.

3434 The de minimis ingestion-based standard in the draft is
3435 available for any component part so long as it isn't a small
3436 part. And there is no consideration of whether lead needs to
3437 be in that particular component.

3438 My question to you is to the extent there is bipartisan
3439 sentiment that Congress should grant manufacturers some form
3440 of relief from the lead content limits, do you agree or
3441 disagree that any such exception must, as a fundamental

3442 matter, consider whether that product needs to have lead in
3443 it to function properly?

3444 Ms. {Weintraub.} I agree.

3445 Mr. {Butterfield.} Let me skip over a couple of
3446 questions. I will stay with you if you will. Tucked away at
3447 the very end of the Republican discussion draft is a one-
3448 sentence section regarding the effective date of the
3449 amendments in the draft. Although that section is at the
3450 very end and only one sentence long, what this section says
3451 is actually quite important. As I understand it from my
3452 staff, what this sentence says is that anyone who is
3453 currently in compliance with any part of CPSIA gets a free
3454 pass. Would you agree or disagree with that and would you
3455 elaborate for me, please?

3456 Ms. {Weintraub.} I do agree. I think that provision
3457 that you are referencing is truly retroactive provision of
3458 this law. I think the term ``retroactivity'' as it applies
3459 to other lead standards I think is legally not accurate. But
3460 in this case I think this is true retroactivity. The one
3461 sentence actually states that this draft will go back to the
3462 time that the CPSIA was passed in August of 2008.

3463 Mr. {Butterfield.} Okay. I want to get to the database
3464 in the few seconds that I have left and this is a rather long
3465 question. This is going to be too lengthy for me to complete

3466 in the time allotted, but would you speak to the database
3467 that we rolled out a few weeks ago and tell us your
3468 conclusions on it?

3469 Ms. {Weintraub.} Sure. The consumer complaint database
3470 is a very important consumer protection. It is so important
3471 because consumers have been in the dark about product safety.
3472 There is many incidents that we know about and obviously
3473 others that we couldn't possibly know where consumers were
3474 just completely in the dark, that manufacturers had
3475 information about a safety problem with the product. CPSC
3476 may or may not have known and consumers continued to use the
3477 product. They were in the dark. They were under a veil of
3478 ignorance and weren't able to make the right choices for
3479 their families because they just didn't know about incidents
3480 that sometimes were pervasive and affected many, many people.

3481 So what the database seeks to do is equal this playing
3482 field a little bit. It still requires CPSC to go to
3483 manufacturers outside of the database before they can release
3484 information about particular products. But it requires a
3485 very specific number of fields of information that really
3486 narrow the information so that information has to be very
3487 targeted to the type of harm, a description of the product,
3488 and really provide useful information to consumers.

3489 And unlike other government databases, it provides a

3490 place where manufacturers can comment simultaneously. If you
3491 go on the database today, you will see a consumer filed a
3492 comment and then in the same page the manufacturer files a
3493 comment, which is significant.

3494 Mr. {Butterfield.} Thank you. I yield back.

3495 Mrs. {Bono Mack.} I thank the gentleman. And the chair
3496 now recognizes Mr. Olson for 5 minutes.

3497 Mr. {Olson.} I thank the chair and I thank the
3498 witnesses for your knowledge, for your patience, and your
3499 persistence.

3500 And my first question is going to be for you, Ms.
3501 Weintraub. What is more dangerous, a product of 10,000 parts
3502 per million lead that does not leach enough lead to result in
3503 a measurable increase in a child's blood lead level or a
3504 product that contains 100 parts per million lead that leaches
3505 enough lead to result in a measurable increase in a child's
3506 blood lead level?

3507 Ms. {Weintraub.} I think it depends on a number of
3508 scenarios, so I am not sure. I could get back to you.

3509 Mr. {Olson.} Okay. So you can't tell me between 10,000
3510 parts per million or 100 parts per million?

3511 Ms. {Weintraub.} I think, you know, there is many
3512 factors that go into that sort of analysis. So I would like
3513 to review the information and get back to you if I could.

3514 Mr. {Olson.} Okay. Thank you. I would appreciate
3515 that. Is there a mechanism to aid CPSIA to prevent these
3516 safe products to be sold to children under age 12?

3517 Ms. {Weintraub.} I am sorry. Can you repeat that?

3518 Mr. {Olson.} I can, yes, ma'am. Is there a mechanism
3519 to aid CPSIA to prevent these safe products to be sold for
3520 children under age 12--safe lead products?

3521 Ms. {Weintraub.} Well, I am not sure that I agree with
3522 underlying assumption of the question, but products intended
3523 for children 12 and under have to meet the current lead
3524 standards, as well as the other mandatory standards that are
3525 relevant to those products.

3526 Mr. {Olson.} Okay. Thank you for that answer. A
3527 couple more questions. You testified that Congress took over
3528 a year in a deliberate process to consider the implications
3529 of this law. Unfortunately, as much as we would like to
3530 think we are, we are not immune to error. We are not
3531 omniscient. I would bet the vast majority, if not all the
3532 Members of Congress had no idea we would be essentially
3533 banning bicycles, jungle gyms, and golf equipment in a time
3534 of a child obesity crisis, ban science equipment like
3535 microscopes and organic geology sets, again, in a time when
3536 students are falling behind in the sciences, or ban musical
3537 instruments in a time when our students are also falling

3538 behind in the arts. Did you know this law would ban those
3539 products?

3540 Ms. {Weintraub.} I think what is important to note is
3541 that lead is not necessary to be in products. And if it is
3542 in fact necessary, I think that should be part of any
3543 analysis that would give flexibility for any type of
3544 exemption, because the important thing to focus on from the
3545 consumer perspective is that when consumers are purchasing a
3546 product for their child, a toy, they don't expect that they
3547 will be exposing them to risk. And especially when it comes
3548 to lead, it is impossible for a consumer to identify whether
3549 there is lead in that product. So the consumer is really
3550 relying on the manufacturer and also relying upon Congress
3551 and the CPSC to make choices that will protect consumers.

3552 Mr. {Olson.} And we are doing that, ma'am, with all due
3553 respect. And one final question. You testified that CPSIA
3554 became law as a result of ``a period of a record numbers of
3555 recalls of hazardous products that injured, sickened, or
3556 killed children.'' What I remember most are the lead-in-
3557 paint recalls. And no one here will ever argue that lead-in-
3558 paint restrictions should be loosened. No one. ``However,
3559 the most significant problems with this bill relate to lead
3560 in substrate.'' Putting aside metal jewelry, again,
3561 restrictions for which we do not intend to loosen, were there

3562 any children injured, sickened, or killed by lead in
3563 substrate? How many and can you provide verified statistics
3564 of those injuries?

3565 Ms. {Weintraub.} I believe I answered a similar
3566 question previously and I will answer the same information
3567 that unfortunately, I am sure that there were injuries, there
3568 were harms to public health, but it is very difficult to
3569 document because these harms and these injuries occur as
3570 neurological impacts to effects of behavior and decreases in
3571 IQ. So it is very hard to document. But to say that there
3572 has been no harms from lead in substrate I think is not
3573 accurate.

3574 Mr. {Olson.} I appreciate those answers again. I would
3575 submit to you that it is important we know those answers
3576 before we take action. We should be able to document it.
3577 and I yield back my time.

3578 Mrs. {Bono Mack.} Would the gentleman yield, actually,
3579 for your final minutes? I would like to ask a follow-up
3580 question if might to Mr. Locker and take the final minute.
3581 So you state the regulations have departed from sensible
3582 risk-based decision-making at the Commission and the law does
3583 not grant them the ability to make commonsense decisions--
3584 there are those words ``common sense'' again--but commonsense
3585 decisions that has resulted in banning safe products. How do

3586 you know the products are safe?

3587 Mr. {Locker.} That comment related to the ability of
3588 the Commission to grant exceptions based upon data that was
3589 available to them. I mean the Commission is not going to act
3590 to grant exceptions if there was exposure--as Mr. Howell
3591 testified under the Federal Hazardous Substances Act--to any
3592 hazardous substance. So in that situation the problem is not
3593 that the Commission can't make that determination. The
3594 problem has been that the language in the statute, which you
3595 now seek to correct, provides the Commission cannot make the
3596 decision if there is any lead that comes from the product.
3597 And that creates a Catch-22. So what we are saying is that
3598 when the Commission can determine that there is no
3599 extractable lead from the product that presents a hazard, the
3600 examples of the ATV fender, the bicycle fender, brass latches
3601 on safety devices maybe in car seats and strollers, when
3602 there is no actual human health risk, they should be able to
3603 say that these are exempt or excluded products. So far they
3604 can't and the way, you know, many of our clients know they
3605 are safe is they do do testing. They do do extraction
3606 testing. They do do formulations. They avoid hazardous
3607 substances where possible because under the Federal Hazardous
3608 Substances Act for children's products, they have to.

3609 Mrs. {Bono Mack.} Thank you. All right. The balance

3610 of the time has expired. I will recognize Ms. Schakowsky for
3611 5 minutes.

3612 Ms. {Schakowsky.} Thank you, Madam Chairman. I wanted
3613 to make it clear particularly to Mr. Marshall that Mr.
3614 Waxman, who at the time in April of 2010, who was chairman of
3615 the full committee, released a discussion draft that gave
3616 targeted relief to industry while maintaining important
3617 protections, which I am sure you agree are important for the
3618 health and safety of children brought about by this
3619 legislation. I was very involved in it. At the time Mr.
3620 Rush wasn't here for health reasons and I helped negotiate
3621 the bill and I worked with Chairman Barton and afterwards,
3622 you know, things happened. And you see some problems and so
3623 Mr. Waxman introduced this draft that would make some
3624 changes.

3625 And at the time the draft was supported by the National
3626 Association of Manufacturers, the Retail Industry Leaders
3627 Association, the Motorcycle Industry Council, the Handmade
3628 Toy Alliance, and Goodwill Industries. And Chairman
3629 Tenenbaum wrote that the Waxman discussion draft would
3630 provide CPSC with the flexibility needed to implement the
3631 law. And then at that time the Republican minority refused
3632 to support the legislation and it didn't move forward in the
3633 111th Congress. So I want to make the point that we

3634 understand that there are some things that need to be
3635 tweaked. We want to do it but we don't want to blow up the
3636 bill.

3637 This has been an issue so dear to my heart, and I did
3638 want to ask Ms. Weintraub an important question. The draft
3639 bill exempts most children's products, including durable
3640 nursery goods--which I have been working on for many
3641 sessions--from third-party testing but then says that cribs
3642 will be tested. However, the current language remains
3643 ambiguous on cribs. Can you talk about this ambiguity? If
3644 the bill were to become law, could parents be assured that
3645 the crib they are using is safe?

3646 Ms. {Weintraub.} Sure. Yes, I agree that there is
3647 ambiguity. On the one hand, in the list of products that
3648 clarifies that there is third-party testing, cribs and non-
3649 full-size cribs are included, but yet there is a reference to
3650 a C.F.R. that seems to have moved. So it is a little bit
3651 confusing. But then further confusing there is another
3652 provision later on--I believe it is in the third-party
3653 section--which says that this would stay all standards having
3654 to do with third-party testing that were passed since some
3655 date in 2009. So there is definitely confusion about whether
3656 cribs would be required to be tested to the new robust crib
3657 standard.

3658 Ms. {Schakowsky.} There is another part. The bill
3659 would eliminate the requirement that daycares and hotels in
3660 certain states use newer, safer cribs. And I have
3661 subsequently become friends with Linda Ginzler, mother of
3662 Danny Keysar, whose son died a really tragic accident. And I
3663 had in my hand the letter from her that I wanted to read just
3664 one paragraph.

3665 ``We founded Kids In Danger in 1998 after the death of
3666 our beloved son Danny in a poorly-designed inadequately-
3667 tested and recalled portable crib. Danny was 16 months old
3668 when the top rails of the Playskool Travel-Lite crib he slept
3669 in at his licensed childcare home collapsed around his neck,
3670 strangling him. He was the 12th child to die in cribs of
3671 this design.''

3672 So, you know, is it necessary to eliminate that
3673 requirement?

3674 Ms. {Weintraub.} No, it is incredibly problematic. In
3675 terms of what the draft bill does for childcare facilities,
3676 it seems to be allowing all fixed-side cribs and the new
3677 robust crib standard does much more than eliminate drop-
3678 sides. It adds many important provisions that ensure the
3679 durability of the crib so that cribs can actually wear,
3680 reflecting how children use cribs has to do with slat
3681 integrity, has to do with mattress support, and the integrity

3682 of the hardware. So by just saying that all fixed-side cribs
3683 can be used in daycares, it unfortunately isn't capturing the
3684 universe of those cribs that we have reason to be concerned
3685 about.

3686 Ms. {Schakowsky.} Let me just say in the seconds I have
3687 left, Madam Chairman, that I know that you care very much
3688 about the safety issues and just I for one would love to be
3689 able to work with you to address some of the problems that we
3690 are hearing and to work to come up with some kind of a
3691 compromise.

3692 Mrs. {Bono Mack.} The gentlelady yields. I thank her
3693 very much for the spirit and I look forward to working with
3694 you and I acknowledge your expertise and your passion over
3695 the years in this and I can say, I think, just in listening
3696 to these past few seconds, I think there is some
3697 misinterpretation of this. But this is a draft discussion.
3698 Sometimes I feel it is almost like a Mad Libs when we were
3699 kids. There are blanks in here for this very reason. And I
3700 would never dream of doing this without working with you. So
3701 I thank you very much for your comment. And now the chair
3702 recognizes Mr. McKinley for his 5 minutes.

3703 Mr. {McKinley.} Thank you, Madam Chairman. Ms.
3704 Weintraub, I have got a couple questions for you.
3705 Apparently, the chairman and others on the committee, they

3706 asked you about substantiating the claims that children have
3707 been ``injured, sickened, or killed'' by toys with lead in
3708 its substrate. And you have responded that these injuries
3709 are, by and large, silent and undocumented. How do we know
3710 they exist if they are silent and undocumented? And could
3711 you provide us some documentation that supports this, how
3712 many people have and with names or circumstances?

3713 Ms. {Weintraub.} We know that lead exposure to children
3714 causes a range of neurological--

3715 Mr. {McKinley.} I am looking for some specifics because
3716 you made the statement. That is why I am just trying to--

3717 Ms. {Weintraub.} Yeah, so first, the--

3718 Mr. {McKinley.} I don't want the generalities. That is
3719 what happens around here. I am new at this game and everyone
3720 likes to talk in the abstract. I am an engineer. I want to
3721 deal in details. So when you make that statement, I want you
3722 to prove it.

3723 Ms. {Weintraub.} Sure. Well, first, the statement that
3724 I made applied to a full range of products. And when I
3725 talked about the injuries and deaths, I was also talking
3726 about magnet-toy deaths, as well as injuries from other toxic
3727 chemicals.

3728 Mr. {McKinley.} Can you document it?

3729 Ms. {Weintraub.} It is very difficult to document if a

3730 child--

3731 Mr. {McKinley.} Well, then you shouldn't be making that
3732 statement.

3733 Ms. {Weintraub.} I can provide you with scientific
3734 studies that will--

3735 Mr. {McKinley.} Let me go on my second question for
3736 you. Last week we had at the request, perhaps, or insistence
3737 of the administration and the Congressman from California, we
3738 included language in a broadband oversight bill to take care
3739 of the false and erroneous claims against people for waste,
3740 fraud, abuse, and precisely to protect these companies'
3741 reputations. We used Congressman Waxman's own language that
3742 he had inserted in a radio spectrum bill that he had produced
3743 last year. So we were using specifics. And then last year
3744 there was a data security bill that the Republicans were
3745 trying to put in to a consumers' right bill to protect access
3746 to databases, protect it for security for people's
3747 reputations. I have got a company in my area that has cried
3748 out on this. He has already had legal advice that is
3749 suggesting that he could be accused anonymously by people
3750 using false names put up there against him and he won't be
3751 able to clear his company name.

3752 Shouldn't companies who manufacture consumer products
3753 not be provided the same ability to protect their reputations

3754 from erroneous or false claims as the companies who receive
3755 broadband like we just did?

3756 Ms. {Weintraub.} I think there are very similar
3757 protection that is not identical. But first of all, on the
3758 consumer complaint database, complaints cannot be anonymous.

3759 Mr. {McKinley.} Would you work with us on that? Is
3760 that something that you think we should be doing? Shouldn't
3761 we be protecting everyone and not just certain people?

3762 Ms. {Weintraub.} I think there are adequate protections
3763 already. And already in order for a claim to be filed and
3764 posted on the database, a consumer needs to verify that what
3765 they are saying is true.

3766 Mr. {McKinley.} Their counsel doesn't agree with you on
3767 that. That is why we need to do this language. We need to
3768 have something in there to be able to take care of that
3769 because we are looking for something that is consistent with
3770 it. But the last question I have--

3771 Ms. {Weintraub.} Well, I am happy to take a look at--

3772 Mr. {McKinley.} --is, Mr. Marshall, if I could--back to
3773 you. You know, one of the things we were looking for in this
3774 hearing were some data because there are a lot of blanks.
3775 And you heard the chairman talk about it.

3776 And on page 11 it says the term ``produced in small
3777 quantities means not more than 'blank' number of units of the

3778 same product.' ' What would you recommend is a number that we
3779 should use in that?

3780 Mr. {Marshall.} I think that could be a range of
3781 numbers. I think on an outside I think 10,000 units per year
3782 would be the highest we would like to see.

3783 Mr. {McKinley.} One thousand?

3784 Mr. {Marshall.} Ten thousand is the highest.

3785 Mr. {McKinley.} Ten thousand?

3786 Mr. {Marshall.} Yeah. But it has to do with--

3787 Mr. {McKinley.} And that maybe I am dealing more with
3788 your company, what you all produce.

3789 Mr. {Marshall.} Well, I own a toy store and my wife and
3790 I, we buy from small-batch manufacturers.

3791 Mr. {McKinley.} Okay.

3792 Mr. {Marshall.} But that is a number that we are
3793 willing to discuss.

3794 Mr. {McKinley.} Ten thousand.

3795 Mr. {Marshall.} As a high number. That would be the
3796 highest that we would want to see that number. It could be a
3797 range of numbers below that as well.

3798 Mr. {McKinley.} Okay. I yield back my time.

3799 Mrs. {Bono Mack.} I thank the gentleman. And seeing no
3800 other members present, I believe that we are now ready to
3801 wrap it up. I ask unanimous consent that these 16 letters be

3802 made a part of the record, all of which have been vetted
3803 previously by the minority. Without objection.

3804 [The information follows:]

3805 ***** COMMITTEE INSERT *****

|
3806 Mrs. {Bono Mack.} All right. And as we wrap things up
3807 again, I want to thank our panelists for your patience today,
3808 your indulgence certainly through those long series of votes.
3809 I would like to thank you for your commitment to this very
3810 important issue. I look forward to hearing your thoughts
3811 further as we move this legislation forward.

3812 But I would like to be perfectly clear. Our only goal
3813 is to correct the unintended consequences of CPSIA. This
3814 draft does not undermine the current law. Again, we are
3815 trying to fix the problems that we know of in CPSIA,
3816 hopefully get some common sense back into this thing. We are
3817 simply working to make it better for all Americans and to
3818 provide the Consumer Product Safety Commission with the
3819 flexibility that it is asking for.

3820 As the mother of two children and three stepchildren, I
3821 am completely committed--like everybody in this room is--to
3822 the safety of children everywhere. So I hope we can put
3823 these political differences aside and pass a bill that will
3824 make them prouder and safer. The ranking member and I
3825 continue to have discussions about our hope and willingness
3826 to work together to get a good bill through Congress that not
3827 only we can be proud of but the American people can as well.

3828 So I remind members they have 10 business days to submit

3829 their questions for the record and I ask the witnesses to
3830 please respond to any questions they receive. And the
3831 hearing is now adjourned. Thank you again.

3832 [Whereupon, at 3:55 p.m., the Subcommittee was
3833 adjourned.]