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1 {York Stenographic Services, Inc.}

2 HIF048.170

3 HEARING ON ``A REVIEW OF CPSIA AND CPSC RESOURCES''

4 THURSDAY, FEBRUARY 17, 2011

5 House of Representatives,

6 Subcommittee on Commerce, Manufacturing and Trade

7 Committee on Energy and Commerce

8 Washington, D.C.

9 The subcommittee met, pursuant to call, at 11:30 a.m.,
10 in Room 2322 of the Rayburn House Office Building, Hon. Mary
11 Bono Mack [Chairwoman of the Subcommittee] presiding.

12 Members present: Representatives Bono Mack, Blackburn,
13 Harper, Lance, Cassidy, Guthrie, Olson, Pompeo, Kinzinger,
14 Barton, Upton, Butterfield, Dingell, Towns, Schakowsky and
15 Waxman (ex officio).

16 Staff present: Gary Andres, Staff Director; Jim
17 Barnette, General Counsel; Mike Bloomquist, Deputy General
18 Counsel; Paul Cancienne, Policy Coordinator, CMT; Andy

19 Duberstein, Special Assistant to Chairman Upton; Robert
20 Frisby, Detailee, CMT; Brian McCullough, Senior Professional
21 Staff Member, CMT; Jeff Mortier, Professional Staff Member;
22 Gib Mullan, Chief Counsel, CMT; Katie Novaria, Legislative
23 Clerk; Michelle Ash, Chief Counsel; Felipe Mendoza, Counsel
24 and Will Wallace, Policy Analyst.

|
25 Mrs. {Bono Mack.} The subcommittee will come to order.
26 I would ask members to take their seats.

27 As we begin to work this year, I would like to thank all
28 of the members on the Subcommittee on Commerce, Manufacturing
29 and Trade for your participation, especially the new ranking
30 member, Mr. Butterfield. I would also like to congratulate
31 Mr. Upton on his chairmanship of the full committee and to
32 thank him for entrusting me with the chairmanship of this
33 very important subcommittee.

34 As you know, the Energy and Commerce Committee is the
35 oldest standing committee in the House of Representatives,
36 dating back to 1795. Its original name was the Commerce and
37 Manufacturers Committee and our subcommittee continues to
38 focus on the core of our original jurisdiction. The chair
39 now recognizes herself for an opening statement.

40 This is the first hearing of our subcommittee for the
41 112th Congress. Over the months ahead I plan to look at a
42 wide range of issues that deeply affect Americans in their
43 daily lives. One of the most important as well as one of the
44 most vexing issues we face today is how do we get our economy
45 back on track? How do we create new jobs? How do we bring
46 jobs which have been lost to foreign countries back home and
47 how do we make ``Made in America'' matter again? I believe

48 it is part of our job to take a close look at what is working
49 and what is not working and then see how we can work together
50 to make a real difference in peoples lives.

51 Today's hearing is about the Consumer Product Safety
52 Improvement Act, affectionately known as CPSIA. This
53 legislation was truly a landmark in efforts to improve
54 consumer product safety. It was the first reauthorization of
55 the CPSC in 17 years and it modernized and strengthened the
56 agency in many different and meaningful ways. While CPSIA
57 has many virtues, there are some unintended consequences of
58 the law as well. We have a responsibility to the American
59 public to review those specific provisions of the law that
60 have proven to be problematic and to fix them. Admittedly,
61 it is a careful balancing act and we have to be certain as
62 the old saying goes, ``not to throw the baby out with the
63 bathwater.''

64 For thousands of businesses who strive to be responsible
65 let us do what is best for consumers. CPSIA has consumed and
66 inordinate amount of their time trying to understand how each
67 new regulation and standard will affect them. Unfortunately,
68 many have gone out of business, attributing their demise to
69 some of the burdens of compliance with the many provisions of
70 the new law. We need to strike a careful balance. As a
71 Nation, we simply cannot afford to lose jobs or to stifle

72 innovation because of unnecessary regulations. Frankly, many
73 businesses never even heard about this law until well-after
74 it was enacted. Most were shocked to learn of the onerous
75 requirements it would impose on them if they manufactured or
76 sold any children's product even though they had never done
77 anything wrong and never had a single product recall.

78 It began with the best of intentions. In 2007, the
79 widely publicized toy recalls for violations of existing lead
80 paint standard gave way to new prohibition on lead content in
81 children's products. As interpreted by the Commission, this
82 category goes far beyond just toys to cover sporting goods,
83 library books, ATVs, educational products, CDs, clothing and
84 many other items. The goal was a noble one, making products
85 safer for our kids but within just months of passage both the
86 Commission and the Congress realized that problems with the
87 new law would need to be addressed.

88 The Commission recently announced yet another stay of
89 enforcement, at least five now by my count that it deems
90 necessary to avert potentially disastrous results. What is
91 more, during the last Congress numerous bills and legislative
92 drafts were introduced including one by Mr. Barton to remedy
93 some of the problems we already know about. I hope our new
94 members can quickly get up to speed on these issues and
95 working together we can come up with a commonsense solution

96 that is a win-win for everyone.

97 Today the Commission has jurisdiction over literally
98 thousands of different types of products. It is critically
99 important that they should be able to prioritize their
100 resources to address the products that pose the greatest
101 risks to consumers. As a mother, I have very strong,
102 passionate feelings about protecting all children but as a
103 former small business owner I know all too well how
104 unnecessary regulations, even well-intentioned ones can
105 destroy lives too. This is a rare opportunity to put aside
106 the differences that often divide this great body and put our
107 heads together to make a good law even better. It is up to
108 us now and as we begin this important debate, I am going to
109 encourage everyone to remember what we all tell our kids
110 growing up, keep your eye on the ball.

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

112 ***** COMMITTEE INSERT *****

|
113 Mrs. {Bono Mack.} Mr. Butterfield, you are now up to
114 bat and the gentleman from North Carolina, the ranking
115 member, Mr. Butterfield is now recognized for 5 minutes for
116 his opening statement.

117 Mr. {Butterfield.} Let me thank the chairman for
118 convening this very important hearing today and I certainly
119 thank the witnesses for their anticipated testimony. We
120 received a copy of your advanced testimony and I read most of
121 it last evening but though I did not read all of it and so I
122 look forward to your testimony today.

123 Today marks our first hearing and I want to thank the
124 chairman of this subcommittee for calling this hearing and
125 for her friendship and for her anticipated leadership on this
126 very important committee. I reached out to the chairman and
127 she has reached out to me and we have created a friendship
128 and I look forward to working with her as we go forward. I
129 can certainly say that the early signs are encouraging.

130 As today's hearing demonstrates, the issues before this
131 subcommittee often have a real and direct impact on the daily
132 lives of the American people. From the toaster they use at
133 breakfast, to the dishwasher they load as they head out the
134 door, to the dolls and the toy trucks their kids play with,
135 people reasonably expect the consumer products they bring

136 into their homes will be safe. Unlike many of the issues we
137 deal with, consumer product safety is nonpartisan or at least
138 it should be. In fact, a poll released just yesterday by the
139 publisher of Consumer Reports found that 98 percent of
140 American consumers agree that the Federal Government should
141 play a prominent role in improving product safety. I am
142 hopeful that we will be able to find common ground and move
143 forward in a bipartisan manner on consumer product safety.
144 It is clearly, it is clearly what the American people want
145 and expect.

146 This is an obvious choice as our first hearing. We all
147 understand the challenges that the Consumer Product Safety
148 Commission has faced in implementing the CPSIA, the law that
149 we all know so much about. I also understand that we are
150 likely to see some legislation on this issue in the coming
151 weeks. While no complete agency overhaul is likely to be
152 perfect, the CPSIA has provided some crucial changes to
153 strengthen and modernize the consumer product safety system,
154 particularly with respect to children's products. The law
155 established basic safety standards for limiting the amount of
156 lead and phthalates in children's products. It also
157 introduced a product testing system designed to ensure that
158 all children's products and other products subject to
159 mandatory safety rules are safe, and it gives the Commission

160 new resources and authority, and reestablished a five-member
161 Commission, two of whom are sitting in front of us, allowing
162 it to proceed in an unfettered way with its decision and
163 rulemaking authority.

164 Consumers had long believed that if a product made it to
165 the store shelf that it must be safe. Unfortunately, that
166 was not the case and is not the case and the millions of toys
167 recalled in the summer of 2007, illustrated this frightening
168 trend and these weren't just recalls because of high lead
169 levels. Many were due to design-related safety defects that
170 could have led to burns and choking and strangulation among
171 other potentially fatal dangers.

172 Parents were concerned and outraged, as were the members
173 of this committee. As a result, we resolved that our
174 children would no longer be the frontline for measuring the
175 risk to their health and safety from toys and other products
176 they use. These manufacturers would have to prove their
177 products were safe before they made their way into the hands
178 of our children.

179 I understand that implementation has been a challenge
180 for the Commission and for the small and large manufacturers
181 working to comply with the new law. Today I hope to hear
182 about how the law is working as well as the new challenges
183 and as some say the unintended consequences that may have

184 been created. I also hope to learn how the Commission
185 allocates its resources between implementing this law and its
186 many other important responsibilities. I also look forward
187 to hearing why key provisions of the law still aren't being
188 enforced. That is very important and why some
189 congressionally mandated rules still have yet to be
190 finalized.

191 I look forward to the hearing from all of the witnesses
192 and as I said earlier, I thank you for coming today with your
193 testimony.

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

195 ***** COMMITTEE INSERT *****

|
196 Mr. {Butterfield.} I am going to yield my last minute
197 that I have to any member who would like to consume. Ms.
198 Schakowsky, you have my remaining time.

199 Ms. {Schakowsky.} I thank the gentleman very much.

200 I want to congratulate Chairman Tenenbaum for restoring
201 the Consumer Product Safety Commission to its proper role of
202 protecting consumers. And consumers do believe when they go
203 and pick items off the shelf, they already think that
204 somebody somewhere is protecting them, and thank goodness the
205 CPSC is doing that just now. Before this landmark bill
206 passed, there were 170 items of children's jewelry containing
207 lead at high and dangerous levels. This legislation did
208 something about that and finally, when we did our annual toy
209 safety bill there were fewer items that we said were
210 dangerous that were on the shelf.

211 The Commission has already shown its flexibility in
212 dealing with some of the problems of implementation. But the
213 bottom line issue of protecting consumers and particularly
214 children, that is the proper role of government and that is
215 our proper role that we will exert today. We are going to
216 protect our consumers and our children.

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

218 ***** COMMITTEE INSERT *****

|
219 Mrs. {Bono Mack.} Chairman Upton yielded his 5 minutes
220 for his opening statement to me in accordance with committee
221 rules. As his designee, I now recognize Mr. Barton, Chairman
222 Emeritus of the committee and conferee on CPSIA for 1 minute.

223 Mr. {Barton.} Thank you, Madam Chairwoman, and it is
224 good to see you in the chair. I look forward to
225 participating with you and the other members of this
226 subcommittee as we have a very profitable next 2 years.

227 It is good to see our two witnesses, the honorable
228 chairwoman and of course Commissioner Northup who I actually
229 remember as congresswoman. Anne Northup, it is good to see
230 you.

231 I was a conferee on the consumer product safety,
232 whatever it was, information act 3 or 4 years ago. Mr.
233 Dingell was the chairman of that conference. Ms. Schakowsky
234 was on it and Mr. Waxman was on it, and I think Mr. Whitfield
235 and Mr. Stearns on our side. Senator Boxer I remember and
236 Senator Inouye on the Senate side. We had a good conference.
237 We reported a good bill. Unfortunately, we put some language
238 in at the very end of the conference that has turned out to
239 be very difficult because it doesn't really give the CPSC the
240 flexibility that they need to show some discretion for some
241 of our smaller manufacturers and in some cases, individual

242 producers of some of these products. We introduced a reform
243 bill in the last Congress. We were never able to get
244 consensus on it and I hope that under the leadership of
245 Chairwoman Bono Mack that we can get that consensus in this
246 Congress.

247 And with that I would yield back and say I again look
248 forward to working on this issue.

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

250 ***** COMMITTEE INSERT *****

|
251 Mrs. {Bono Mack.} I thank the gentleman.

252 Now, I would like to yield a minute to Mr. Pompeo, one
253 of our newest members, 1 minute.

254 Mr. {Pompeo.} Thank you, Madame Chairwoman. Thanks to
255 the witnesses for coming out this morning. I look forward to
256 the hearing.

257 A little later today on the floor or perhaps it will be
258 early tomorrow morning I will offer an amendment of having to
259 do with the public accessible database information. CPSC is
260 set to roll this database out in early March as called for in
261 CPSIA in 2008, but unfortunately the database's final role in
262 my view has created and will create far more harm than good
263 that it will do. The statute in my view has been interpreted
264 to mandate the posting of materially inaccurate information
265 and the agency has created a database that will both direct
266 consumers away from safe products to relatively less safe
267 ones and damage the reputation of very safety-conscious
268 manufacturers.

269 I hope this amendment will pass this afternoon and we
270 will get the time to reflect and review and give this
271 committee the chance to do oversight so that we can get a
272 better role, a better database that will more effectively
273 accomplish the important objectives of the statute. Thank

274 you.

275 [The prepared statement of Mr. Pompeo follows:]

276 ***** COMMITTEE INSERT *****

|
277 Mrs. {Bono Mack.} And I have 1 more speaker but at this
278 point she is not here. I would like to yield to Mr. Waxman
279 for his opening statement for 5 minutes.

280 Mr. {Waxman.} Thank you very much. I want to thank
281 Chairman Bono Mack for holding this hearing and congratulate
282 her on her new chairmanship of this important subcommittee.

283 Until recently, our product safety system and especially
284 our toy safety system was terribly broken. In 2007 and 2008,
285 we saw record recalls and a total loss of consumer confidence
286 in the safety of all products. Children were killed and
287 horribly injured by defective and dangerous products. The
288 Consumer Product Safety Commission had limited statutory
289 authority. Only two of the three commissioner slots were
290 filled and its staff numbers and resources had thoroughly
291 atrophied. This situation alarmed families across the nation
292 and Congress responded. In 2008, Congress enacted truly
293 historic product safety legislation that vastly improved our
294 children's health and safety. Now that we are a few years
295 away from the recalls and the most dramatic stories have left
296 the front pages some suggest that we didn't really need to
297 enact such a strong law but I believe that is wishful
298 thinking. The fact remains that the system we had in place
299 was a failure. This law was necessary to protect kids and

300 families across the country.

301 Let me just mention a few of the law's successes. Today
302 toy recalls have dropped from 172 in 2008, to 44 in 2010.
303 Today we have strong mandatory standards for cribs and CPSC
304 has finished creating a publicly accessible consumer incident
305 database which as far as I know is a very useful database and
306 we ought to get a chance to review it.

307 Today CPSC has increased its staff and resources. It
308 increased surveillance at ports, five commissioners as well
309 as a new IT system and laboratory. To retreat now from the
310 proven consumer protections achieved under this law would be
311 a huge mistake.

312 This morning an important new study was published. It
313 shows that between 1990 and 2008, nearly 200,000 infants and
314 young children went to emergency rooms for injuries related
315 to cribs and playpens. And a new poll for the Consumers'
316 Union documents Americans want a strong federal regulator to
317 protect children from these dangers.

318 As legislators we know that legislation is not flawless.
319 Although the Commission has made great strides in carrying
320 out this law, we have heard from a number of stakeholders
321 that certain provisions of the law may need adjustment and we
322 need to take these concerns seriously. Over the past 2 years
323 we have met repeatedly with stakeholders affected by the new

324 law to understand their concerns and to craft an appropriate
325 legislative response. I see that some of these stakeholders
326 are represented on the second panel of this hearing and I
327 welcome them. As I have stated to them in the past and I
328 will repeat today, I am committed to working with them, the
329 Commission and members of this committee to strike a delicate
330 balance between the need for targeted changes to the law and
331 the need to preserve the most important public health
332 accomplishments of the law. Product safety should not and
333 has not been a partisan issue and it is my sincere hope that
334 this committee will work quickly to resolve these issues once
335 and for all.

336 I look forward to hearing the testimony. I look forward
337 to working with the new subcommittee and committee leadership
338 as we continue our commitment to protect all consumers,
339 especially children.

340 And I yield back the balance of my time.

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

342 ***** COMMITTEE INSERT *****

|
343 Mrs. {Bono Mack.} I thank the gentleman.

344 Today we have two panels before us. Each of the
345 witnesses has prepared an opening statement that will be
346 placed in the record. Each of you will have 5 minutes to
347 summarize that statement in your remarks.

348 On the first panel we have and we welcome the Honorable
349 Inez Tenenbaum, Chairman of the Consumer Product Safety
350 Commission. Joining her on the first panel is Commissioner
351 Anne Northup and our former colleague. Thank you both for
352 being here today.

353 Chairman Tenenbaum, you are recognized for 5 minutes.

|
354 ^STATEMENTS OF HON. INEZ TENENBAUM, CHAIRMAN, CONSUMER
355 PRODUCT SAFETY COMMISSION; AND HON. ANNE NORTHUP,
356 COMMISSIONER, CONSUMER PRODUCT SAFETY COMMISSION

|
357 ^STATEMENT OF INEZ TENENBAUM

358 } Ms. {Tenenbaum.} Thank you and good morning, Madam
359 Chairman, Ranking Member Butterfield and members of the
360 Subcommittee on Commerce, Manufacturing and Trade.

361 Since assuming the chairmanship of the Commission in
362 July, 2009, I have focused on three key objectives. First, I
363 have worked diligently to implement the Consumer Product
364 Safety Improvement Act and use that Act's new authorities in
365 a manner that is both highly protective of consumers and fair
366 to industry stakeholders. I recognize that some of these
367 rules have caused concern in the regulated community and I
368 have worked to provide appropriate relief whenever possible.
369 However, it is also important to point out that the vast
370 majority of the CPSIA rules and requirements had been adopted
371 unanimously by the Commission and widely accepted by the
372 industry consumer groups and families across the country.

373 I am pleased to report to the subcommittee, we are on
374 time and on budget to launch the public database on the

375 safety of consumers' products mandated by Section 212 of the
376 CPSIA and this launch is on March the 11th. This database
377 will empower consumers with information allowing them to
378 quickly determine whether products they already own or are
379 considering purchasing are associated with safety hazards or
380 recalls. I want to assure this subcommittee that CPSC staff
381 has worked to ensure that the database is fair to all
382 stakeholders while also fulfilling the intentions of
383 Congress. Overall, I strongly believe that we have reached
384 the right balance of addressing the manufacturers' legitimate
385 concerns while also ensuring that the public has access to
386 critical consumer product safety information. This database
387 will prevent injuries and it will save lives. Congress
388 recognized this when it added Section 212 to the CPSIA and I
389 look forward to seeing this important to fully implemented in
390 just 3 weeks from now.

391 Second, I have focused on changing the CPSC's internal
392 processes so that the agency is more assertive and more
393 capable of addressing safety challenges presented by
394 thousands of types of consumer products imported from all
395 over the world. In the last year the Commission has released
396 a strategic plan that establishes a plan to make the CPSC the
397 global leader in consumer product safety. We have
398 established a new office of education global outreach and

399 small business ombudsman that has already begun to provide
400 outreach to small businesses and crafters. We have embarked
401 on a substantial upgrade of our information technology system
402 which has formed the backbone of the database and our new
403 CPSC.gov homepage.

404 Third, I have focused on proactive prevention of
405 consumer harms identifying emerging hazards and keeping those
406 products out of the stream of commerce. We have taken a
407 number of steps to increase the surveillance of potentially
408 harmful consumer goods by signing several information sharing
409 agreements with Customs and Border Protection and increasing
410 our physical presence at the ports of entry. The
411 Commission's safe sleep team has also made great strides to
412 rid the marketplace of dangerous cribs, usher in a new
413 generation of safer cribs and to educate parents about the
414 importance of maintaining a safe sleep environment for
415 infants and toddlers. A key component of this was the
416 mandatory crib safety standard. These standards were
417 designed through many hours and staff working collaboration
418 by the Commission resulting in a unanimous vote in favor of
419 the new standards on December the 15th, 2010. And
420 particularly, I am extremely proud of the Commission's staff
421 and the work they have done to implement the bulk of the
422 CPSIA and create a safer consumer product marketplace for all

423 Americans.

424 The Commission has received increases in appropriations
425 over the past 3 years. These resources are making a
426 difference. They ensure that we can get the message out to
427 families after a hurricane or an ice storm that the use of
428 portable generators in homes can result in carbon monoxide
429 poisoning and tragedy. They also allow us to do public
430 outreach to new mothers so they will not place their newborns
431 into an unsafe sleep environment that could result in a
432 tragedy. Some will say that these resources are solely to
433 promulgating rules under the CPSIA. This is untrue.

434 In 1980, the Commission had almost 1,000 employees and
435 an inflation-adjusted budget of \$150 million. By 2007, the
436 Commission had fallen to 385 employees and was barely able to
437 carry out its core functions. We simply cannot return to
438 those dark days.

439 In the coming months I look forward to discussing
440 possible target improvements to the CPSIA with this
441 subcommittee. On January 15, 2010, I reported a unanimous
442 report of the Commission requesting some additional
443 flexibility on some key requirements. I recognize that some
444 want to go further than this and reopen the entire act. This
445 would be a mistake. Calls for a return to a completely risk-
446 based lead paint and contents standard are one example of a

447 proposal that is seriously ill-advised. Lead is a
448 contaminant and a powerful neurotoxin. It is a particular
449 threat to the developing brain of a fetus, infant and a young
450 child and with documented negative effects on behavior and
451 permanent loss of IQ.

452 During my tenure as Chairman, my message to
453 manufacturers has been simple. Get the lead out. If it
454 absolutely has to be in your product, we have sought the
455 authority to address it through a functional purpose
456 exception. We have made substantial progress in this area
457 since the passage of the CPSIA and parents should never have
458 to wonder and worry about whether the model train or the toy
459 they purchase for their child is leaded or unleaded.

460 Thank you again for inviting me to provide testimony
461 before the subcommittee today.

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

463 ***** INSERT 1 *****

|
464 Mrs. {Bono Mack.} I thank the chairman and would
465 recognize Commissioner Northup for 5 minutes.

|
466 ^STATEMENT OF ANNE NORTHUP

467 } Ms. {Northup.} Thank you, Madam Chair, and let me
468 congratulate you. I know you are the first woman that is a
469 subcommittee chairman of the Energy and Commerce Committee
470 and as a former member I know that those achievements are so
471 important to all the women that come behind us. It is very
472 exciting to the women on Capitol Hill to see you as the chair
473 so I congratulate you, and also, Ranking Member Butterfield,
474 thank you for having me here today.

475 I appreciate the opportunity to come and talk a little
476 bit about the CPSIA. I certainly want to acknowledge what
477 the chair said and that is that most of our votes have been
478 five to nothing. They are bipartisan. There is a wish
479 across the Commission to make sure that our children are
480 safer. I feel that if I had been still in Congress when the
481 CPSIA had come before me that I would have voted for this
482 bill. And understanding it as I read it as I was nominated
483 by the President to this Commission and then went through the
484 confirmation process, I had an opportunity to visit with most
485 of the Senators who had been on the subcommittee and the
486 committee, the Commerce Committee. And overwhelmingly I
487 heard from them that there were unanticipated consequences of

488 this bill and told me that they believed in the bill that
489 there was a flexibility for us to both protect children and
490 to avoid these unintended consequences and I promised them
491 that I would do that.

492 And like I said as I read the bill, everything seemed so
493 straightforward and so reasonable. It was only then when I
494 was sworn in that I found out that the Commission had come to
495 certain conclusions about portions of this bill, especially
496 the absorb ability exclusion that have rendered whole
497 sections of the bill meaningless. In other words, our
498 Commission has found on a partisan majority that that section
499 of the law is totally meaningless, that it does not apply to
500 one product. So I am here today, not to be the naysayer
501 because I think it is important entirely. I think it is
502 important to recognize that our chair has instituted some
503 things that have modernized this Commission and have made it
504 possible for us to intercept things at the border and to
505 advance our technologies that will make an enormous
506 difference and help us protect children.

507 So I am here though to bring to your attention some of
508 my concerns. It has been shocking to me the number of
509 businesses that we have entirely caused to go out of
510 business, the number of businesses that have left the
511 children's product arena completely because of this bill, the

512 number of choices that parents no longer have. Everyday I
513 hear from businesses who tell me we use to make this many
514 versions of this product. Today we make one because any
515 additional components will cause us this many more thousands
516 of dollars of testing, this many more thousands of dollars of
517 paperwork and tracking and concerns that we have, and we
518 heard it just at the toy fair this weekend. Almost
519 universally people estimated their cost and increase the
520 price to parents 20 to 30 percent and the fact that they have
521 reduced the bells and whistles of their toys. They have, as
522 one major manufacturer told me, we have taken the fun out of
523 toys because we don't want to put multiple colors. We don't
524 want to put the sound in it. We don't want to put the extra
525 additions to it because we have to--it is just so complicated
526 to abide by the law.

527 Specifically, the law requires that yes, everyone meet
528 the lead standard and that means whether the lead is
529 absorbable to not, even though in the law it said that items
530 where the lead was not absorbable were exempted from the law.
531 So we have applied it so that everything is affected by that
532 even when it is not absorbable. So people that make ball
533 bearings and connectors and things like that have no way to
534 make those products and still comply by the law. Or they are
535 using, as somebody told us in testimony, substitutes that are

536 even less safe like antimony, a known carcinogenic. So we
537 need to address that exclusion.

538 I want to use the rest of my time to talk about the
539 database. Right now you can go on Amazon.com, decide you are
540 going to order a highchair for your child as I did for my
541 grandchildren and the brand that I chose, I put in a brand,
542 147 different highchairs they make and some of them are \$54
543 on the first page, one is \$148. Today our database, somebody
544 puts in an incident and all they have to do is give that
545 brand name. They do not have to say whether it was the \$54
546 chair or the \$148 chair. They can be misidentifying it as we
547 find people misidentify things in incidents everyday. That
548 kind of information is not helpful to consumers. If accurate
549 information is helpful, inaccurate information can drive
550 people away from the safest product and it is not helpful to
551 us who have to enforce the law. I know we will have a chance
552 to talk about this further in the questions and answers but I
553 did want to bring that to your attention.

554 Thank you very much.

555 [The prepared statement of Ms. Northup follows:]

556 ***** INSERTS 2 ,3, 4 *****

|
557 Mrs. {Bono Mack.} I thank the witnesses for their
558 testimony and I am going to recognize myself for the first 5
559 minutes of questioning.

560 And my first question is to Chairman Tenenbaum, while
561 well-intentioned, CPSIA is clearly flawed in many, many
562 respects. What needs to be done to make it more workable?

563 Ms. {Tenenbaum.} Thank you, Madam Chairman. Last
564 January all of the Commissioners submitted a report to this
565 committee and to Congress and it was a unanimous report in
566 which we asked for four things. First of all we asked for
567 greater flexibility to granting exclusions from the Section
568 101(a) lead limits and that is now it is 300 in parts per
569 million. In August it will be 100 parts per million. We
570 asked for exclusions for ordinary children's books. We asked
571 for a perspective application when we go to 100 parts per
572 million so that compliant inventory now in the stores or are
573 being shipped to the stores would not have to be recalled.
574 We only want 100 parts per million applied prospectively.
575 And we wanted some relief and some flexibility for small
576 manufacturers and crafters and so that was what we asked the
577 Committee for. Mr. Waxman proposed a bill and that was
578 discussed on both sides of the aisle. Mr. Barton had a bill
579 and a number of members submitted bills but Congress did not

580 take any action last year. So we are hopeful that this year
581 we can have.

582 Mrs. {Bono Mack.} Thank you for those suggestions. Let
583 me move on to the next question because 5 minutes goes by so
584 quickly.

585 Ms. {Tenenbaum.} I am sorry.

586 Mrs. {Bono Mack.} That is okay. If you could clarify
587 something for me though, in terms of lead exemptions you
588 favor the so-called functional purpose exemptions. What do
589 you mean by that and doesn't this threaten to bog down the
590 Commission in making case by case determinations?

591 Ms. {Tenenbaum.} Well, under the Federal Hazardous
592 Substance Act which is the act which used to govern the way
593 we dealt with lead before they passed CPSIA, there was a
594 functional purpose exemption. For example, if you had a
595 chemistry set, you had to label what the chemicals were but
596 we did not recall chemistry sets because the chemicals were
597 needed for the functional purpose of the chemistry set. It
598 was our thoughts, several of us that we could say if you have
599 an ATV and you need the ATV or the bicycle lead in it to make
600 it stronger or have greater machine ability when you are
601 making an ATV or bicycle, then that is your functional
602 purpose, and if it doesn't harm children then we could exempt
603 you. We never envisioned this being a very complicated

604 exemption process but as it was talked about in Congress it
605 became very complicated and then it really sunk under its own
606 weight.

607 Mrs. {Bono Mack.} Thank you. It seems to me that the
608 Commission's priorities get out of whack at times and you
609 spend so much time focusing on trace amounts of lead but what
610 about dangers that actually result in kids being hurt?
611 According to one of my hometown newspapers, 20,000 children a
612 year under the age of 5 are injured in shopping cart
613 accidents. Under CPSIA, things like doll clothes must be
614 approved by third-party testers. Are the locking wheel
615 devices on shopping carts tested?

616 Ms. {Tenenbaum.} Well, thank you so much for that
617 question. My staff has made me aware of the problems with
618 shopping carts and we have been engaged with the ASTM which
619 is the voluntary standards making organization to look at
620 shopping carts so that we can expedite the issues with those
621 carts. I would have to note though because we have increased
622 resources we are able to look at emerging hazards faster and
623 that is why any cuts to our budget will knock us off course
624 in terms of our ability to respond to emerging hazards like
625 shopping carts and lithium battery buttons and so forth.

626 Mrs. {Bono Mack.} Thank you, I can see.

627 Ms. {Northup.} Madam Chair, first of all the functional

628 purpose the way it was written would have been very
629 difficult. It said that anybody applying for it would have
630 to prove that there was no substitute and as we heard in
631 testimony yesterday, there is always a substitute. The fact
632 is you will end up with a \$7,000 bicycle. So its not that
633 there is not substitute. But if a ball bearing for example
634 and it is made of brass is important in a bicycle, why is it
635 not also important in a Tonka truck and the other items and
636 so yes, bicycles might have the financial wherewithal to
637 apply. They have to prove that there is no other practical
638 substitute. They have to prove it doesn't hurt a child. I
639 think that the minority of the Commission believes that if we
640 exempt a material for one manufacturer, we ought to exempt
641 that same material for all because if it meets the bar that
642 it is not going to harm a child then why is there any other
643 reason for us to address it. And as far as yes, this has
644 completely absorbed the Commission's time. There are things
645 that have gone unmet. Things like table saws. There is
646 technology that addresses this. There are 10 fingers that
647 are cut off a day in this country. Carbon monoxide
648 poisoning, 500 people die a year from that because of
649 generators. These are things that are way overdue in the
650 rulemaking that we have not taken up because there simply is
651 not the time to do that.

652 Mrs. {Bono Mack.} I thank the witnesses and now I would
653 like to yield 5 minutes to Mr. Butterfield for his
654 questioning.

655 Ms. {Butterfield.} Thank you, Madam Chairman.

656 Let me address my questions to the chairman of the
657 Commission and the chairman is right, 5 minutes goes very
658 quickly so I am going to try to get through this.

659 Ms. {Tenenbaum.} I am trying to be.

660 Mr. {Butterfield.} It is clear that the manufacturers
661 have become critical of the Commission in implementing the
662 database and we have just talked about that. Even your
663 colleague, Ms. Northup, has been somewhat respectfully
664 critical of the database. Just last week in written
665 testimony to the House Oversight and Government Reform
666 Committee, the National Association of Manufacturers'
667 president, Mr. Timmons, stated that, ``The final rule creates
668 a default for immediate publication before any meritorious
669 claims regarding trade secrets or material inaccuracies are
670 resolved.'' In your testimony today, you point out several
671 safeguards in the final rule to protect manufacturers and I
672 know this is an issue that the drafters of the act gave a lot
673 of thought. If you have ever read or even glanced at this
674 section of the law, you can see it is rather lengthy. In
675 fact, the statute provides more procedural safeguards than

676 any other public database at a federal agency including NHTSA
677 and FDA, and so I appreciate that the critique of the
678 database provided by a witness on today's second panel is a
679 bit more careful than what came from the manufacturers last
680 week. Nonetheless, it seems to me that there is some amount
681 of misunderstanding and misinformation about the database. I
682 would like you to help us clear up that with a few yes or no
683 questions. Number one, is it correct that anyone who submits
684 a report must provide to the Commission their name and
685 contact information?

686 Ms. {Tenenbaum.} Yes.

687 Mr. {Butterfield.} Is it correct that anyone who
688 submits a report must complete a verification that the
689 information is true and accurate?

690 Ms. {Tenenbaum.} Yes.

691 Mr. {Butterfield.} Is it correct that within 5 business
692 days of receiving a report the Commission will transmit the
693 consumer report directly to the manufacturer?

694 Ms. {Tenenbaum.} Yes.

695 Mr. {Butterfield.} Madam Chairman, is it correct that
696 the Commission will not publish that report until the tenth
697 business day after transmission to the manufacturer?

698 Ms. {Tenenbaum.} Yes.

699 Mr. {Butterfield.} Is it correct that during the 10-day

700 waiting period the manufacturer is given a chance to do three
701 things? Number one, claim parts of the report are materially
702 inaccurate. Number two, claim parts of the report contain
703 confidential information and three, submit its own comments
704 to be made public along with the consumers report. Is that
705 true?

706 Ms. {Tenenbaum.} Yes, that is true.

707 Mr. {Butterfield.} Is it correct that the Commission as
708 practicable will attempt to expedite that is expedite review
709 of material inaccuracies where the manufacturer has limited
710 the length of its submission?

711 Ms. {Tenenbaum.} That is true.

712 Mr. {Butterfield.} Is it correct that the Commission
713 will review all inaccuracy claims and will correct or remove
714 any inaccurate information published in the database?

715 Ms. {Tenenbaum.} Yes.

716 Mr. {Butterfield.} Is it correct that the database will
717 contain only reports of harm from a product and not general
718 complaints or reviews about a product?

719 Ms. {Tenenbaum.} Yes.

720 Mr. {Butterfield.} Is it correct that the Commission
721 will seek criminal prosecution through the Department of
722 Justice where it identifies repeated instances of false
723 submissions?

724 Ms. {Tenenbaum.} Yes.

725 Mr. {Butterfield.} And finally and we are within the 5
726 minutes, let me quote from the final rule on this one. ``The
727 Commission will as a matter of policy, redact the allegedly
728 confidential information from a report of harm before
729 publication in the database until it makes a determination
730 regarding confidential treatment.'' Does that really mean
731 what it says? Is it correct that no information claimed by a
732 manufacturer to be confidential will be made public until
733 this is resolved?

734 Ms. {Tenenbaum.} That is true.

735 Mr. {Butterfield.} All right, thank you, I don't know
736 about you but those safeguards strike me as very adequate and
737 I am very pleased with your responses. Thank you.

738 Ms. {Schakowsky.} Would the gentleman yield for a
739 second?

740 Mr. {Butterfield.} Yes, I will yield to the gentlelady
741 from Illinois.

742 Ms. {Schakowsky.} Thank you.

743 I wanted to raise just the issue that our chairwoman
744 raised about--oh no, it was Ms. Northup raised about products
745 not being clearly identified, that there may be what?

746 Ms. {Northup.} One hundred forty-seven, that was it,
747 yes.

748 Ms. {Schakowsky.} Yeah so that is there something in
749 the regulations that makes sure that we are clearly
750 identifying the actual product line that the product itself
751 precisely so there isn't that kind of confusion so it is not
752 just a brand name but that it is which exactly of the items?

753 Ms. {Tenenbaum.} Well, you have to give the product
754 name but you don't have to give the model name. But you have
755 to give the product name. You have to give the manufacturer,
756 the date you purchased it, your name and verification and
757 several other things but we are not required to do the model.
758 But we are hopeful that people will give the model name to be
759 more clear and we certainly will investigate. If we
760 investigate we will find out what the model name is.

761 Ms. {Schakowsky.} I think that is a reasonable thing to
762 ask.

763 Mrs. {Bono Mack.} Ma'am, if we can move on before we
764 get around to a second round of questioning hopefully.

765 Ms. {Schakowsky.} All right, okay, excuse me.

766 Mrs. {Bono Mack.} But members the time is involved by
767 the votes on the floor so I would like to recognize Mr.
768 Harper from Mississippi for 5 minutes.

769 Mr. {Harper.} Thank you, Madam Chair.

770 I would like to ask if I could Commissioner Northup a
771 couple of questions on some of this. What provisions of

772 CPSIA do you think do not warrant the cost or regulation?

773 Ms. {Northup.} Well, first of all there have been no
774 cost benefit analysis so there is we don't even know what the
775 cost of these regulation are. We estimated in 2009, billions
776 of dollars. I have attached a list of companies that we know
777 have gone out of business. Companies that we know have cut
778 back. Companies that have left the market, the number of
779 employees that have been cut off but there has been no broad
780 study of that. But I would, the one that we have stayed
781 right now, the testing and third-party certification, because
782 we have advanced technology we are better at the border then
783 we have ever been. Our ability to get logs of what is coming
784 into this country we know who the people are that maybe have
785 a bad record, who has a good record. We have the ability to
786 scan an enormous amount of products instantaneously as they
787 come in. Our level of penalties we if something comes in and
788 it doesn't comply the entire shipment is destroyed and so
789 those threats have created an enormous pressure on the
790 manufacturers overseas to verify and re-verify and check.
791 The third-party testing and then the certification on top of
792 that is creating a nightmare of paperwork because you have to
793 track every nut, bolt, screw. Bicycles, 141 different
794 components so every time it changes in the manufacturing
795 process you have to change the lot number, you have to change

796 the 141 certification numbers, you have to retest and they
797 just, you know, they what it is old technology this sort of
798 third-party testing. And if I may say, the people that are
799 going to break those rules do you think they are not going to
800 put in a new shipment of snaps and not change their
801 certification or keep using the same lot numbers? We have
802 such incredibly advanced ways of scanning materials coming
803 into this country now that the cost of just that alone is
804 going to be billions of dollars and it is on every single
805 product even though the vast, vast, vast majority of them
806 because of the fact, their products will be destroyed as they
807 come in at the ports are fine. Let me just say that the
808 database, we have spent \$29 million on it. Yes,
809 Representative Schakowsky is exactly right. It has the
810 manufacturer's name. It may say a Graco high chair. It does
811 not say which Graco high chair. It does not say the day it
812 was purchased. You are supposed to say the approximate date
813 of the accident but I will just use the example of
814 Thanksgiving, three grandchildren. One is the new Graco high
815 chair, one is the one I brought up from the basement that is
816 30 years old, one of them is the antique I have sitting by
817 the fireplace. I could enter that as an accident if the leg
818 fell off of one of those. The manufacturer has no idea. Is
819 this a 1990s high chair or is this today's high chair? Do I

820 need to conduct a recall today or do I have a product that
821 years ago was produced? And by the same token, the parents
822 who might go online and say okay I am going to buy a high
823 chair. What data is in the database? They are not going to
824 know. Is this a product that is on the market today? And
825 finally, it allow anybody, not first person knowledge but it
826 can be third-party. We are even inviting any organization to
827 download all their data into our database. So the
828 manufacturer gets a report, a red Schwinn bicycle that the
829 wheel fell off. Schwinn says I don't make a red Schwinn
830 bicycle but you have to give your name if you are the entrant
831 and you can be a bystander. You can be a third-party
832 organization. You can be the Consumers Union. So we have no
833 way to go back to the consumer and say can you help us figure
834 this out. They don't make a red bicycle and then we find out
835 it wasn't. I had today a major company that sent me about
836 eight examples of where there were two, one where a child
837 died. It took 30 days for us and them to ascertain that it
838 was a hoax. That is the kind of information. Those are
839 things that come in everyday into our database. They are now
840 going to be public within 15 days of when they are entered
841 and nobody is going to be able to verify because they are not
842 going to know who the consumer is.

843 Mr. {Harper.} Thank you, Madam Chair.

844 Mrs. {Bono Mack.} I thank the gentleman. I would like
845 to yield 5 minutes to the gentlelady from Illinois, Ms.
846 Schakowsky.

847 Ms. {Schakowsky.} My certain, okay, sorry.

848 I wanted to ask the chairwoman, is \$29 million the cost
849 of the database?

850 Ms. {Tenenbaum.} No, that is not true and we have
851 repeatedly said it is not true. We were charged when we were
852 given new funds to upgrade our whole IT system. The database
853 is around \$3 million. The IT system was to get a data
854 warehouse. We have five different silos of data that
855 couldn't talk to each other. Our database couldn't talk to
856 CBP so we had done extensive upgrading of our whole IT system
857 and the database cost about \$3 million of that. Now, we have
858 had a soft launch of the database and of the 900 incidents we
859 have had in February most of them had the serial number and
860 the other thing we only out of that 900 we only had four
861 material inaccurate claims and we had 723 businesses who
862 signed up to have a business portal so they can get the
863 information within 5 days of us receiving it.

864 Ms. {Schakowsky.} Thank you. So actually you did. How
865 were those four discovered that were inaccurate or whatever
866 word you used?

867 Ms. {Tenenbaum.} Well, the business portal when you

868 sign up, the 723 businesses sign up and we send them the
869 report, they come back to say this information is materially
870 inaccurate. Now, the law requires us to post the report of
871 harm before we make the determination of whether or not it is
872 true. We are going to try our very best to determine if it
873 is materially inaccurate and the company is right and not put
874 it on the database within 10 days. But if we haven't
875 received the information or haven't had the time to research
876 it and get to the bottom of it if it is a very complex
877 laboratory issue and testing issue then we will have to post
878 it and that is what the rub is.

879 Ms. {Schakowsky.} Okay but I wanted to get to this
880 issue of verified or firsthand. Here is my concern, one of
881 the things that really inspired me to work on this law was
882 the death of a child, Danny Kaiser, and his mom, Linda Ginzel
883 who created Kids in Danger and became a great advocate over
884 this tragedy. Well, she wasn't there when her son died in
885 the crib. Would she be then ineligible to report on her
886 son's death because she had not been at the daycare center or
887 a parent who is not in the room when a child dies in a crib?
888 I mean how are you going to distinguish?

889 Ms. {Northup.} Actually, you know, I actually wrote an
890 alternative database and absolutely the daycare center can
891 put this information in, the parent can put this information

892 in. Nobody wants people that don't have firsthand
893 information not to be able to put this information in. The
894 issue is more a question of third parties that are sometimes
895 fourth and fifth-hand information. Let me just say one of
896 the things I have seen at the Commission is that
897 organizations that have particular safety agendas, marketing
898 agendas want to use information of accidents to come to you
899 and say there are 10 examples of this. You ought to pass a
900 law. I will give you an example. The fire marshals, they
901 want sprinklers in all buildings. We are not involved in
902 that issue but they often put into fires in homes the fact
903 that it was a BIC lighter. Well, it may not be a BIC
904 lighter. In fact, BIC lighter has come to us and say please
905 make them identify these better because what they really are
906 is the cheap foreign knockoff. The problem for the company
907 is if it says a BIC lighter. They are subject to a class-
908 action lawsuit. They are subject to running around trying to
909 prove that it is not a BIC lighter. And we don't even have
910 the name of the person whose house burned down. All we have
911 is the person that entered the incident, the Fire Marshals
912 Association.

913 Ms. {Schakowsky.} I, you know, I get what you are
914 saying but I think that the organizations that represent they
915 become a portal for people who have been hurt. Also have

916 this, you can trace back this information.

917 Ms. {Northup.} Many of them don't. We often have
918 information where we cannot get back to who it was that was
919 harmed and, you know, I would just say, you know, as a parent
920 I know that I knew what the product was that was at hand and,
921 you know, the question is would a bystander have that
922 information. This is really important information to have.
923 If you as the chair said I have never seen our agency be able
924 to resolve a question of material inaccuracy in 10 days,
925 ever. I mean there are ones that are still dangling out
926 there that are 9 months old that we still haven't ruled on.

927 Ms. {Schakowsky.} I yield back.

928 Mrs. {Bono Mack.} Good, the gentlelady's time has
929 expired.

930 The chair recognizes the gentlelady from Tennessee, Ms.
931 Blackburn, for 5 minutes.

932 Mrs. {Blackburn.} Thank you, Madam Chairman, and I want
933 to welcome the two of you and thank you for being here and
934 thank you for getting your prepared testimony to us.

935 I think that we have in front of us CPSIA is something
936 that most people are just not real happy with. And I found
937 it very interesting and, Commissioner Northup, I want to ask
938 you what you think about the results of that Consumer Union
939 poll that Mr. Waxman sent around yesterday and a dear

940 colleague and also would like for you if you will to continue
941 to talk about some of the unintended consequences. You have
942 hit on the absorb ability problems and the miscues that are
943 there, businesses closing. Of course we hear a lot from our
944 charitable organizations about their displeasure with what we
945 are seeing in the implementation of this law. Price
946 increases we have talked about the database problems and then
947 of course you were just beginning to touch on what I think is
948 very dangerous for many of our American manufacturers and
949 that is the fraud and infringement on their copyrights and
950 the fraudulent merchandise, the pirated merchandise that
951 makes it way and they found out about it later. This Schwinn
952 bicycle is a perfect example of that. And so if you will
953 talk about those unintended consequences that are coming into
954 you and then touch on that Consumer Union poll because I
955 don't think people are in favor of this.

956 Ms. {Northup.} Well, you know, I was sort of amazed at
957 the poll. It did say I mean first of all if you had polled
958 me and said do you think the federal government should be
959 involved in consumer safety, wouldn't every one of us in this
960 room say yes? I was pretty shocked only eight or nine out of
961 ten said yes. What I was even more surprised is that only
962 half of those that said yes said they are very much
963 supportive of that. The other half said just somewhat

964 supportive of the federal government being involved. But
965 mostly I would say that the poll was written in such a way
966 all of us do polls politically and we know if we want really
967 accurate information we have to make the poll so that it
968 doesn't slant the question. You could also have written it
969 that says do you think the federal government should require
970 businesses to test every component of their children's
971 product in an outside lab increasing the price 20 to 30
972 percent for materials that are not even dangerous to them.
973 What sort of results do you think you would have gotten?
974 Here is another one. Do you think the federal government
975 should have spent \$29 million? Let me tell you, this whole
976 database is we could have continued operating on the database
977 we had. It was it only had to be changed because it was
978 going up on a database where certain incidents that are not
979 verifiable and can be entered trial lawyers, consumer
980 advocates or competitors was false information could be
981 posted about legitimate companies. You know, what sort of
982 poll do you think you would have gotten? I don't think
983 either those questions or the questions in the poll give you
984 the real truth that we need to if you really if what you are
985 trying to do is poll the American people you need to actually
986 give them this is better.

987 Mrs. {Blackburn.} Okay and let me move on to the

988 unintended consequences.

989 Ms. {Northup.} Yes, the unintended consequences I would
990 just tell you that it was a month after being at the Consumer
991 Product Safety Commission. I was actually depressed because
992 I thought that we when I passed laws when I was in the General
993 Assembly of Kentucky and in Congress and I sent them over to
994 agencies and I thought they would make them rational and that
995 they had more leeway. This law does not have a lot of leeway
996 but we have heard from members of Congress. Senator Klobuchar
997 sent us a letter and said this law clearly was meant to
998 exempt items that aren't where the lead is absorbable.

999 Mrs. {Blackburn.} Okay let me stop you right there.

1000 Madam Chairman, do you think the agency's overreach in
1001 trying to implement this law the way they have overreached on
1002 some of these rules has attributed to some of the jobs loss
1003 that we have seen in the manufacturing sector in this
1004 country?

1005 Ms. {Tenenbaum.} I don't think we have overreached. I
1006 think we have implemented it based on the plain language of
1007 the statute and the issue here is the statute gives three
1008 exemptions.

1009 Mrs. {Blackburn.} Okay let me stop you right there
1010 because I want to move on to the question on the database,
1011 \$29 million is what you have spent total on this database?

1012 Ms. {Tenenbaum.} No, we have spent \$3 million on the
1013 database.

1014 Mrs. {Blackburn.} Okay.

1015 Ms. {Tenenbaum.} We also received funds and that is the
1016 whole \$29 million, \$3 of which were the database which we did
1017 IT modernization.

1018 Mrs. {Blackburn.} Did you carry that out in-house or
1019 did you contract it out?

1020 Ms. {Tenenbaum.} Well, we had some contractors and some
1021 insiders.

1022 Mrs. {Blackburn.} Okay and the timeframe that it has
1023 taken you to get the database?

1024 Ms. {Tenenbaum.} We had when I came to the Commission
1025 July 29 we had not received the money from OMB because we had
1026 not qualified to bring the money down so we started in July
1027 of '09 and that is when the money came in.

1028 Mrs. {Blackburn.} But you still have problems with it
1029 both from the entry and the information side?

1030 Ms. {Tenenbaum.} No, we don't. We just did a soft
1031 launch.

1032 Mrs. {Blackburn.} Yield back.

1033 Mrs. {Bono Mack.} Yeah, the lady's time has expired.

1034 The chair recognizes the gentleman from New York, Mr.
1035 Towns for 5 minutes.

1036 Mr. {Towns.} Thank you very much, Madam Chair.

1037 And also let me say it is good to see you.

1038 Ms. {Northup.} Thank you. It is great to see you.

1039 Mr. {Towns.} Happy to know there is life after
1040 Congress.

1041 Ms. {Northup.} I have missed you.

1042 Mr. {Towns.} Let me just begin first of all I want to
1043 just clear up something. You know, I keep hearing \$3
1044 million. I keep hearing \$29 million on this database. I
1045 mean how much does this database really cost? Let me put it
1046 on the record here.

1047 Ms. {Tenenbaum.} Three million.

1048 Ms. {Northup.} The IT modernization cost \$29. This is
1049 the first time I have ever heard the figure \$3 million ever
1050 but it was necessary in order to have this public database so
1051 that everything could talk to each other but let me just say
1052 going forward this year we do not have additional FTEs in the
1053 budget to handle the cases that come in but after this year
1054 we do. So the cost is going to grow because we are going to
1055 have to manage all the questions of verification when, you
1056 know, the verification that is part of the intake of an
1057 incident is only a self-verification where you say to the
1058 best of my knowledge this is true and we know as we take in
1059 cases right now that sometimes people have the wrong product.

1060 They have, you know, so the verification that the litigation
1061 that is involved all of that will take more FTEs.

1062 Ms. {Tenenbaum.} Mr. Towns, we had five separate
1063 databases or silos. They could not talk to each other so if
1064 someone sent us an e-mail on CPSC.gov and said my stove
1065 caught on fire. It was this manufacturer and this model
1066 number we would then manually have to put it into our
1067 incident report on computers but we had all five. They could
1068 not we didn't have a data warehouse where one system could
1069 talk to the other system. We did not--we needed an upgrade
1070 in our hardware in our computers. We needed an upgrade in
1071 software. So we could not even share information with CBP
1072 because our systems wouldn't talk together so all of this is
1073 a larger effort to get our technology up-to-date and that we
1074 have people who have said they have repeatedly told Mrs.
1075 Northup that it is \$3 million. It is not \$29 million and so
1076 it is \$3 million. The database is \$3 million. It is not \$29
1077 million.

1078 Mr. {Towns.} Okay, thank you. Let me--in 2008, CPSIA
1079 passed with broad bipartisan support. In fact I voted for it
1080 and was signed into law by President George Bush. According
1081 to your testimony, Commissioner Northup, this legislation has
1082 had unintended consequences you were talking about earlier to
1083 small businesses because of new testing standards. Would

1084 implementation of a component part testing rule benefit small
1085 businesses?

1086 Ms. {Northup.} We hope so. You know, what we would
1087 hope is that there would be there were developed on the
1088 market suppliers that would provide pre-tested, pre-certified
1089 components. The snap, the zipper, the component so that
1090 somebody that say makes a child's outfit could go to
1091 Michael's or I guess, you know, or whoever, the hobby shop
1092 and pick up these components pre-tested and pre-certified and
1093 then depend on those in their final certificate as, you know,
1094 they would have currency. We would accept those pre-
1095 certifications and certificates in the final product. It
1096 will help. It does not take away the fact that many small
1097 suppliers also had very small lots. They make things to
1098 order. They make things for example at the toy fair I met a
1099 woman who makes things for the blind. She has to have
1100 buttons for the eyes because just painting them on don't give
1101 you the tactile benefit. We have educational toys that are
1102 very small lives and so all these seeking out these
1103 certification numbers, these pre-certified products then
1104 doing a final certificate that picks up all of those. Every
1105 time you go back to the store and you pick up another lot you
1106 have to change your final certificate. You have to change
1107 what your tracking label is so that it reflects a new

1108 certificate. It is a lot of paperwork and the small
1109 businesses are telling us that is why we are going to make
1110 one thing or we are going to get out of the children's
1111 product business. It is very, you know, Ashley Furniture was
1112 probably the best example. They spent \$13 million testing.
1113 They have 14 layers of primer and final product. They have
1114 every screw, nut and bolt. Not one product, not one
1115 component violated the lead limit but it was \$13 for them to
1116 get the tracking and the component testing done so far.

1117 Mr. {Towns.} Thank you, Madam Chair.

1118 Mrs. {Bono Mack.} Thank you. The gentleman's time has
1119 expired.

1120 I would like to recognize my new colleague from Kansas,
1121 Mr. Pompeo, for 5 minutes.

1122 Mr. {Pompeo.} Thank you, Madam Chairman.

1123 Chairman Tenenbaum, you said that there has been no cost
1124 benefit analysis performed at all, is that correct?

1125 Ms. {Tenenbaum.} Under the CPSIA the Commission had
1126 mandatory deadlines and also the CPSIA did not require the
1127 Commission to do cost benefit analysis. Now, under the
1128 Federal Hazardous Substance Act and no under CPSA which is
1129 our general act we do cost benefit.

1130 Mr. {Pompeo.} But there has been none on the database?
1131 So when we are talking about \$3 million or \$29 million that

1132 has been spent, I mean the real cost of this thing isn't what
1133 we are paying for the database. It is the hundreds of
1134 millions of dollars this is going to cost small business but
1135 we don't truly have any idea, is that correct, no analysis?

1136 Ms. {Tenenbaum.} Well, the Commission has not done that
1137 because it is not our role to but we would certainly support
1138 any other agency that wanted to do one. We would provide
1139 them with the data.

1140 Mr. {Pompeo.} Thank you. I appreciate that. You said,
1141 ``The rub is that we have to post it." You have to post it.

1142 Ms. {Tenenbaum.} We have to post within 10 days.

1143 Mr. {Pompeo.} So would you support this committee
1144 recommending that we provide flexibility at your agency that
1145 you don't have to put it on that you can make a decision
1146 about whether it is accurate and the right thing to do?
1147 Today you say we have forced your hand. Would you prefer
1148 that we gave your agency more flexibility?

1149 Ms. {Tenenbaum.} I think we need to stay to a limit
1150 where we can get information out as quickly as possible to
1151 consumers. I have heard of too many deaths, Danny Kaiser,
1152 other deaths of children because parents did not have the
1153 information and we need a quick turnaround if a product is a
1154 problem. We will make the best faith effort once it is given
1155 to us that it is materially inaccurate to make a

1156 determination.

1157 Mr. {Pompeo.} I appreciate that. I think this, I am an
1158 engineer. I love data but I also and I run for office and I
1159 know what people put online exactly.

1160 Mrs. {Bono Mack.} Will the gentleman yield for briefly?

1161 Mr. {Pompeo.} Yes, of course, yes, ma'am.

1162 Mrs. {Bono Mack.} First day jitters, opening night
1163 jitters up here. We forgot to start the clock so we would
1164 like to point out that your time will expire at 2 minutes.

1165 Mr. {Pompeo.} That is great. I assumed it was my first
1166 day jitters that you were referring to.

1167 Mrs. {Bono Mack.} That is right. It was your first day
1168 jitters. You had it right.

1169 Mr. {Pompeo.} That will happen as well. I just think
1170 this is a plaintiff's bar dream and I think the cost of
1171 litigation will be enormous.

1172 Ms. Northup, do you think it would make sense to delay
1173 the implementation of the database to let this committee work
1174 out some of the challenges to make sure that we get good
1175 information to the public and we don't end up causing all the
1176 problems that have been alluded to this morning?

1177 Ms. {Northup.} Absolutely, as I walked around the toy
1178 fair in New York, one person after another raised this issue
1179 to me. Some already had issues that had come in on the soft

1180 launch and said there is nobody that knows what the facts are
1181 on this. They don't have to give enough facts that you can
1182 possibly know what the product is. They don't have to give
1183 enough specifics that you can possibly know what went wrong
1184 with it or even if it is they can't even make the claim it is
1185 materially inaccurate because they have no way to correspond
1186 with us and have us be able to go back to the source who
1187 might have firsthand information. I think that when you
1188 consider the jobs in this country and you consider the fact
1189 that we are going to have manufacturers running around
1190 terrified about how they are going to answer a database
1191 question when maybe it is not even their product. Maybe it
1192 is a product that is not even on the market anymore. It is
1193 20 years old. And consumers if I might say the benefit to
1194 consumers I think of the ladders ad where you have two people
1195 playing tennis on the tennis court and all these people come
1196 running down to the point where it is crowding out the
1197 legitimate game of tennis. If you have all these data dumps
1198 from these organizations in here, the legitimate firsthand
1199 benefit that you can get from this database is lost and I
1200 might see that company X had a problem. It might not be
1201 there product. It might be a product from 20 years ago. I
1202 might think okay I don't want to buy that product so I buy a
1203 different product and guess what? Really that was the safer

1204 product. So it is even misdirecting people to what is a
1205 hazard and what isn't a hazard, just some of the questions to
1206 stay within the timeframe.

1207 Mr. {Pompeo.} Thank you, Commissioner Northup.

1208 I yield back my time.

1209 Mrs. {Bono Mack.} I would thank the gentleman.

1210 I would and it is an honor to recognize the chairman
1211 emeritus and author of the original Consumer Product Safety
1212 Act as well as the conferee on CPSIA and the chair would
1213 recognize Congressman Dingell for 5 minutes.

1214 Mr. {Dingell.} Madam Chairman, I thank you and I
1215 appreciate your courtesy in recognizing me and I commend you
1216 for this hearing.

1217 As my colleagues some of them will remember and the
1218 members will remember we passed with the support of the
1219 unanimous support of this committee a unanimous bill on this
1220 matter. It was an excellent piece of legislation. It got to
1221 the United States Senate and it got screwed up. And then we
1222 went to conference and the screw-up was worsened and it
1223 wasn't very long before I was being called by industry
1224 inquiring why a bill which had passed the House unanimously,
1225 come out of this committee unanimously had been turned into
1226 such a sad caricature.

1227 So I have some questions for the Commissioner and I want

1228 to welcome the Commissioner and I want to welcome you
1229 particularly, Commissioner Northup.

1230 Ms. {Northup.} Thank you.

1231 Mr. {Dingell.} And I want you to understand this
1232 hearing is not critical of you but it is of the United States
1233 Senate and those people that screwed this up and we are going
1234 to try and figure out what it is we can make the matters
1235 right and help you to do your job. And I speak with
1236 particular outrage because years ago John Moss and I wrote
1237 the original legislation which created this your Commission
1238 in this room right here. It was a great success until the
1239 Senate got its hands on it and some members of the conference
1240 assisted actively in that screw-up.

1241 Yes or no to both Commissioners, Section 101 of the
1242 CPSIA permits the Commission to exempt certain materials and
1243 products from the ax lead limit? I believe that is so
1244 narrowly written as to be useless. Do you believe that
1245 Section 101(b) needs to be amended in order to permit the
1246 Commission a more reasonable degree of discretion in granting
1247 exemptions, yes or no?

1248 Ms. {Tenenbaum.} Yes.

1249 Ms. {Northup.} Yes.

1250 Mr. {Dingell.} To both Commissioners, similarly given
1251 widespread concern about the feasibility of retroactively

1252 applying CPSIA's requirements to existing inventory, do you
1253 believe the applicability of such requirements should instead
1254 be limited to products manufactured after the act's effective
1255 date or the effective date of regulations promulgated by the
1256 Commission pursuant to the act except in instances where the
1257 Commission decides that exposure to a product causes a health
1258 and safety risk to children, yes or no?

1259 Ms. {Tenenbaum.} Yes for a hundred parts per million.

1260 Ms. {Northup.} Yes, for all parts. If they are not
1261 dangerous we should allow them to still be sold.

1262 Mr. {Dingell.} And you ought to have waiver authority,
1263 isn't that right?

1264 Ms. {Tenenbaum.} Yes.

1265 Ms. {Northup.} Yes.

1266 Mr. {Dingell.} That makes for intelligent regulation.

1267 Now again to both Commissioners, likewise I am concerned
1268 that the age limit for children's products defined in CPSIA
1269 unnecessarily subjects certain products such as bicycles to
1270 more rigorous standards than otherwise necessary. Do you
1271 believe the age limit used in the definition of children's
1272 products should be lowered, yes or no?

1273 Ms. {Tenenbaum.} No.

1274 Ms. {Northup.} Yes.

1275 Mr. {Dingell.} We have got a division. Do you believe

1276 that the Commission should have authority to deal with the
1277 question of waivers on that matter where it makes good sense,
1278 yes or no?

1279 Ms. {Tenenbaum.} Yes.

1280 Ms. {Northup.} Yes, except I worry about the big
1281 companies having the resources to ask for a waiver and for
1282 the exact same products small ones won't.

1283 Mr. {Dingell.} The little guys don't.

1284 Do both Commissioners, I am also concerned that the
1285 blanket applicability of certification and tracking label
1286 requirements could be when required unduly cumbersome
1287 especially for small businesses. Would an exemption for
1288 small businesses like the one contained in the Food Safety
1289 Modernization Act be feasible in the case of consumer
1290 products, yes or no?

1291 Ms. {Tenenbaum.} I would like to study that more. I
1292 don't know. I didn't read the food act.

1293 Mr. {Dingell.} That is a fair answer.

1294 Ms. {Northup.} I would support that but I would support
1295 doing away with third-party testing and certification and
1296 just let the advanced technology we have today. All the new
1297 tools that you gave us are plenty adequate to make sure that
1298 companies comply with our laws.

1299 Mr. {Dingell.} Now, to both Commissioners I will expect

1300 that you will if you see fit make additional remarks for the
1301 purposes of the record and I sorry that I am so constraining
1302 you. Again to both Commissioners, do you believe that the
1303 Commission's problems in implementing CPSIA can be remedied
1304 solely by administrative action by CPSC, yes or no?

1305 Ms. {Tenenbaum.} No.

1306 Mr. {Dingell.} Commissioner?

1307 Ms. {Northup.} We could make some significant changes
1308 if we made the absorb ability exclusion mean something and I
1309 think there is we could have the majority of the
1310 commissioners didn't so it will take your action to change
1311 that.

1312 Mr. {Dingell.} I thoroughly agree. We have made a fine
1313 mess out of this. It has to be rectified legislatively.

1314 Again to both Commissioners, if not do you support
1315 amending CPSIA to address these problems?

1316 Ms. {Tenenbaum.} Yes.

1317 Ms. {Northup.} Yes.

1318 Mr. {Dingell.} Would you assist the committee in our
1319 effort to do so?

1320 Ms. {Tenenbaum.} Yes.

1321 Ms. {Northup.} Yes.

1322 Mr. {Dingell.} I will be submitting additional
1323 questions to the record to allow the Commission to expand on

1324 these matters and I will ask Madame Chairman unanimous
1325 consent that my letter of March 4, 2009, to Commissioners
1326 Nord and Moore as well as their respective replies be entered
1327 into the record.

1328 Mrs. {Bono Mack.} Without objection.

1329 [The information follows:]

1330 ***** COMMITTEE INSERT *****

|
1331 Mr. {Dingell.} And members of the Commission I just
1332 want to ask this one additional question. Do you believe
1333 that implementation of CPSIA has overburdened the existing
1334 CPSC staff and resources?

1335 Ms. {Tenenbaum.} No.

1336 Ms. {Northup.} Yes.

1337 Mr. {Dingell.} Does CPSC have adequate resources with
1338 which to implement CPSIA as well as to carry out its other
1339 duties?

1340 Ms. {Tenenbaum.} Yes, if we are not cut.

1341 Mr. {Dingell.} Commissioner?

1342 Ms. {Northup.} No, I don't think we do but we could
1343 change the law and it would be sufficient and I am delighted
1344 to see you again, Representative Dingell.

1345 Mr. {Digell.} Well, you are welcome back here,
1346 Commissioner. I am happy to see you and I am sorry we are
1347 seeing you under these circumstances and just maybe we can
1348 fix this mess. Thank you.

1349 Mrs. {Bono Mack.} The gentleman's time has expired.

1350 The chair would recognize the gentleman from Kentucky,
1351 Mr. Guthrie for 5 minutes.

1352 Mr. {Guthrie.} Thank you, Madam Chairman. I appreciate
1353 the opportunity to be here and I have to follow-up Chairman

1354 Emeritus Dingell. To the other committee and back so I might
1355 have missed this but I know the ranking member asked
1356 questions about the database and Congresswoman Northup, my
1357 fellow Kentuckian, or Commissioner Northup, you were going to
1358 answer. You may have since I was gone. They went through a
1359 series of questions on the database and did you agree with
1360 the security that it is a secure database and they did clear
1361 up all the problems or if you have mentioned that then we
1362 will move forward.

1363 Ms. {Northup.} Let me just state again I think it is so
1364 important because this database is going to be turned on that
1365 first of all the database rule that was written there was
1366 great division within the Commission. It is one of the few
1367 things that has divided us so seriously. I just I want to
1368 reiterate that there are a lot of things that we agree with
1369 and that the chair has really done a magnificent job in
1370 coordinating with Customs and implementing so much of this
1371 law. It is a shame that we are sort of here on the biggest
1372 debate issue but it is going to be turned on in 3 weeks. It
1373 is going to allow anyone to input, anyone, any organization,
1374 third-hand knowledge, hearsay information and the type of
1375 things that we see everyday. We see a Facebook where
1376 somebody talks about Pampers and about that they are causing
1377 a huge problem. Suddenly we got in 500 or we get in all

1378 these cases as I have to be careful I don't talk about what
1379 is confidential but I think we have made public statements
1380 that to date we have not been able to find that there is any
1381 problem with Pampers. But we haven't even finished providing
1382 a final statement on that.

1383 Mr. {Guthrie.} Okay, I want to get to another question.
1384 Go on for just a minute.

1385 Ms. {Northup.} For the companies that then would be
1386 running around because somebody collected some information on
1387 Facebook and at this point the person that owns the Facebook
1388 account could transfer every one of those incidents into our
1389 database. They do not have to know who it happened to. They
1390 put it in as their entry. That is legal. That is what they
1391 are supposed to do. It is the name and contact information
1392 of the person entering it, not the consumer.

1393 Mr. {Guthrie.} Right, I just wanted to ask another
1394 question real quick.

1395 Ms. {Northup.} Yes.

1396 And, Chairman Tenenbaum, and actually we met a long time
1397 ago when I was a State legislator and you hosted us for the
1398 Southern Regional Education Board in Charleston and you did a
1399 great job. Thanks but I am a manufacturer, my background and
1400 like the Administration we are looking to create jobs and the
1401 ability to export, not just importing, increase our imports

1402 and my understanding is that CPSIA is that American
1403 manufacturers won't be allowed to sell their goods abroad
1404 unless they meet the lead standard that we just heard the
1405 Chairman Emeritus say we have got to fix. So and also they
1406 won't be able to sell abroad unless their goods have not been
1407 sold in the United States and never will be sold in the
1408 United States. So if they have never been sold in the United
1409 States or won't be they won't be able to sell abroad unless
1410 they compete with this law that we just heard other comment
1411 we think is unworkable. Do you think this puts American
1412 manufacturers at a disadvantage to or we couldn't make
1413 something here and send it somewhere else to go into a
1414 product and then come back here?

1415 Ms. {Tenenbaum.} No, American manufacturers have to
1416 meet the standard which is 300 parts per million right now
1417 and 90 parts per million for lead.

1418 Mr. {Guthrie.} Well our point is that it is difficult
1419 to do that and as Chairman Emeritus has said the whole law we
1420 need to fix that.

1421 Ms. {Tenenbaum.} No, yesterday we heard testimony.
1422 Excuse me, I just interrupted you.

1423 Mr. {Guthrie.} No, go ahead. Go ahead, no that is
1424 fine. We are trying to get all of this in before we are out
1425 of time.

1426 Ms. {Tenenbaum.} I am sorry but this came to mind but
1427 we heard testimony about one of the largest testing
1428 laboratories in the world and they said they tested over
1429 90,000 data points and they found that 97 percent already
1430 comply with the hundred parts per million lead and so people
1431 are already going to that standard. And the other thing is
1432 that domestic manufacturers and importers have to comply with
1433 the 300 parts per million lead content and 90 parts per
1434 million.

1435 Mr. {Guthrie.} Part of it is the labeling too.

1436 Ms. {Tenenbaum.} Right and Canada has already dropped
1437 their standard for lead content to 90. The EU has 90 but it
1438 is the solubility standard but it is roughly comparable and
1439 but it is so worldwide people are dropping their lead
1440 standards. Because I have an article from May 1936, which
1441 talks about the harm lead can do to children and just this
1442 article says even infinitesimal amounts can bring down the
1443 IQ. It is a potent neurotoxin. It can cause brain damage
1444 and there is no de minimis standard known. There is no safe
1445 level of lead known.

1446 Mr. {Guthrie.} I am going to let you go.

1447 Ms. {Northup.} Let me just say that we have health
1448 agencies that tell us about what is an unsafe level of lead.
1449 The CDC, the NIH, the EPA all tell us a child's lead level

1450 needs to be under 10 parts per deciliter of blood. Right now
1451 only one percent of all children reach that and in every case
1452 even the consumers, I mean the American Association of
1453 Pediatrics tells us that if a child doesn't, they don't say
1454 it is their bicycle handlebars to take away those toys. They
1455 tell you it is because of lead in paint, lead in gasoline and
1456 what to do to offset those. No one has ever suggested in the
1457 health community that your bicycle handlebars and things like
1458 that have anything to do. In fact, we allow more than that
1459 amount of lead, the FDA in a child's piece of candy can have
1460 more lead.

1461 Mr. {Guthrie.} As a manufacturer I can tell you if you
1462 agree with everything and it all works like it is supposed
1463 to, the traceability side of that because I have an
1464 automotive supplier and he said if he had to trace everything
1465 came in and went on that is a real cumbersome thing for our
1466 American manufacturers I think.

1467 Ms. {Northup.} Thank you.

1468 Mrs. {Bono Mack.} The gentleman's time has expired.

1469 The chair recognizes the gentleman from Texas, Mr. Olson
1470 for 5 minutes.

1471 Mr. {Olson.} Thank you, Chairwoman, and thank you to
1472 our witnesses for coming in. I greatly appreciate your time
1473 and your expertise.

1474 I want to follow-up on a comment you made, Commissioner
1475 Northup, about and I will quote here, ``We are better at the
1476 border then we have ever been.''

1477 Ms. {Northup.} I was talking about products coming in.

1478 Mr. {Olson.} Yeah, products coming in exactly. No, no,
1479 yeah, yeah, not yeah but we don't want to open that. No,
1480 ma'am.

1481 I represent the Port of Houston which is the largest
1482 port in foreign products here in America and you all know
1483 that the Panama Canal is being widened and deepened and it is
1484 expected to be opened in 2015. When it is these very, very
1485 large cargo ships that right now are coming to the western
1486 coast of Mexico, the western United States are going to punch
1487 through the canal and come to the Gulf Coast. Any my
1488 question is are you working right now with DHS with the
1489 Customs people to make sure that we have the resources that
1490 when these ships get through if not were going to have some
1491 of these toys and all the things we are concerned about that
1492 you can verify and test these things and get ahead of this
1493 curve so they don't come to the pier, get off the pier and go
1494 into our economy?

1495 Ms. {Northup.} Really the person who has done so much
1496 on this is our chair and I feel like I ought to let you
1497 answer first because you have a lot you can say.

1498 Ms. {Tenenbaum.} Well, first of all thank you. First
1499 of all, last year we were the first agency to sign a
1500 memorandum of agreement with Customs and Border Protection
1501 whereby we get to see the manifest data. We have two people
1502 located at CBP and the CTAC office and we look at data on
1503 ships as it comes to the United States before it is even
1504 import before it is unloaded and we have also just finished a
1505 study on a risk management study so that we can target
1506 shipments and we are very, very accurate. Last year we, I
1507 had the numbers but we were able to have at least the
1508 targeted shipments that we stopped we found at least 50
1509 percent had already violated. So we are working so that
1510 companies that don't have history of non-compliance can have
1511 a safe lane and those that we need to target and monitor
1512 closely we will have information well ahead of time before
1513 they get into the port. Because I visited the Port of
1514 Savannah and also the Port of Charleston and I understand
1515 that, you know, we need to get the shipments unloaded.

1516 Mr. {Olson.} Yes, ma'am.

1517 Ms. Northup, any comments?

1518 Ms. {Northup.} Yeah, only that it is so sophisticated
1519 it is so impressive. I think when you consider how advanced
1520 it is and the fact is one of the reasons we have so many
1521 fewer recalls is because we are intercepting things at the

1522 port and it does add to my claim what I believe is a reason
1523 why third-party testing and all the certification and
1524 tracking of every single component is going to be obsolete in
1525 compared to the new ways we have to survey what is coming
1526 into our ports.

1527 Mr. {Olson.} Yes, ma'am. Thank you very much for those
1528 answers. I would encourage you to keep working with the
1529 Customs and Border Patrol because this is will be big all
1530 along the Gulf Coast.

1531 Ms. {Tenenbaum.} They are our strongest partners.

1532 Mr. {Olson.} I mean it is not just the Port of Houston.
1533 It is all the ports along the Gulf Coast are going to be
1534 impacted by this and obviously we need to stop these products
1535 from getting in as quickly as we possibly can.

1536 The other question I have is about the impact of CPSIA
1537 on sort of the charities. Under the lead content test
1538 requirements right now is it a violation to donate clothes,
1539 toys or other items to children 12 and under if the items
1540 have not been tested and certified in compliance with law?

1541 Ms. {Tenenbaum.} No, it is not a violation for you to
1542 give clothes to Goodwill or Salvation Army or any other
1543 charity. We have worked with all the charitable
1544 organizations and worked with States. We had a handbook. We
1545 have done an extensive education. We know that there are

1546 certain items that pose the largest risk. Children's jewelry
1547 could have cadmium or lead. Painted toys, items made out of
1548 vinyl because vinyl degrades quicker and lead can be exposed
1549 and there have been high amounts of lead in vinyl clothes, in
1550 vinyl clothing. So we have worked with them on things they
1551 need to check and not resell. Also it is illegal to sell a
1552 recalled product under CPSIA so if a crib has been recalled
1553 or playpen you shouldn't sell it. But we work really hard
1554 with the States and the organizations to try to educate them
1555 on what are the high-risk products.

1556 Ms. {Northup.} It is almost impossible to resell any
1557 children's product. As Goodwill told me in Kentucky they
1558 have lost a million dollars in sales in the first 4 months
1559 that this went into effect because the fact is they actually
1560 paid \$35,000 to buy an XRF gun. They hired somebody and
1561 trained them. By the time they found a button that passed
1562 they had spent more money than they would get on a blouse for
1563 example, a child's blouse and they found that so all of those
1564 things went out. All the new standards we have made for
1565 durable goods make every other durable good that is in the
1566 marketplace whether it is a car seat or a bath seat or you
1567 cannot sell them secondhand. So while it is not against the
1568 law for you to donate them, it is against the law for them to
1569 sell anything that doesn't comply.

1570 Mr. {Olson.} Thank you, ma'am.

1571 Mrs. {Bono Mack.} The gentleman's time has expired.

1572 The chair recognizes Congressman Lance for 5 minutes.

1573 Mr. {Lance.} Thank you very much, Madam Chair, and good

1574 afternoon to you both. I am new to the full committee,

1575 therefore new to the subcommittee and it is my honor to meet

1576 both of you and I look forward to working with both of you.

1577 As I understand that you have stayed portions of the law

1578 for several years in a row. I also understand that some

1579 manufacturers might still be worried that state attorneys

1580 general might enforce the requirements even though those

1581 requirements have been stayed and I would request your

1582 comments as to perhaps whether or not your stay should be

1583 effective with the States as well.

1584 Ms. {Tenenbaum.} Well, the stay will automatically lift

1585 December 31 of this year. Now what we have not and that is

1586 just for testing and certification for lead content, not lead

1587 paint. We didn't stay it but lead content.

1588 Mr. {Lance.} Yes.

1589 Ms. {Tenenbaum.} And so but you still have to comply.

1590 So we didn't stay enforcement. Any manufacturer has to

1591 comply with lead paint limits, total lead content, limits on

1592 certain phthalates, small parts, magnets and F963. Now, that

1593 means that attorneys general may enforce the law just as we

1594 might enforce the law and the large manufacturers as well as
1595 the large retail, if you go into any retail establishment you
1596 will find that their products have been tested because they
1597 require before the Wal-Mart's, the Toys R Us, Target, if they
1598 require you to show a third-party test and that is why many
1599 people are already testing. So the attorneys general are not
1600 stayed from enforcement and neither are we.

1601 Mr. {Lance.} And has that occurred in any situation
1602 with which you are familiar?

1603 Ms. {Tenenbaum.} Sure we have several attorneys general
1604 who are very active in consumer product safety and you can as
1605 well as some States who have lower lead limits than we do.
1606 Illinois has a 40 parts per million lead limit. Proposition,
1607 I mean California has had Proposition.

1608 Mr. {Lance.} But do you know what I do not. Do you
1609 know what it is in New Jersey? I do not know.

1610 Ms. {Tenenbaum.} No, but I can look it up.

1611 Mr. {Lance.} Commissioner Northup, your comments?

1612 Ms. {Northup.} Yes, well first of all the attorneys
1613 general one of the things that the law did say is that
1614 attorneys general can enforce the law even though it is a
1615 federal law can enforce it at the State level and it has
1616 caused a lot of angst among manufacturers and, you know, even
1617 though Illinois has a 40 parts per million, it doesn't say

1618 that you can't sell it. It just says you have to label it
1619 saying it might cause lead poisoning in your child.

1620 Mr. {Lance.} I see. Thank you, I did not realize that.

1621 A philosophical question, sometimes perhaps in all cases
1622 laws we pass here and that are passed at State capitols with
1623 which I am familiar have unintended consequences and then it
1624 is our responsibility to try to address them. Do you believe
1625 and I would address this to both of our distinguished
1626 witnesses. Do you believe that unintended consequences might
1627 on occasion result in overreaching?

1628 Ms. {Tenenbaum.} Well here is the law that was passed
1629 allows to exempt products. If we cannot exempt a product if
1630 normal use and abuse of the product results in any lead being
1631 absorbed into the human body, any lead. So that is why when
1632 you had bicycles and ATVs and books the any lead standard
1633 kicked in and that is where we say we need flexibility.

1634 Mr. {Lance.} That would require modification of the
1635 statute in your opinion?

1636 Ms. {Tenenbaum.} It would require us to have some
1637 flexibility and that if there is no harm to the child or to
1638 the person using it then we could have a waiver or an
1639 exemption. We can grant an exemption.

1640 Mr. {Lance.} Ms. Northup.

1641 Ms. {Northup.} I think by far the simpler thing and the

1642 thing to give certainty to the providers, the businesses is
1643 to have an exemption that makes the absorb ability exclusion
1644 mean something. There were three exclusions. There were
1645 electronics. There was the inaccessible. We have made both
1646 of those two exclusions mean something considerable but we
1647 have decided that not one thing qualifies for the absorb
1648 ability. If you changed it to say no amount of lead could be
1649 absorbable that would cause any material change in a child's
1650 lead level we would totally rationalize this bill.

1651 Mr. {Lance.} Would you suggest that this be done at
1652 your level or through by statute?

1653 Ms. {Northup.} Well, I do make the argument I have a
1654 legal brief that I think that it did give us that because I
1655 believe that Congress when they passed it meant for that
1656 section of the law to mean something and there is a lot of
1657 statutory past interpretation that shows that you can't just
1658 write off a whole section of the law. But the majority of
1659 the Commissioners decided that we couldn't and so it will
1660 take a change by you.

1661 Ms. {Tenenbaum.} First of all that was.

1662 Mrs. {Bono Mack.} The gentleman's time has expired and
1663 we need to move along but I would like to thank both
1664 witnesses for appearing today.

1665 I also urge both of you moving forward to reexamine how

1666 the Commission prioritizes risk. Let us focus more on real
1667 dangers facing our children which may be going unaddressed at
1668 the present time and not perceived ones. Again thank you
1669 both very much. I look forward to working with you on fixing
1670 as Chairman Emeritus Dingell said all that is screwed up.

1671 Ms. {Tenenbaum.} Thank you, Madam Chairman. Thank you
1672 all.

1673 Ms. {Northup.} Thank you.

1674 Mrs. {Bono Mack.} We will just give a few moments for
1675 the second panel to get in place.

1676 The subcommittee will come back to order.

1677 On our second panel we have four witnesses. I would
1678 like to welcome them all.

1679 Our first witness is Jolie Fay. Ms. Fay is the founder
1680 of children's product company called Skipping Hippos based
1681 out of Portland, Oregon. She is also secretary of the
1682 Handmade Toy Alliance which she also represents today.

1683 Our second witness is Wayne Morris. Mr. Morris is the
1684 vice president of Division Services for the Association of
1685 Home Appliance Manufacturers representing manufacturers of
1686 all sizes and various consumer products.

1687 Also today, we have Rick Woldenberg of Chicago,
1688 Illinois. Mr. Woldenberg is the chairman of Learning
1689 Resources, Incorporated, a children's product manufacturer

1690 and direct mail retailer that specializes in educational
1691 toys. The company is a small business but employs over 150
1692 people.

1693 And finally, we will hear from Nancy Cowles, Executive
1694 Director of Kids in Danger also based in Chicago. Ms. Cowles
1695 is testifying on behalf of Kids in Danger, Consumer
1696 Federation of America and Consumers Union.

1697 Again, welcome to all of you. You will each be given
1698 the 5 minutes and to help you keep track of time, I am going
1699 to make him remember to keep track of time and when the light
1700 turns yellow before you in the little box please try to sum
1701 up your remarks so that when the light turns red you are
1702 ready to stop. And with that we will welcome Ms. Fay for her
1703 first 5 minutes and just ask that you turn on the microphone
1704 and bring it close to your mouth and you are recognized for 5
1705 minutes.

|
1706 ^STATEMENTS OF JOLIE FAY, FOUNDER, SKIPPING HIPOS AND
1707 SECRETARY, HANDMADE TOY ALLIANCE; WAYNE MORRIS, VICE
1708 PRESIDENT, DIVISION SERVICES, ASSOCIATION OF HOME APPLIANCE
1709 MANUFACTURERS; RICK WOLDENBERG, CHAIRMAN, LEARNING RESOURCES,
1710 INC.; AND NANCY A. COWLES, EXECUTIVE DIRECTOR, KIDS IN DANGER

|
1711 ^STATEMENT OF JOLIE FAY

1712 } Ms. {Fay.} Chairman and members of the subcommittee,
1713 thank you for inviting us here.

1714 I make children's ponchos in my home in Portland and I
1715 am testifying today on behalf of the Handmade Toy Alliance
1716 members. We are the people knitting hats on the train and we
1717 are the mothers in line with you at the store. We are the
1718 people from your hometowns who have grown up in families that
1719 craft and we are your neighbors and your families and we are
1720 constituents, and we need your help to bring commonsense
1721 changes to the CPSIA. Our businesses were born from the
1722 desire for safe children's products. We make them with care
1723 and attention and most often from materials purchased from
1724 our local craft stores. Our dreams are to build heritage
1725 products that will be cherished and remembered and saved for
1726 generations.

1727 Our broad membership experience is the unintended
1728 consequences of the CPSIA in different ways. Micro-sized
1729 businesses that craft and retail toys and children's products
1730 make up half of our membership. Often these are one-person
1731 businesses who produce and sell in very small batches. The
1732 CPSIA makes no provisions for these businesses to be able to
1733 operate. People crafting in their homes are expected to
1734 third-party test the same way as a mass-market manufacturer.
1735 The cost of third-party testing for lead and ASTM standards
1736 are prohibitive in very small batches. Tracking and labeling
1737 requirements are too burdensome and people find the law and
1738 its requirements too complex to understand and apply.

1739 At the Hollywood Senior Center in Portland, Oregon there
1740 is a small retail shop that sells items made by the seniors.
1741 They live on an incredibly small fixed income and would never
1742 be able to afford a single ASTM third-party test. The
1743 workmanship that has developed over a lifetime helps
1744 contribute a small but very substantial supplement to their
1745 monthly income. These are artisans and this law makes them
1746 criminals.

1747 Another segment of small-batch businesses producing
1748 multiple items and selling in boutiques and online are also
1749 not able to absorb the testing costs for their products and
1750 are treated equivalent to mass-market manufacturers.

1751 Companies who create only 20 or so products producing in
1752 batches in 10 and 20 units simply cannot afford these testing
1753 costs and expect to be able to charge the same price or even
1754 a reasonable price.

1755 A third group hurt is in the specialty toy retailers.
1756 These are the mom and pop toy shops in towns across America.
1757 The CPSIA removes the ability for them to sell most safe and
1758 local products and many international products. Loss of
1759 specialty toys from Europe particularly tilts the children's
1760 marketplace in favor of mass produced items and removes the
1761 opportunity for special retailers to differentiate
1762 themselves. Without the ability to offer unique items to
1763 sell in their store, there is nothing that can set them apart
1764 from their competitors.

1765 Finally, toy importers represent two percent of our
1766 membership. It is a small percentage but a big component of
1767 the culture of specialty toys in America. Within this
1768 melting pot culture that we live in they provide access to
1769 many safe products from our ancestors and countries of origin
1770 enriching the value of play and helping the culture survive.
1771 The CPSIA treats these small-scale importers as if they were
1772 mass-market manufacturers and they suffer alongside the U.S.
1773 small-batch manufacturers.

1774 I grew up in Wyoming where my great-grandparents were

1775 homesteaders. For generations my family has made toys and
1776 clothes and saddles for children. I cherish these items
1777 because they are from my family and they were made with care,
1778 just like what I make. Our members are people just like me
1779 from all across the country making safe products that we
1780 cannot afford to third-party test. I am here today because I
1781 want my children to continue this tradition and to understand
1782 and learn from our entrepreneurial spirits. Crafting gives
1783 them joy and selling it gives them reward.

1784 While the HTA has worked closely with the CPSC, we feel
1785 strongly that the current legislation does not grant the CPSC
1786 the flexibility to address our members' needs. Our
1787 membership is in need of a legislative fix that only you in
1788 Congress can give. Solving the problems of the CPSIA is not
1789 only for our members' immediate financial relief but will
1790 save generations of future handmade products. For thousands
1791 of years cultures have been studied through their handcrafted
1792 toys. In museums around the world there are artifacts of
1793 handmade toys connecting the cultures of the past to
1794 societies of today. What will the legacy be if the CPSIA
1795 destroys our generation's ability to share this piece of
1796 history?

1797 Thank you for the opportunity to speak.

1798 [The prepared statement of Ms. Fay follows:]

1799 ***** INSERT 5 *****

|
1800 Mrs. {Bono Mack.} I thank the gentlelady.

1801 And now we will hear from Mr. Morris for 5 minutes.

|
1802 ^STATEMENT OF WAYNE MORRIS

1803 } Mr. {Morris.} Thank you, Chair Bono Mack and members of
1804 the subcommittee. Thank you for inviting the Association of
1805 Home Appliance Manufacturers to testify on this important
1806 matter.

1807 AHAM supports the creation of a public database to
1808 assist consumers with easy access to relevant and accurate
1809 safety information, and it is important that that situation
1810 be properly funded. Of course there are many private
1811 Internet sites that play the same role and so it makes little
1812 sense for the Commission to expend major resources to create
1813 a competing website unless it adds value. A critical part of
1814 that value proposition is that the information should be of
1815 high quality, accuracy and utility.

1816 Unfortunately, the Commission's current database design
1817 hinders the publication of accurate information. It places
1818 unreasonable burden on manufacturers and it does not require
1819 timely resolution of good faith material inaccuracy claims.
1820 We need the database to be news we can use. With a few
1821 changes the accuracy of the information can be improved.
1822 Nothing we are proposing inhibits in any way the Commission
1823 from pursuing reports it receives from consumers or anyone

1824 else to see if a corrective action is necessary or a
1825 violation of the standards has occurred.

1826 Our testimony here is limited to what is place on a
1827 public, incident, Internet-based database. We have three
1828 points.

1829 One, the Commission should resolve claims of material
1830 inaccuracy. According to the CPSC material inaccurate
1831 information is a report of harm in a report which contains
1832 ``information that is false and misleading and which is so
1833 substantial and important as to affect a reasonable
1834 consumer's decision making about the product.'' This
1835 includes misidentification of the product, manufacturer or
1836 private labeler, or the harm or risk of harm.

1837 The manufacturer has the burden of proof and must
1838 provide specific evidence and describe how the report is
1839 wrong and how it should be corrected. It is in every
1840 legitimate party's interest that the Commission post only
1841 accurate information to the database.

1842 Under the current regulations, all harm reports except
1843 for the ones of outstanding confidentiality claims have to be
1844 posted to the database within 10 days of transmitting the
1845 report to the company no matter what. Accordingly, even if a
1846 company meets the Commission's burden of proof and responds
1847 within the short 10-day period, by submitting substantial

1848 evidence of material inaccuracy the Commission will post the
1849 complaint to the database before resolving the material
1850 inaccuracy claim. The Commission actually has no obligation
1851 to resolve the material inaccuracy claimed by any particular
1852 time. As we all know, once information has been published on
1853 the Internet even if it is revised or retracted later, it
1854 stays in cyberspace forever and may already have done damage.

1855 We believe it is wrong for the federal government to
1856 allow companies and their brands to be unfairly
1857 characterized, even slandered without evaluating the
1858 company's claim. Because of the extremely limited timeframe
1859 to receive the information, analyze it and develop a
1860 response, we believe that it is unlikely that many companies
1861 will comment on a high percentage of reports of harm and the
1862 chairman spoke earlier of the soft launch proving what we
1863 say. If a company does respond, basic fairness requires that
1864 the government decide before the data is publicly released.

1865 Two, the eligible reporters to the database should be
1866 limited to those with direct information. The CPSIA lists
1867 those who may submit reports of harm to the inclusion of
1868 public incident database. The Congressional specificity of
1869 these groups was purposeful to encourage their involvement
1870 and to make clear that those who are the consumers, their
1871 representatives, first responders or care providers to

1872 consumers should not participate in the database for their
1873 own ends. This applies to trial lawyers, consumer groups and
1874 even trade association like mine. Remarkably, the Commission
1875 is now in the final database rule shoehorn certain non-
1876 governmental organizations into a definition of public safety
1877 entity. Congress should reinstate the original intent of the
1878 legislation.

1879 The database ought to be limited to those people who
1880 purchase the product, use the product or cared for someone
1881 who has suffered an injury. Otherwise the database is simply
1882 a blog and there is no reason for the federal government to
1883 displace or compete with private blogs.

1884 Three, the Commission should require a registration a
1885 model or other descriptive information. There are thousands
1886 of categories of consumer products, manufacturers and brands
1887 where there are numerous models of a product. Although the
1888 Commission encourages submitters to provide more detailed
1889 information which will allow the public and manufacturers to
1890 identify which particular product was subject to alleged
1891 incident, it does not require that information. This is a
1892 mistake which Congress should remedy.

1893 The suggestions that we have made do not prevent a
1894 useful, accessible public database. Rather, we believe our
1895 proposals enhance the utility of this new mechanism.

1896 Thank you for the opportunity to testify. I would be

1897 glad to answer questions. Thank you.

1898 [The prepared statement of Mr. Morris follows:]

1899 ***** INSERT 6 *****

|
1900 Mrs. {Bono Mack.} Thank you, Mr. Morris.

1901 And, Mr. Woldenberg, you are recognized for 5 minutes.

|
1902 ^STATEMENT OF RICHARD WOLDENBERG

1903 } Mr. {Woldenberg.} Chairman, Ranking Member Butterfield
1904 and distinguished members of the subcommittee, thank you for
1905 the opportunity to testify this morning.

1906 My name is Richard Woldenberg. I am chairman of
1907 Learning Resources, an Illinois-based 150-person manufacturer
1908 of educational materials and educational toys. I am
1909 accompanied today by my son, Ben, and my daughter, Alana.
1910 This is my second appearance before the subcommittee to
1911 testify about the CPSIA.

1912 Three years after its passage, the high cost of the
1913 CPSIA, its overreaching and intrusive nature, its non-
1914 existent impact on injury rates and its depressing effect on
1915 the markets is beyond dispute. What remains a mystery is why
1916 we did this to ourselves in the first place.

1917 The crisis, such as it is seems like a media-fed
1918 hysteria. CPSC recall statistics reflect only three
1919 unverified injuries and one death attributed to lead from
1920 March, '99 to April, 2010, out of literally trillions of
1921 product interactions by tens of millions of children.
1922 Notably, there was only one recall of phthalates in U.S.
1923 history, 40 little inflatable baseball bats in 2009.

1924 The possibility of injury is real but what is the
1925 probability of injury. Supporters of the CPSIA have never
1926 proven a causal link between the reported hazard in
1927 children's products and actual cases of injury. This is a
1928 very serious indictment of this law.

1929 Children can take lead into their bodies in many ways
1930 including through the air, water and food everyday. The
1931 CPSIA places all of the blame on children's products without
1932 any substantive proof of cause. Lead or phthalates poisoning
1933 may seem so frightening that no price is too high to pay. In
1934 our panic, the absence of proof that children's products are
1935 causing injury hardly seems to matter. But in the wake of
1936 Toyota, is jumping to conclusions about causation still
1937 acceptable? Is it responsible government to simply argue
1938 that the CPSIA doesn't harm children and that businesses will
1939 just absorb the costs?

1940 The harm inflicted by the CPSIA has been brought to the
1941 subcommittee's attention time and again over the last 3
1942 years. First, absurdly high compliance costs. We have
1943 experienced a 10 times increase in costs from 2006 until
1944 2011, all without any change in the safety of our products
1945 because they were safe to begin with. This cost jobs and
1946 curtailed business expansion opportunities.

1947 Second, rules mania. Doubt over the interpretation of

1948 CPSC rules is widespread. No wonder the rules and law
1949 applicable to our business now balloon over 3,000 pages and
1950 counting. Several customers respond to this uncertainty by
1951 instituting their own safety rules. One even insisted that
1952 we test for lead in paint even if the item had no paint on
1953 it.

1954 Third, absurd complexity. The explosion of safety rules
1955 makes it difficult or impossible to know how to comply. In
1956 the context of a real product line there is just too much to
1957 figure out. What is a children's product? What isn't? What
1958 is a toy? Which materials need to be tested or retested? In
1959 practical terms, it is a nightmare.

1960 Other rules make us look stupid to customers. Consider
1961 for instance this warning on one of our rock sets.

1962 ``Caution, federal law requires us to advise that the rocks
1963 in this educational product may contain lead and might be
1964 harmful if swallowed.'' This is a form of humiliation.

1965 Fourth, liability risk deters cooperation. Under the
1966 CPSIA the CPSC has become a coercive enforcer of rules with
1967 little mercy or sense of proportion and no exercise of
1968 judgment. This environment certainly contributed to a lack
1969 of cooperation by component manufacturers who won't test for
1970 CPSIA compliance and subject themselves to CPSC persecution.
1971 Trust has been destroyed in so many ways.

1972 Congress must restore to the CPSC the responsibility to
1973 assess risk. My top five recommendations are that first, the
1974 CPSC should be mandated to base its safety decisions,
1975 resource allocations and rules on risk assessment. Second,
1976 the definition of children's products should be limited to
1977 children six-years-old or younger and the definition of toy
1978 for phthalates purposes should be limited to children three-
1979 years-old or younger. Third, lead in substrate and
1980 phthalate-testing should be based on the reasonable business
1981 judgment of the manufacturer, not mandated outside testing.
1982 Resellers should be entitled by rule to rely on the
1983 representation of manufacturers. Fourth, mandatory tracking
1984 labels should be explicitly limited to long-life heirloom
1985 products with a known history of injuring the most vulnerable
1986 children. And fifth, the public injury incident database
1987 should be restricted to recalls or properly investigated
1988 incidents only. Manufacturers must be given full access to
1989 all posted incident data including contact information.

1990 In conclusion, I urge your committee to address the
1991 fundamental flaws in the CPSIA to restore order to the
1992 children's product marketplace and to protect small
1993 businesses from further damage. I appreciate the opportunity
1994 to share my views here today and I am happy to answer your
1995 questions.

1996 [The prepared statement of Mr. Woldenberg follows:]

1997 ***** INSERT 7 *****

1998

Mrs. {Bono Mack.} Thank you.

1999

Ms. Cowles, you are recognized for 5 minutes.

|
2000 ^STATEMENT OF NANCY A. COWLES

2001 } Ms. {Cowles.} Thank you. Thank you chairman, ranking
2002 member and other subcommittee members for allowing us to
2003 testify here today.

2004 I am Nancy Cowles. I am the executive director of Kids
2005 in Danger. KID was founded in 1998, by the parents of Danny
2006 Kaiser who you have already heard about today, who died in a
2007 very poorly designed and inadequately tested portable crib.
2008 A portion of the Consumer Product Safety Improvement Act is
2009 in fact named after Danny. His parents and our organization
2010 are moved that lasting improvements to the safety of juvenile
2011 products will always be associated with his name.

2012 Contrary to how it has been portrayed, CPSIA was not a
2013 slapdash attempt to address new reports of lead-painted
2014 products from China and bad press in the Chicago Tribune.
2015 Many sections of the law were previously introduced bills
2016 including mandatory standards and testing for juvenile
2017 products, a ban on using unsafe cribs in childcare, product
2018 registration, Internet labeling and lead limits.

2019 KID has been reporting on the problems of lead in
2020 children's products and looking for a limit for those
2021 elemental lead since 2004. Even with delays and incomplete

2022 implementation, CPSIA has already shown success in making
2023 children safer. My written testimony does go into much
2024 greater detail but here are just a few areas.

2025 Over the past 4 years we have seen 10 million cribs
2026 recalled in this country. That is a lot of cribs and we know
2027 from past history on recalls, many babies are still sleeping
2028 in those cribs that are dangerous. A report released just
2029 today by the American Academy of Pediatrics shows that 26
2030 children are rushed everyday to hospital emergency rooms
2031 because of injuries caused or taking place in a crib.

2032 CPSIA finally gave CPSC the authority to end a decade of
2033 inaction in the voluntary standard setting process on cribs
2034 and address real world hazards that have killed dozens of
2035 children. The CPSIA also requires that infant-toddler
2036 durable products such as cribs, strollers and highchairs
2037 include a product registration card to give manufacturers the
2038 ability to contact consumers in the event of a recall or
2039 product safety issue. Danny's mother has testified before
2040 this former body that she firmly believes her son, Danny,
2041 would be alive today if the product that killed him had come
2042 with one of those simple cards.

2043 One of the most significant improvements in safety will
2044 be the database which goes live in March. It will both help
2045 individual consumer's research purchasing decisions as well

2046 as report when they have a safety problem with a product. In
2047 addition, it will help spot injury patterns and emerging
2048 hazards. The CPSC has put in place, as we have heard, many
2049 safeguards to keep the information accurate and useable.

2050 We have also heard that before the CPSIA was passed,
2051 CPSC's ability to protect the public had been dramatically
2052 weakened. In 1972, when it was first started the agency was
2053 appropriated would be \$176 million in today's dollars and had
2054 786 full-time employees. Over the next 2 decades it dropped
2055 by almost 60 percent.

2056 CPSIA infused CPSC with resources exactly where they had
2057 been lacking in the preceding years. Through the CPSIA and
2058 the appropriations process, CPSC has taken a number of
2059 important steps to protect consumers. They have a strong
2060 team in place to address safe sleep for infants. They have
2061 updated their internal data management in preparation for the
2062 new database and they have reinvigorated industry setting
2063 standard bodies. CPSC is a stronger more effective agency
2064 today because of the Consumer Product Safety Improvement Act.
2065 Consumers including children are safer. Implementation will
2066 have real safety results across all of CPSC's work and CPSC
2067 has in addition continued to address emerging hazards such as
2068 Chinese drywall, cadmium batteries and more.

2069 There have been delays and problems with implementation

2070 especially in the areas of testing for lead and other
2071 hazards. We fully support the Handmade Toy Alliances call
2072 for clear rules for reasonable testing for micro-
2073 manufacturers of children's products including the component
2074 testing procedures that are underway. But no matter where
2075 they make their purchases, parents deserve to know the
2076 products they buy for their children are safe, whether it was
2077 made in someone's garage, a small workshop or a huge factory
2078 in China.

2079 How do you know that the wheels on the baby's toy truck
2080 won't come off if you aren't testing it? How can we be sure
2081 products don't contain lead if they or their components
2082 aren't tested? Parents certainly can't ascertain the
2083 presence of lead. It is a known neurotoxin whose effects are
2084 permanent and irreversible. The damage is cumulative so
2085 every exposure simply adds to what the child has already been
2086 exposed to. And it has been suggested that we move to an
2087 accessible limit or use the risk analysis on every product
2088 but as we are talking here today about CPSC's resources, I do
2089 not believe that this product-by-product analysis of
2090 accessibility and risk would be useful and in fact would tie
2091 up most of CPSC's time and resources. We know lead is
2092 dangerous and we know it shouldn't be in children's products.

2093 Thank you for your time.

2094 [The prepared statement of Ms. Cowles follows:]

2095 ***** INSERT 8 *****

|
2096 Mrs. {Bono Mack.} I thank the witnesses for your
2097 courtesy in honoring the red light and would like to
2098 recognize myself 5 minutes for the first round of questions.

2099 First, Ms. Fay, welcome again to the committee. I
2100 appreciate it very much. I think as a member of Congress
2101 every time I get the opportunity to see how our laws matter
2102 at home in our districts it is very important and sometimes
2103 very eye opening for what we do here. Just a very quick
2104 question, you are a crafter and your inspiration for your
2105 crafts is your own children, correct?

2106 Ms. {Fay.} Correct.

2107 Mrs. {Bono Mack.} So the items you make, your children
2108 are the first to try them out to test them out?

2109 Ms. {Fay.} Always.

2110 Mrs. {Bono Mack.} Well, thank you and, Mr. Morris, you
2111 mentioned briefly the comparing the database to your fear of
2112 it becoming a blog and I think we all have concerns and we
2113 recognize the changing nature of the Internet and that
2114 everyday we find new information there or new ways to learn
2115 about information. I too have some concerns about the
2116 database but how can you even begin to investigate a
2117 complaint if your folks don't know who it came from how to
2118 contact the complainant?

2119 Mr. {Morris.} Well, you are right, Chairman. The issue
2120 with the database is one that has been troublesome to our
2121 manufacturers since the very beginnings of it. I believe
2122 that when this particular body, this committee considered the
2123 database originally, in the House it was a study bill and it
2124 became a situation with the requirements when it was added in
2125 the Senate. The issue of having invalidated information is
2126 very concerning to manufacturers whose real primary I guess
2127 you could say their real value is their brand name. That
2128 tends to be in many cases these days the primary activity
2129 that they operate. So any time that we have the ability to
2130 investigate further to take a little bit of additional time
2131 and certainly to contact the consumer would be a help to
2132 everyone in gaining accuracy to this database. It is really
2133 not much of use to anyone if it contains just allegations
2134 that have not been proven.

2135 Mrs. {Bono Mack.} Thank you.

2136 Ms. Cowles, in terms of safety who would you regard as
2137 the best couple of children's product manufacturers?

2138 Ms. {Cowles.} Well, you know, what we tell parents who
2139 call us with that same question of what crib should they buy,
2140 what stroller, is that any manufacturer, you know, needs to
2141 meet the standards that are out there and that you can't
2142 necessarily go by brand name. So I think that what we are

2143 looking at here is that there are parents need to know that
2144 go to the store that any of the products on the store shelves
2145 whether it be a big name store or your small local retailer
2146 or someone selling at a craft fair that the product is not
2147 going to hurt their child and so I mean we don't.

2148 Mrs. {Bono Mack.} So you don't actually help them with
2149 the answer when they call you for a specific help on their
2150 question?

2151 Ms. {Cowles.} No, we certainly don't recommend one
2152 brand over another. No, we don't. We don't do any marketing
2153 for the brands.

2154 Mrs. {Bono Mack.} Is there any company that has no
2155 safety problems at all?

2156 Ms. {Cowles.} No.

2157 Mrs. {Bono Mack.} Would you favor a CPSIA amendment
2158 that allows the Commission to decide if the crib standard is
2159 revised again whether childcare centers have to buy new cribs
2160 or not?

2161 Ms. {Cowles.} For the next revision you mean not this
2162 current one? Yes, we do favor. We do not believe that it
2163 needs to continue to be retroactive. We think at this point
2164 with the number of dangerous cribs out there it is good to
2165 get rid of them now at this point and they do have the 2
2166 years but I think any further changes because this was such a

2167 dramatic overhaul, any future changes could be perspective
2168 from the date of manufacturer so we do support that.

2169 Mrs. {Bono Mack.} Mr. Woldenberg, how do you keep track
2170 of all of the federal and State requirements that apply to
2171 your business?

2172 Mr. {Woldenberg.} We work pretty hard. It is a lot.
2173 We have a staff of five-and-a-half people including myself,
2174 plus an outside lawyer on retainer and we have been working
2175 at it for 3 years.

2176 Mrs. {Bono Mack.} And then, Ms. Fay, how big is your
2177 staff to try to comply with the same requirements?

2178 Ms. {Fay.} It is just me.

2179 Mrs. {Bono Mack.} And, Mr. Morris, in the case of and I
2180 have got to be brief, in the case of youth ATVs, CPSC has
2181 made the judgment that the risk of lead exposure to children
2182 is outweighed by the risk that children face if youth ATVS
2183 are not available and they ride adult-size ATVs instead. Can
2184 you briefly say does inaccurate information in the database
2185 pose the same problem? If the database sounds a false alarm
2186 about one product couldn't consumers be scared into buying a
2187 more dangerous product instead?

2188 Mr. {Woldenberg.} Chair Bono Mack, I won't try to
2189 explain on all terrain vehicles because that is really not
2190 our product category but you address the issue of the

2191 materially inaccurate information in the database and I
2192 believe that is one of the things that we believe very
2193 strongly that there is time that needs to be added to this
2194 sequence within the CPSC to resolve these types of issues and
2195 to make sure that the information that has been put onto the
2196 comment by the consumer is in fact accurate. That the model
2197 number is there, it treats that particular model number. It
2198 gives that information to the consumer or to others so that
2199 they can deal with it directly. It is also a problem that if
2200 these reports are made the Commission itself is going to seek
2201 to try and do an investigation. If they don't know, they
2202 will be running around trying every type of product. I think
2203 that we need to try and narrow that down. Thank you.

2204 Mrs. {Bono Mack.} Thank you. I just appreciate. I am
2205 new with a gavel but I hold it and you guys stop and that is
2206 a pretty powerful feeling without having to pound it.

2207 But I would like to recognize Mr. Butterfield for his 5
2208 minutes of questioning.

2209 Mr. {Butterfield.} Thank you, Madam Chairman.

2210 Ms. Cowles, let me start with you. Your group as well
2211 as other groups that you are representing today seems to be
2212 acquainted with the dangers of lead.

2213 Ms. {Cowles.} That is correct.

2214 Mr. {Butterfield.} I think you have spent a lot of time

2215 reading about and studying and getting familiar with. As you
2216 note in your testimony, you tried to raise the profile of the
2217 problem with lead in children's products some years ago, a
2218 few years before the massive recalls in '07 and '08. I am
2219 told that you even asked the Commission to act using its
2220 authority to establish lead content limits for children's
2221 products and I assume that the Commission didn't respond
2222 favorably. Can you speak to that please?

2223 Ms. {Cowles.} Yes, in fact I have the study here that
2224 we released in 2004 looking at lead in children's products.
2225 We call it Playing with Poison and we were surprised and I
2226 think that actually the CPSIA has reaffirmed our surprise at
2227 just how pervasive lead is and so we are very concerned not
2228 only with lead in paint but the lead content. It is an
2229 irreversible damage that it does to a child. Well under the
2230 hundred parts per million limit that we are looking at is
2231 enough for a child to be exposed to and lower their IQ one
2232 point.

2233 Mr. {Butterfield.} Do you have advocate for a total
2234 lead content limit?

2235 Ms. {Cowles.} We do and we support the total lead that
2236 is in the CPSIA. We think it is the most straightforward,
2237 the simplest way to test as well as we believe less expensive
2238 than the soluble test.

2239 Mr. {Butterfield.} All right.

2240 Mr. Woldenberg, let me just briefly address something to
2241 you as well. You pointed to a label a few moments ago on the
2242 toy that said something. Would you repeat that again because
2243 we didn't see that in your written testimony?

2244 Mr. {Woldenberg.} Okay, I apologize, it says,
2245 ``Caution, federal law requires us to advise that the rocks
2246 in this educational product may contain lead which may be
2247 harmful if swallowed.'' It goes on to say, ``We stand behind
2248 the safety of all of our products'' and gives our phone
2249 number.

2250 Mr. {Butterfield.} Did you manufacture that product?

2251 Mr. {Woldenberg.} Yes, it is a box of rocks for
2252 schools.

2253 Mr. {Butterfield.} Unless we are sadly mistaken we are
2254 not aware of any federal law that requires that label to
2255 posted on the toy.

2256 Mr. {Woldenberg.} We are unable to determine whether
2257 those levels of rocks, this is an educational product. There
2258 is an exemption in CPSC rules that allows us to label
2259 products as possibly containing lead if they are for
2260 educational use in school and that is why we did this. We
2261 did this.

2262 Mr. {Butterfield.} But you take the position that it is

2263 required by federal law?

2264 Mr. {Woldenberg.} It is required by the CPSC. We
2265 didn't want to do it.

2266 Mr. {Butterfield.} All right.

2267 Let me go back to you, Ms. Cowles, if I can and talk
2268 about the database. There has been a lot of conversation
2269 about that. Some people say data and some say data. I am a
2270 southerner, I guess I say data.

2271 Ms. {Cowles.} Well, I am from South Carolina so I go
2272 with you.

2273 Mr. {Butterfield.} Yes, yes, Ms. Cowles, Mr. Morris in
2274 his testimony takes issue with the Commission including
2275 certain NGOs in the definition of public safety entities. I
2276 assume he means the inclusion of consumer advocacy groups in
2277 that definition. Do you believe that groups like your group
2278 should be able to submit reports of harm for the database and
2279 if so please explain why?

2280 Ms. {Cowles.} I do believe that there are instances in
2281 which a group like mine would have information about a case
2282 about an injury and in order to make sure that it was
2283 included in the database, might want to enter that into the
2284 database. And I can give you--I have been working on this
2285 issue for 10 years now and while we talk about the database
2286 as a new thing, as we have said the CPSC has always had this

2287 way to provide information to them. They have always had an
2288 online forum. They have always had their own database. The
2289 difference is that now the consumers now will have access to
2290 that public information. I have only once reported an
2291 incident to CPSC and that was because it was from a family
2292 who had already lost one child to an unsafe product and did
2293 not want to deal with CPSC again. That was the only incident
2294 in which I did it so I do believe there are instances where
2295 it will be done. I do not believe there is going to be this
2296 flood from groups like ours. I can assure you the parents
2297 that I deal with who call me about a problem, they have
2298 already reported it to the manufacturer but they are calling
2299 me or the CPSC so that the manufacturers who say they don't
2300 have the information, I have never found that to be the case.

2301 Mr. {Butterfield.} I believe Mr. Morris calls it
2302 salting the database. Have you ever salted a federal
2303 government database? Do you know any group that has?

2304 Ms. {Cowles.} Do you mean put false information in it?

2305 Mr. {Butterfield.} Yes, recklessly done so.

2306 Ms. {Cowles.} No, I certainly do not. I think we look
2307 forward to access to information. Now when a parent calls me
2308 about a child who has been injured or killed it takes me
2309 months to get that information from CPSC to see if there were
2310 other incidents or if there is a standalone incident. I am

2311 looking forward to having access to information that can keep
2312 children safe so I do not think and I will not be spending my
2313 time putting false information about anybody's products in
2314 it.

2315 Mr. {Butterfield.} Do you understand you could go to
2316 jail for doing that or anyone could?

2317 Ms. {Cowles.} Well, I wouldn't do it either way.

2318 Mr. {Butterfield.} Anyone could.

2319 Ms. {Cowles.} Yes.

2320 Mr. {Butterfield.} All right, thank you very much.

2321 My time has expired.

2322 Mrs. {Bono Mack.} I thank the gentleman.

2323 The chair recognizes the vice-chair of the subcommittee
2324 for 5 minutes, Marsha Blackburn.

2325 Mrs. {Blackburn.} Thank you, Madam Chairman.

2326 Ms. Cowles, do you know how exposure to lead occurs in a
2327 child?

2328 Ms. {Cowles.} I know there are many different ways that
2329 exposure occurs.

2330 Mrs. {Blackburn.} Well, according to the CDC it is
2331 direct ingestion such as swallowing paint chips, house dust
2332 or soil contaminated by leaded paint or through hand-to-mouth
2333 activities such as placing fingers or other objects in their
2334 mouth putting them in contact with lead paint or lead dust.

2335 Do you know what today's major source of lead exposure is
2336 today according to scientists?

2337 Ms. {Cowles.} Yes, I do.

2338 Mrs. {Blackburn.} And what is that

2339 Ms. {Cowles.} That is old housing stock and the
2340 environmental lead.

2341 Mrs. {Blackburn.} According to the CDC the major
2342 sources of lead exposure among U.S. children are lead
2343 contaminated dust, deteriorated lead-based paint and lead
2344 contaminated soil. Do you know what scientists attribute
2345 this 91 percent drop--well let me go up here first? Do you
2346 know what the average blood lead level of a child under 5 was
2347 in 1970?

2348 Ms. {Cowles.} No, but I am sure it was much higher than
2349 it is today.

2350 Mrs. {Blackburn.} The average and this is according to
2351 the EPA, the average BLL of a child under 5 was 15 micrograms
2352 per liter. Do you know what the current level of concern is
2353 according to the CDC?

2354 Ms. {Cowles.} You better tell me. I have a guess but,
2355 right.

2356 Mrs. {Blackburn.} In micrograms do you know the average
2357 blood lead level, the BLL of a child under 5, do you know
2358 what that is today?

2359 Ms. {Cowles.} No.

2360 Mrs. {Blackburn.} Okay, it according to the EPA in '07
2361 and '08, the average of a child under 5 was 1.4 micrograms
2362 per deciliter. So that I think gives you a pretty good idea
2363 of how we are doing with the lead. What do you think has
2364 attributed to this 91 percent drop in the blood lead level?

2365 Ms. {Cowles.} The banning of lead in paint, the banning
2366 of lead in certain products, the very extensive abatement
2367 efforts on the part of cities, States.

2368 Mrs. {Blackburn.} Well, the CDC says it is the result
2369 of the removal of lead from gasoline as well as from other
2370 sources such as household paint, food and drink cans, and
2371 plumbing systems so just some items there for the record.

2372 Mr. Woldenberg, can you tell us what your annual testing
2373 costs are under CPSIA?

2374 Mr. {Woldenberg.} We are projecting for, I am sorry.

2375 Mrs. {Blackburn.} Okay and also I want you to tell me
2376 how this has affected your business plan following the
2377 adoption of the rules. Let me see where it is now and what
2378 kind of changes you had to make.

2379 Mr. {Woldenberg.} Group-wide we are projecting costs
2380 far in excess of \$1 million up to \$2 million for this fiscal
2381 year and we expect that to increase if the 15-month rule is
2382 implemented as currently drafted by the agency. The impact

2383 on our business is that a tremendous amount of money has been
2384 removed from our business at an extremely inconvenient time.
2385 Our head count is down about approximately 30 percent from
2386 peak. It is, of course, not entirely due to this law. There
2387 was the recession but it greatly depleted our resources. We
2388 have deferred on opportunities to expand our business range
2389 into younger child ages educational products simply because
2390 we don't want to be exposed to the risk.

2391 Mrs. {Blackburn.} How many jobs do you think that would
2392 have created had you been able to move ahead with that
2393 expansion?

2394 Mr. {Woldenberg.} Well, \$2 million goes a long way
2395 especially when it is moved from your profits so I am hoping
2396 a couple dozen and we have about five people in quality
2397 control to compensate for that.

2398 Mrs. {Blackburn.} Okay so you are lacking a couple of
2399 dozen jobs.

2400 Mr. {Woldenberg.} I would say so.

2401 Mrs. {Blackburn.} Ms. Fay, welcome. I am glad you are
2402 here. Talk about the unintended consequences of CPSIA
2403 affecting small business owners like yours and I want you to
2404 talk in terms of jobs, prices and consumer choice in the
2405 marketplace.

2406 Ms. {Fay.} We can't afford the third-party testing. We

2407 can't. It is not just the lead. It is the ASTM testing and
2408 the phthalate testing. I don't know anyone especially now
2409 this has been going on for so long and we have been fighting
2410 this for so long that none of us can.

2411 Mrs. {Blackburn.} So it will shut you down? It will
2412 shut your fleece fabrics and things, it will shut you down.
2413 So instead of creating the environment in which government
2414 creates the environment for jobs growth to take place, you
2415 see this as something that is completely restricting your
2416 ability to do business?

2417 Ms. {Fay.} Yeah, I am still the only inventory I have.

2418 Mrs. {Blackburn.} Direct and indirect jobs, how many
2419 jobs would that be costing?

2420 Ms. {Fay.} It is mine, you know, and it is every other
2421 crafter out there. If we can't continue selling our stuff,
2422 we are dead in the water.

2423 Mrs. {Blackburn.} Well and I think that is everyone
2424 wants to make certain that we are handling the problems that
2425 are in front of us but I think we are all concerned when we
2426 look at the unintended consequences.

2427 I yield back.

2428 Mrs. {Bono Mack.} I thank the gentle lady.

2429 The gentlelady from Illinois, Ms. Schakowsky is
2430 recognized for 5 minutes.

2431 Ms. {Schakowsky.} Mr. Woldenberg, you have written that
2432 there are no injuries as a result of products with high lead
2433 levels and my colleague was just talking about lead. I am
2434 really confused here. Is there some argument here that
2435 protecting our children from lead in toys is an unreasonable
2436 direction to go in, Mr. Woldenberg, that this is not a
2437 problem? Do you have scientific data that would back up that
2438 there are no injuries as a result of products with high lead
2439 levels?

2440 Mr. {Woldenberg.} Well, the source of my information is
2441 the CPSC and I went through every recall they did from '99 to
2442 2010, line by line and what I have said consistently is that
2443 there are three unverified injuries in their reports and one
2444 death attributed to lead in recalls of children's products
2445 since '99.

2446 Ms. {Schakowsky.} And so you are concluding that lead
2447 in toys that that is okay? That it is not a problem.

2448 Mr. {Woldenberg.} Oh no, I would never say that. It is
2449 not in doubt that lead is dangerous but the real question
2450 isn't whether lead is dangerous but the real question is
2451 whether our products are dangerous and the consequence of.

2452 Ms. {Schakowsky.} I am really not following that. If
2453 lead is in toys and sometimes at very high levels and in
2454 trinkets and things like that how then and you believe that

2455 it is dangerous then how can the product not be dangerous?

2456 Mr. {Woldenberg.} Well, I believe that Representative
2457 Blackburn cited that it is soluble lead that the CDC and NIH
2458 and EPA cite as the cause of blood lead levels rising and
2459 what is at issue I think largely today is the regulation of
2460 insoluble lead that is lead bound into substrate and I
2461 believe that is, you know, not nearly the cause for concern
2462 because we can't identify people who have been injured by it.
2463 We are a conscientious.

2464 Ms. {Schakowsky.} All right, thank you.

2465 Ms. Cowles, let us talk about the different tests and
2466 your comments are what Mr. Woldenberg has said.

2467 Ms. {Cowles.} Well, I think that that the statistics
2468 from CDC do not differentiate between soluble and insoluble.
2469 It is lead dust. It is lead. That lead could be the total
2470 lead in the product. A child can transfer it from its hand
2471 to their mouth, you know, if you watch a child at play. If
2472 you were to put purple ink on a child's hand and have them be
2473 unaware and come back an hour later and see all the purple
2474 ink around their mouth. Even children you think are too old
2475 to mouthing you would see that they are ingesting whatever
2476 gets on their hand a child is going to ingest even older
2477 children then the up to three that we have talked about in
2478 terms of mouthing. In terms of the product itself and the

2479 testing, the total lead test that CPSIA requires the under
2480 300 parts per million going to 100 parts per million, is a
2481 very straightforward test that can be done. You can screen
2482 for it using an XRF gun so that you can see if it has some
2483 lead in it then you are going to need to do the test and so
2484 we believe that that is much more straightforward. You get
2485 more reliable results from that than a soluble test where you
2486 have to sort of figure out using different methods how much
2487 how your much of the lead will actually come out using
2488 different amounts of acids for different periods of time.
2489 Those tests often are very different. You get different
2490 results at different times and they aren't as straightforward
2491 I don't think as the total lead. I think the total lead
2492 actually simplifies it and makes it easier for people to
2493 comply.

2494 Ms. {Schakowsky.} The other thing I have a real problem
2495 with is that somehow this notion of a cost benefit analysis
2496 in a tradition way. I mean what is the value then of a
2497 child's life or a child's IQ point. Ms. Cowles, if you would
2498 comment on the use of this the notion that we should have
2499 some sort of a cost benefit analysis.

2500 Ms. {Cowles.} And I think if we are going to look at
2501 cost benefits let us look very closely at the benefit side.
2502 It is true as Mr. Woldenberg said there are not body bags of

2503 children who have been injured and killed by lead but there
2504 is testing that shows that a small exposure to lead is going
2505 to lead to a reduction in a child's IQ point. You are not
2506 going to be able to measure that. The parent isn't even
2507 necessarily going to know but we can show that that has an
2508 impact on future earnings. We have seen reports that,
2509 Representative Blackburn, you mentioned the changes in the
2510 '70s. There are reports that indicate that the drop in crime
2511 that we have seen could be because of the reduction in lead
2512 at that time. So to say that simply because a child doesn't
2513 have an acute case of lead poisoning does not mean that there
2514 is not chronic lead poisoning that could be affecting both
2515 their future earning and our economy. So if we are going to
2516 look at cost benefit, we need to look closely at the benefits
2517 of children and how they are protected and what impact that
2518 has.

2519 Ms. {Schakowsky.} And thank you.

2520 Mrs. {Bono Mack.} The gentlelady's time has expired.

2521 The chair recognizes the gentleman from Mississippi, Mr.
2522 Harper, for 5 minutes.

2523 Mr. {Harper.} Thank you, Madam Chairman.

2524 Ms. Fay, I would like to ask you just a couple of
2525 things. Of course, you know, we all want to make sure that
2526 the products that the kids use are safe. How do you ensure

2527 that your product is a safe product without testing?

2528 Ms. {Fay.} Before the February 10, 2009, I rented an
2529 XRF scanner and I tested for 15 hours in my basement with
2530 this x-ray gun. I tested every fabric and every trim and I
2531 tested possible trims on sample cards that I might use in the
2532 future and in 15 hours every test result I had was no lead
2533 detected.

2534 Mr. {Harper.} What was the cost for you to rent that
2535 device, if you recall?

2536 Ms. {Fay.} To rent it, it was for 5 days, \$2,500 and I
2537 shared the cost with four other companies and I know that
2538 many of the handmade toy lines members across the country
2539 were having testing parties where they would get big groups
2540 of people to also use an XRF scanner so that everyone knew
2541 that all of their products were free of lead. And I also
2542 know in Oregon you are allowed to take your products to the
2543 Housing Development Department and they test them with an XRF
2544 scanner for free.

2545 Mr. {Harper.} I am just curious that you found no
2546 problems in what you spent the 15 hours with.

2547 Ms. {Fay.} I found no problems with any of my products.

2548 Mr. {Harper.} And the four other companies that shared
2549 this with you or the 5-day rental cost with you, did they
2550 find any problems that you were aware of?

2551 Ms. {Fay.} I am aware of some problems with shoes and
2552 mostly on the soles of the shoes, sometimes companies had
2553 like a colored dot that helped recognize their brand and that
2554 dot on the sole of the shoe sometimes had lead that I know
2555 of.

2556 Mr. {Harper.} And do you know what that particular
2557 company did in reaction to that, if you know?

2558 Ms. {Fay.} They threw them all away.

2559 Mr. {Harper.} Okay and is it your desire that you
2560 produce and manufacture goods that are safe?

2561 Ms. {Fay.} Yes and it was for most of the handmade toy
2562 lines it if not every single one of us, we started our
2563 businesses because we wanted safe products for our kids and
2564 we felt that if we made them with our hands and we knew that
2565 the time and attention going into this product was there, the
2566 products would be safer.

2567 Mr. {Harper.} When you shared this cost for this and
2568 you said \$2,500 for this device for the 5-day rental, have
2569 you been given a cost estimate of what the third-party
2570 testing would be for you?

2571 Ms. {Fay.} At the time, I had just sold my house and I
2572 took almost all of our money, invested in my business so I
2573 had \$30,000 worth of product and my testing costs were
2574 \$27,000.

2575 Mr. {Harper.} Okay, thank you, Ms. Fay.

2576 Mr. Woldenberg, if I could just ask you on, you know,
2577 how do you without doing the testing what do you propose?
2578 What is a reasonable response to what we are seeing here?

2579 Mr. {Woldenberg.} Well, we have always tested and there
2580 is no way to know if you comply with a standard without
2581 testing. We also can't use an in-house testing lab. We are
2582 not big enough and aren't prepared to manage one so, you
2583 know, what we want to do is manage to a standard. Set a
2584 reasonable standard and then the government shouldn't get
2585 involved in telling us how to meet it. We know well how to
2586 meet it and we have been doing it more than 2 decades
2587 successfully.

2588 Mr. {Harper.} So do you see a greater burden on small
2589 volume businesses with this possible requirement?

2590 Mr. {Woldenberg.} What I just articulated or what
2591 exists?

2592 Mr. {Harper.} Yes.

2593 Mr. {Woldenberg.} What I just articulated would be far
2594 easier. You know, Ms. Fay just described wasting thousands
2595 of dollars testing stuff that everyone knows is safe. That
2596 is just a terrible burden on any business whether it is a
2597 single business or a business with 150 people.

2598 Mr. {Harper.} Okay, thank you.

2599 Madam Chair, I yield back the balance of my time.

2600 Mrs. {Bono Mack.} The gentleman yields back.

2601 The chair recognizes Dr. Cassidy for 5 minutes.

2602 Dr. {Cassidy.} Ms. Cowles, I am sorry, how do you
2603 pronounce your name? I am sorry.

2604 Ms. {Cowles.} That is all right, Cowles.

2605 Dr. {Cassidy.} Cowles. I have to admit I started
2606 laughing when Mr. Woldenberg said he has to label rocks as a
2607 potential threat for lead poisoning if they are swallowed.
2608 Does that seem reasonable to you?

2609 Ms. {Cowles.} I don't think that is part of CPSIA and I
2610 don't think he is saying it is either, the labeling of his
2611 rocks.

2612 Dr. {Cassidy.} Okay, so okay, so that is however that
2613 is interpreted because I think you felt as if you had to
2614 correct?

2615 Mr. {Woldenberg.} That is the only way we can sell
2616 products with lead is we had to find an exemption. There is
2617 an exemption for educational products and the cost to us is
2618 we have to put the word lead on our product. We don't
2619 believe anyone will buy things that say lead on them if they
2620 are for children. Who wants to buy a product that says it
2621 has lead in it? It is death. That is what is going on in
2622 Illinois right now with the lead labeling law which is

2623 essentially overriding your legislation.

2624 Dr. {Cassidy.} But I think there is a dispute as to
2625 whether or not you are actually required to put that on.

2626 Mr. {Woldenberg.} We hired counsel and had a 1-hour
2627 conference call and whether or not this product was saleable
2628 under U.S. law without this label. I very much opposed
2629 putting a label on it. I was overruled by my outside
2630 counsel.

2631 Dr. {Cassidy.} Okay, I can only imagine what that cost
2632 you.

2633 Mr. {Woldenberg.} Exactly.

2634 Dr. {Cassidy.} Now, the next thing is I am new to this
2635 committee so I have kind of an open mind but Ms. Fay do you
2636 have a logger making a little wooden airplane?

2637 Ms. {Fay.} I volunteer at a senior center.

2638 Dr. {Cassidy.} Hang on, hang on, decorating with a non-
2639 lead based paint?

2640 Ms. {Fay.} No, there is no paint on it.

2641 Dr. {Cassidy.} Okay, that has to be tested for lead
2642 content?

2643 Ms. {Fay.} Yes and not the lead. It does not if it is
2644 not coated with anything other than natural materials but the
2645 ASTM testing.

2646 Dr. {Cassidy.} Which is what? I am sorry to be so

2647 ignorant?

2648 Ms. {Fay.} They call it S963 and it is the required
2649 under the CPSIA that any toy has to go through a series of
2650 tests depending on what type of toy it is.

2651 Dr. {Cassidy.} Okay.

2652 Ms. {Fay.} So for example, you have to--we pay someone
2653 to hold an object from shoulder height and drop it to make
2654 sure. That is a laboratory test that they would have to pay.
2655 And the logger at the senior center, he is a retired logger.

2656 Dr. {Cassidy.} So this guy kind of doing a handicraft
2657 has to pay a third-party engineering group to hold it out by
2658 hand and drop it to see if it shatters?

2659 Ms. {Fay.} If he wants to sell it.

2660 Dr. {Cassidy.} Because I mean I am just asking what
2661 would your comments be about that?

2662 Ms. {Cowles.} I think I said in my testimony that we,
2663 you know, since the time this law passed we are very
2664 receptive to the problems of one-of-a-kind items, very small
2665 crafters such as Ms. Fay is talking about and are open to
2666 looking at reasonable testing programs. We are not--we would
2667 not say that those toys do not need to be tested in some way
2668 because again it doesn't matter to the child whether the nice
2669 gentleman at the senior center is making it or if it is
2670 brought in from China. If a wheel is going to fall off and

2671 cause a choking hazard for a very young child the parent
2672 should still know.

2673 Dr. {Cassidy.} Well, let me ask you I don't know, again
2674 I don't know this. I am learning in this committee.
2675 Obviously, I have young children. They always put things in
2676 their mouth, a little bit older now but you could swallow a
2677 ball and that could choke. Is a ball, let us say a ping-pong
2678 ball or is a rubber ball on a paddle, is that covered under
2679 this? I mean clearly they could die from dying swallow a
2680 small little rubber ball.

2681 Ms. {Cowles.} Yes, they can and they do, yes.

2682 Dr. {Cassidy.} Is that covered under this legislation?

2683 Ms. {Cowles.} Yes, balls would be covered because they
2684 are a toy so those products and again the choking hazard is
2685 for products for children under the age of 3. So those
2686 products usually small balls and the paddles you are talking
2687 about are not made for children under 3.

2688 Dr. {Cassidy.} Now, but as I have been reading the
2689 testimony and the stuff applied that is not applied, the
2690 common toy box concept does not apply to those sorts of toys?

2691 Ms. {Cowles.} That is dealing with lead and things more
2692 than the choking hazard. There are additional labeling
2693 requirements for toys for children over 3 but under 6 to
2694 indicate once again that a child under 3 should not have them

2695 but the common toy box we are talking about is the lead
2696 issue.

2697 Dr. {Cassidy.} Now, I actually think if you are
2698 speaking of a common toy box, just thinking of my three
2699 children, that a ball would be more likely to be taken from
2700 one of them than an ATV and so if there is a common toy box,
2701 they will grab the older child's ball and try and put it in
2702 their mouth and hopefully nothing bad happens but it could.
2703 If we are going to accept the rationale, the common toy box
2704 means that you have to limit exposure to some of these toys I
2705 don't see the rationale for limiting it to what we limit it
2706 to.

2707 Ms. {Cowles.} Well, I think that because even for the
2708 child over 3, lead is still a neurotoxin and it is still
2709 going to hurt that child if they do mouth it and so there is
2710 no reason for lead to be in children's toys.

2711 Dr. {Cassidy.} Mr. Woldenberg, you were shaking your
2712 head.

2713 Mr. {Woldenberg.} Well, small parts are not illegal for
2714 children over 3 and there are many cherished childhood
2715 products such as Legos would be illegal if they were so if
2716 your observation is there are lots of small parts out there
2717 that children could be putting in their mouth, it is
2718 absolutely true, and it is a risk that is solved by parental

2719 supervision.

2720 Dr. {Cassidy.} Okay, I yield back. Thank you.

2721 Mrs. {Bono Mack.} The gentleman's time has expired.

2722 The chair recognizes the gentleman from Texas, Mr.

2723 Olson.

2724 Mr. {Olson.} I thank the chair and I thank our

2725 witnesses for coming today. It is pretty obvious that this

2726 is a matter of great importance because of the emotions that

2727 are being felt here in this committee and because as a father

2728 of a beautiful 14-year-old daughter and a 10-year-old son,

2729 all I want for them is to be healthy and happy.

2730 And, Mrs. Fay, I just want to tell you, you are not

2731 alone and I want to prove that to you because I am going to

2732 read a letter that I received from one of our Texans back

2733 home. And her name is Celice William Jackson and she is the

2734 owner of Mommy's Heartbeat and she just makes clothing for

2735 little babies in her home and here is what she wrote. ``This

2736 bill, we are talking about CPSIA, requires manufacturers of

2737 any product intended for children 12 and younger to test

2738 their end product for lead and phthalates. The way the test

2739 is performed is by testing each component of the product in

2740 order to say whether it passes or not. For example, if I

2741 make a diaper and I have pink snaps, thread and fabric, when

2742 I send my diaper to be tested they will test the snaps,

2743 thread and fabric. But say I run out of pink thread and I
2744 use blue then I have to send in the diaper to be tested again
2745 which means that the fabric and snaps will be retested just
2746 because I used a different color of thread. By the way, it
2747 is nearly impossible for non-metallic thread to contain lead.
2748 I believe we can both agree that this testing is wasteful and
2749 redundant. I am a work-at-home mom to a beautiful 9-month-
2750 old daughter. If CPSIA stands as is, I will be forced to
2751 stop doing business. I cannot afford the hundreds of dollars
2752 required just to test one product. The economy is in bad
2753 enough shape as it is without having thousands of small
2754 businesses closing their doors and the cost of children's
2755 good skyrocketing.''

2756 My question for you, are you aware of more businesses
2757 that in your shape, Ms. Fay, out there in Oregon.

2758 Ms. {Fay.} We get e-mails from companies all over the
2759 country talking about how this law is affecting them and we
2760 have compiled a list of businesses that have already closed
2761 due to the CPSIA. However, this list is small in comparison
2762 to what will happen if the CPSIA is fully implemented without
2763 changes. We know that if the stay of enforcement, if third-
2764 party testing is allowed to expire after December and no
2765 amendment has fixed our problems, 90 percent of our
2766 membership will have to close their businesses.

2767 Mr. {Olson.} Yes, ma'am, and again we need to fix that
2768 up here in the House of Representatives.

2769 Ms. {Fay.} Please.

2770 Mr. {Olson.} That is something we can fix and something
2771 we should fix.

2772 A question for you, Mr. Woldenberg, and just sort of the
2773 cost for your business here and how much of the cost of CPSIA
2774 impacted your business, your product lines. I mean your
2775 testimony states that your business costs of compliance have
2776 increased ten-fold, ten-fold.

2777 Mr. {Woldenberg.} Well, I can illustrate that for you.
2778 You know, if we tested every one of our products once in
2779 destructive testing and all of our testing is destructive, we
2780 would have to test 1,500 products. Right now hanging over
2781 our head is the so-called 15-month rule which should be
2782 called the 30-month rule and this is a picture of what I
2783 would have to test. This is 81,000 units. This is what they
2784 look like. All of this would be destroyed and I have to pay
2785 for that. And it is a huge, huge distraction as well. There
2786 is just no end to the threats that come from this law.

2787 Mr. {Olson.} So you have to destroy 81,000 units?

2788 Mr. {Woldenberg.} Yeah, that is what it looks like.

2789 Mr. {Olson.} Just for testing and those are units that
2790 you could be selling, making money and growing your business?

2791 Mr. {Woldenberg.} Right, this is a shipment of 81,000.

2792 I wouldn't get to do that.

2793 Mr. {Olson.} Well, yes, sir. I mean I know that back

2794 home in Texas there are a lot of old boys who would like to

2795 destroy 81,000 cartons there but that is not the way we are

2796 going to grow our economy. We need to get the regulatory

2797 burdens off your back.

2798 Mr. {Woldenberg.} Thank you.

2799 Mr. {Olson.} And anything we can do to help you, we are

2800 going to do it.

2801 Mr. {Woldenberg.} Thank you.

2802 Mr. {Olson.} Thank you very much for your time.

2803 Yield back.

2804 Mrs. {Bono Mack.} The gentleman yields back.

2805 The chair recognizes Mr. Pompeo for 5 minutes.

2806 Mr. {Pompeo.} Thank you, Madam Chairman.

2807 I just have a couple questions for Ms. Cowles. The

2808 American Academy of Pediatrics testified at the Commission's

2809 one hundred parts per million technological feasibility

2810 yesterday that there is a point where we go from the sublime

2811 to the ridiculous when it comes to treating all products as

2812 presenting the identical, the same risk. In your judgment,

2813 have we reached the ridiculous when we treat a bicycle or a

2814 geology kit or a jewelry charm precisely the same way?

2815 Ms. {Cowles.} I don't know that I would call it
2816 ridiculous. I think that it is not really treated the same
2817 way. The charm is obviously going to be, you know, has
2818 definitely caused harm. I think we are looking at the way
2819 that lead is addressed in those different products but the
2820 effect of lead in each of those products if the child is able
2821 to ingest it is going to be the same.

2822 Mr. {Pompeo.} Right and but we still have got the same
2823 hundred parts per million standard for each of those items
2824 and you think that is appropriate given the variance in the
2825 product and the product's usage and the product's contact
2826 with human beings?

2827 Ms. {Cowles.} You know, I think that we should
2828 certainly look at inaccessible lead so that if there is lead
2829 in products that there is no way that the child is going to
2830 touch, that is one issue but I think that the way I look at
2831 it if you want to simplify it is as Rick said, parents do not
2832 want to buy products that have lead in them for their
2833 children. We had a lab testify yesterday at that same
2834 hearing that said most of the products that they are testing
2835 are already well below the hundred parts per million. I
2836 think we can do this and we can make these products without
2837 lead. It is what parents want and we can quibble about how
2838 bad the effect will be but I think that as Rick said if you

2839 tell the parent there is lead in it they really are not going
2840 to want to buy it so why don't we get the lead out of it.

2841 Mr. {Pompeo.} In your judgment, Mr. Woldenberg showed
2842 us a picture of some product that will have to be destroyed.
2843 In your judgment, should the federal government make him
2844 destroy that product?

2845 Ms. {Cowles.} I think he is talking about destructive
2846 testing. He is not talking about he is destroying it because
2847 it has lead in it.

2848 Mr. {Pompeo.} But no he is talking about destructive
2849 testing. Do you think that he should?

2850 Ms. {Cowles.} I am not familiar with his testing
2851 process as to why all of that would have to be destroyed.

2852 Mr. {Pompeo.} Mr. Woldenberg, you were going back with
2853 my colleague, Congressman Butterfield, a few minutes ago
2854 about whether the label there was necessary or required and
2855 your counsel overruled you and told you it was. Has your
2856 counsel told you how many more hours he is going to get to
2857 bill once the database comes online?

2858 Mr. {Woldenberg.} The database is going to be a full
2859 employment plan for our outside counsel.

2860 Mr. {Pompeo.} And so, Ms. Fay, you don't have inside
2861 counsel?

2862 Ms. {Fay.} Can't afford it.

2863 Mr. {Pompeo.} And we have heard different testimony
2864 this morning about the risks and problems potentially with
2865 that database people have different judgment. Commissioner
2866 Tenenbaum was pretty clear in 10 days she feels like she is
2867 required to publish it regardless of its merits. Do any of
2868 the three of you involved in the manufacturing process think
2869 that makes sense?

2870 Mr. {Woldenberg.} I do not. We can't evaluate the
2871 information that we are given because we are not given full
2872 access to the information and one of the biggest concerns
2873 that I have about the database is that by the government
2874 getting into the business of a safety blog they are training
2875 our customers not to call us. I want to talk to them
2876 directly about problems.

2877 Mr. {Pompeo.} I really want and that is actually where
2878 I was headed. I appreciate that. Do any of you ever fear
2879 that your customers when they are not happy with your product
2880 won't call you?

2881 Mr. {Woldenberg.} That is my biggest nightmare.

2882 Mr. {Morris.} Certainly in our industry, Congressman,
2883 the manufacturers get lots of calls from their consumers and
2884 they find vital information very well and very thoroughly
2885 because the consumer when they call usually has the model
2886 number, they have the exact information in front of them and

2887 that is the best way to get the information.

2888 Mr. {Pompeo.} Until 45 days ago I was involved in and I
2889 was running a manufacturing business and my customers when
2890 they weren't happy often were pretty successful at locating
2891 me. I also felt like we had an incentive to respond to that
2892 in a way that was meaningful to the customer and corrected
2893 any potential problems with product that we may have made.
2894 Do you all feel like you have adequate incentive already to
2895 address customer concerns about problems with your products?

2896 Mr. {Woldenberg.} Absolutely and it is how a
2897 conscientious manufacturer has to behave. It is our
2898 responsibility.

2899 Mr. {Morris.} That is why in many cases the claims that
2900 a manufacturer will make about materially inaccurate
2901 information is largely going to be that is not my product.
2902 It needs to be resolved and there is no reason that the
2903 Commission can't take an extra couple of hours to read a
2904 report and make sure that is accurate.

2905 Mr. {Pompeo.} I appreciate it. Thank you all for
2906 coming today.

2907 I yield back my time.

2908 Mrs. {Bono Mack.} The gentleman yield back and no other
2909 members present to ask questions.

2910 Without objection, the chair is going to insert five

2911 additional statements for the record of our hearing that have
2912 been submitted. We have previously shared these with the
2913 minority and believe that they will improve the hearing
2914 record. So ordered.

2915 [The information follows:]

2916 ***** COMMITTEE INSERT *****

|
2917 Mrs. {Bono Mack.} And so in conclusion of the hearing,
2918 I would again like to thank all of our witnesses today. We
2919 all appreciate your time and the stories that you shared with
2920 us. We all want safer products for our children. There is
2921 no question. But we also want to stimulate and encourage
2922 businesses rather than stifle them with unnecessary
2923 regulations that have little to no impact on safety. Our
2924 challenge is to figure out how to strike that balance and
2925 this is only the first of our discussions on that topic. I
2926 would like to most especially thank the Ranking Member
2927 Butterfield for his help today and his support and offer an
2928 open door to him as we work through all of these policies and
2929 to each and everyone of you I believe that we can do great
2930 things if we work together and that is my intention to do it
2931 that way.

2932 So thank you to the audience for your kindness today and
2933 that concludes--oh wait, wait, oh just a little business. I
2934 remind members that they have 10 business days to submit
2935 questions for the record and to ask that the witnesses please
2936 respond promptly to any questions they may receive. The
2937 committee is now adjourned.

2938 [Whereupon, at 2:08 p.m., the Subcommittee was
2939 adjourned.]