

H.R. _____, THE CONSUMER PRODUCT SAFETY
ENHANCEMENT ACT

HEARING
BEFORE THE
SUBCOMMITTEE ON COMMERCE, TRADE,
AND CONSUMER PROTECTION
OF THE
COMMITTEE ON ENERGY AND
COMMERCE
HOUSE OF REPRESENTATIVES
ONE HUNDRED ELEVENTH CONGRESS

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**H.R. ———, THE CONSUMER PRODUCT
SAFETY ENHANCEMENT ACT**

THURSDAY, APRIL 29, 2010

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMMERCE, TRADE,
AND CONSUMER PROTECTION,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC.

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

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

Staff present: Phil Barnett, Staff Director, Bruce Wolpe, Senior Advisor; Michelle Ash, Chief Counsel; Robin Appleberry, Counsel; Felipe Mendoza, Counsel; Timothy Robinson, Counsel; Lindsay Vidal, Press Secretary; Karen Lightfoot, Communications Director; Will Cusey, Special Assistant; Daniel Hekier, Intern; Brian McCullough, Minority Senior Professional Staff; Will Carty, Minority Professional Staff; Shannon Weinberg, Minority Counsel; Jerry Couri, Minority Professional Staff; Samuel Costello, Minority Legislative Analyst; and Robert Frisbee, Minority FTC Detailee.

OPENING STATEMENT OF HON. BOBBY L. RUSH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. RUSH. The subcommittee will now come to order.

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

I want to thank again all the witnesses for taking the time out to offer the Congress your views on the legislation that we are shaping. Known as the Consumer Product Safety Enhancement Act, the draft law would give the Consumer Product Safety Commission new regulatory flexibility to exempt certain products, components and materials from lead limits contained in the Consumer Product Safety Improvement Act of 2008. The draft text affords relief for thrift stores and other retailers through an exclusion for certain used children's products from the lead limits. It also ex-

tends relief to small manufacturers and other businesses by allowing the Commission to approve alternative test requirements for certain small batch manufacturers. And it would require the Consumer Product Safety Commission to provide outreach and assistance to small businesses and restrict the Commissioner from applying the 2008 laws to inaccessible component parts.

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

With that, I look forward to hearing from all the witnesses, and I yield back the balance of my time and recognize the ranking member, Mr. Whitfield, for 5 minutes.

OPENING STATEMENT OF HON. ED WHITFIELD, A REPRESENTATIVE IN CONGRESS FROM THE COMMONWEALTH OF KENTUCKY

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

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

Many of us have received letters and e-mails from constituents who have been affected in a very bad way regarding this legislation, and there was a young gentleman named Ray Curren that lives in my district and he sent an e-mail to me, and it was totally unsolicited, but he says, "The Consumer Product Safety Enhancement Act has just about destroyed me and my business. As you know, I hand make small lots of historic and folk art toys. These are the types of things that your grandfather and great-grandfather made for their kids and grandkids. I make anywhere from a couple of hundred to 300 or 400 a year. I can no longer make these items. The cost of testing raises the cost of the items beyond the reach of most people. I have to give up my craft and my wholesale shows, which were the majority of my income. I always use American-made paint, stains and finishes, which are lead-free, and natural finishes such as beeswax and mineral spirits, which are food-grade finishes. Now these must be tested and I cannot afford it." We have had lots of e-mails and letters like that, and the reason that I am particularly interested in today's hearing is that there are so many issues like the cost of the decisional memos, like the lack of exemption authority for the consumer protection agency, and hopefully you can provide us additional information about the functional purpose petition and the absorption exclusion that is in the current law, and whether or not we should be looking at the

economic impact of this legislation on businesses, particularly at this time when we are focused on trying to create jobs.

There is no question that we need to take some action, and we do need to make sure that children are not exposed to unusually large amounts of lead, and I am convinced that we can do so in a balanced way that will protect children and at the same time allow small businessmen and women who are making products that are not a danger to children to stay in business. So I really look forward to this hearing and I look forward to working with Chairman Waxman and Chairman Rush and the other members of the committee as we take up this legislation and try to make it even better, and I yield back the balance of my time.

[The prepared statement of Mr. Whitfield follows:]

**Statement of the Honorable Ed Whitfield
Ranking Member, Subcommittee on
Commerce, Trade and Consumer Protection.
Hearing on Committee Print of The Consumer Product Safety Enhancement Act
April 29, 2010**

- Thank You Chairman Rush. I am pleased we are moving through regular order on the draft legislation. It is important to provide all our Members - including new Members to the Subcommittee - the opportunity to hear from stakeholders today before we consider the legislation.
- CPSIA (pronounced sip-sea-ah) became Public Law in August 2008 with bipartisan support in an effort to improve product safety for children, particularly toys. But we began to hear of problems soon after as the effective dates for the new lead limits approached.
- Mere months after the signing ceremony it became evident that the reach of CPSIA was far greater than any of us imagined or intended. It has caused major problems for thousands of individuals, businesses, and families. Although the thousands of calls and emails seemed to have died down, it's not because all the problems have gone away.
- It was not possible for many manufacturers to comply with the limits because of the unique nature of their product – such as bicycles and musical instrument that require brass.
- Others manufacturers, particularly the thousands of very small businesses that have never had a problem with their products, could not afford the testing and expect to stay in business.
- Thousands of one-person crafting businesses operate from their home and often make less than \$100 per week. But when it is a supplement to their income it can make a big difference in their lives.
- Most of us are aware of the types of products that have voiced the need for exceptions: ball point pens, brass instruments, certain sports

equipment, bicycles, books, and youth motorcycles and ATV's, among others.

- While some products and materials have been granted relief by the CPSC, many others are operating under a stay of enforcement and need a permanent fix or their products will never make it to market when the stay of enforcement expires.
- And recent developments have provided additional uncertainty to manufacturers with the recently released interpretation of the definition of a children's product.
 - We intended to affect only items meant for and marketed primarily to children age 12 and under. However, this is less clear now because the proposed interpretive rule potentially reclassifies any product that can be "misused" as a children's product. Manufacturers seem to be facing a moving scale with little certainty.
- I appreciate that we are here to address these issues, Mr. Chairman. We need a good bipartisan bill we can all agree fixes these major problems. The draft we are discussing has made progress to fix certain problems, including the retroactive application of the lead limits, and I am sure we can move closer to agreement.
- I am hopeful we can do more to make the focus of the law a priority to stop products that pose a danger to children from entering commerce rather than focus on complicated bureaucratic compliance regimes.
- The current one-size-fits-all approach we chose is simply not working well. Products have different characteristics that are used in many different ways by children of different ages. Treating infant products with the same risk profile as a bicycle or pre-teen garment will continue to wreak havoc on many businesses that have no evidence of causing elevated blood-lead levels in children.
- In fact, the New York Times had an article last week stating that nationwide, the number of children with elevated blood lead levels has dropped from 434,000 in the year 2000 to an estimated 120,000 in

2006. The story further reported the leading sources continue to be lead based paint in older homes and soil contamination.

- We all agree we should continue to eliminate lead poisoning. I think we need to make sure our efforts are concentrated on the likely sources of lead rather than causing collateral damage by forcing business with safe products to prove they are safe.
- We also need to make this law work for the CPSC. The Commission has been devoting nearly all its resources to this law and it's implementing regulations for nearly 20 months with little relief in sight.
 - The unending requirements of this law clearly affect the Commission's ability to be an effective regulator of the tens of thousands of other products that are not "children's products".
- I look forward to discussing these issues and working with all the Members to fix these problems.

Mr. RUSH. The Chair now recognizes the chairman of the full committee, the gentleman from California, Mr. Waxman, for 5 minutes.

OPENING STATEMENT OF HON. HENRY A. WAXMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. WAXMAN. Thank you very much, Mr. Chairman.

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

In 2007 and 2008, Congress reviewed the reasons for these terrible tragedies and crafted a response. In August of 2008, after months of hearings, markets and an extended House-Senate conference, the Consumer Product Safety Improvement Act was enacted on a broad bipartisan basis. That law was a victory for consumers and contained provisions that will enable the CPSC to protect children for decades to come. The provisions were essential not only to protecting children but also to restoring consumer confidence in the toy industry itself.

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

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

The text of this draft is not set in stone, and we look forward to any and all constructive input that will be offered today but the draft does reflect the hard work of months of negotiation with stakeholders and a delicately struck balance between the need for targeted changes to the law and the need to preserve the most important public health accomplishments of that law.

It also reflects a compromise both industry stakeholders and consumer and public health groups are willing to support. I think this level of consensus is remarkable and I expect that today's testi-

mony will go a long way in making clear how important these changes are and how important it is that they be narrowly crafted.

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

Thank you, Mr. Chairman.

Mr. RUSH. The Chair wants to thank the full committee chairman.

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

OPENING STATEMENT OF HON. LEE TERRY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEBRASKA

Mr. TERRY. Thank you.

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

However, I also have some serious concerns about the CPSC's ability to evaluate risk and reasonableness. It is my understanding that this bill was ostensibly intended to give the CPSC greater flexibility in granting exceptions in situations where it is impractical to comply and there is no significant risk of injury. As we know, consumer product safety commissioners are on record requesting such flexibility. Section 2 of this enhancement bill attempts to allow the CPSC to grant exceptions but the hurdles are impossibly high. As drafted, in order to grant an exception, the CPSC would have to find, one, that it is not practical or feasible to manufacture the components without lead, two, that the component is not likely to be placed in the mouth, taking into account foreseeable use and abuse, and three, that there will be no reasonable measurable adverse effect on public health or safety. The CPSIA currently permits the CPSC to grant exceptions if it finds, one, that it won't result in any absorption of lead in the human body, and two, that there won't be any other adverse impact on health or safety. I don't believe that there is a material difference between no measurable adverse effect and won't result in any absorption. Both are a zero-tolerance threshold. Plus when coupled with not likely to be placed in the mouth, taking into account feasibility use and abuse, the bill does not give the CPSC the flexibility it needs to grant reasonable exceptions, so I would like to see a threshold that permits the CPSC to evaluate risk and reasonableness.

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

Mr. RUSH. The Chair recognizes the gentlelady from Illinois, Ms. Schakowsky, the vice chair of the subcommittee, for 2 minutes.

OPENING STATEMENT OF HON. JANICE D. SCHAKOWSKY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Ms. SCHAKOWSKY. Thank you, Mr. Chairman.

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

I want to commend Chairman Waxman, Chairman Rush and their staffs for crafting a bill that would make the sought-after fixes without undermining the important public health mandates that we included in the original legislation. For example, the CPSC will be allowed to exclude specific products or materials from the lead limits but only if such an exemption will have “no measurable adverse effect on public health or safety.”

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

I yield back the balance of my time.

Mr. RUSH. The Chair now recognizes the gentleman from Ohio, Mr. Latta, for 2 minutes.

OPENING STATEMENT OF HON. ROBERT E. LATTA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

Mr. LATTA. Thank you, Mr. Chairman, Ranking Member Whitfield. Thank you for holding this important hearing today to discuss the Consumer Product Safety Enhancement Act.

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

At a time of economic hardship and an average unemployment rate in my Congressional district of over 13 percent unemployment, and in the State of Ohio of 11 percent, we cannot pass legislation

that will further hinder business. According to the National Association of Manufacturers, 2 years ago I had the ninth largest manufacturing district in Congress, and today my district stands at 20th. Currently, I represent the largest manufacturing and the largest agricultural district in the State, and I have concerns that any legislation that forces more bureaucratic mandates on businesses further hinders and hampers economic growth.

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

[The prepared statement of Mr. Latta follows:]

Robert E. Latta
Opening Statement
House Energy and Commerce Committee
Subcommittee on Commerce, Trade, and Consumer
Protection
Hearing on H.R. __ the Consumer Product Safety
Enhancement Act

Chairman Rush and Ranking Member Whitfield:

Thank you for holding this important hearing today to discuss the Consumer Product Safety Enhancement Act of 2010. While this hearing is on revising previously passed legislation, I have heard from several of my small businesses, manufacturers and employees who feel that these suggested changes will do more harm than good. It is very important to protect our children and maintain strong safety regulations, however this legislation seems to create more regulatory burden. I am concerned that there is the strong potential for direct negative effects such as job loss, budgetary constraints and business closures in an already difficult economic environment.

With that in mind, the Administration submitted its Fiscal Year 2011 Budget proposal with a record breaking cost of \$3.8 trillion dollars. This budget proposal includes a \$2 trillion dollar tax increase over the next ten years and projected record deficits. This proposal will double our nation's debt in five years and triple it in ten years from FY 2008 levels. The Congressional Budget Office has stated that under current spending levels, by 2020, American taxpayers will be paying \$2 billion dollars per day in interest alone on the national debt.

It also estimates that the debt will be \$20 trillion by that year. Our nation's economic future requires that this Administration exercise serious fiscal restraint and stop excessive spending.

In a time of economic hardship and an average unemployment rate in my Congressional District over 13.4 percent, we should not pass legislation that will further hinder business. According to the National Association of Manufacturers, two years ago I had the 9th largest manufacturing district in Congress, and today my district stands as the 20th largest in Congress. Currently, I represent the largest manufacturing and the largest agriculture district in the state of Ohio. I have serious concerns that this legislation will force more bureaucratic mandates on businesses, further hindering economic growth.

Mr. Chairman, I appreciate you holding a hearing regarding a legislative fix on this issue, and I look forward to working with you and the Ranking Member on this legislation.

With that Mr. Chairman: I yield back.

Mr. RUSH. The Chair now recognizes the gentlelady from Ohio, Ms. Sutton, for 2 minutes.

**OPENING STATEMENT OF HON. BETTY SUTTON, A
REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO**

Ms. SUTTON. Thank you, Mr. Chairman.

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

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

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

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

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

Thank you, and yield back.

Mr. RUSH. The Chair now recognizes the gentleman from Pennsylvania, Mr. Pitts, for 2 minutes.

**OPENING STATEMENT OF HON. JOSEPH R. PITTS, A REP-
RESENTATIVE IN CONGRESS FROM THE COMMONWEALTH
OF PENNSYLVANIA**

Mr. PITTS. Thank you, Mr. Chairman. Thank you for holding this hearing on the committee print of the Consumer Product Safety Enhancement Act.

I think we all agree that protecting consumers, especially children, from unsafe products is a worthy goal of government regulation. However, the implementation of the Consumer Product Safety Improvement Act has given many cause for concern. We have observed a number of unforeseen and negative consequences arise

that are now putting undue pressure on businesses and manufacturers here in the United States and throughout the world.

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

Mr. Chairman, I ask unanimous consent to enter into the record a letter I received from my constituent, Randy Hertzler, who is here today, which expresses his concerns about the inconsistencies between the CPSIA and EN71, the European standard. He asserts the committee print before us today may be helpful but the wording is ambiguous and does not give full assurance that his concerns and that of many others will be satisfied.

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

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

[The prepared statement of Mr. Pitts follows:]

**Opening Statement for Commerce, Trade, and Consumer
Protection Subcommittee Hearing:
April 29, 2010**

HR____, the Consumer Product Safety Enhancement Act

- Mr. Chairman, thank you for holding this hearing on the committee print of the Consumer Product Safety Enhancement Act.
- I think we all agree that protecting consumers—especially children—from unsafe products is a worthy goal of government regulation.
- However, the implementation of the Consumer Product Safety Improvement Act has given many cause for concern.
- We have observed a number of unforeseen and negative consequences arise that are now putting undue pressure on businesses and manufacturers here in the United States and throughout the world.
- I have received countless emails, phone calls, and letters from businesses in my district and across the United States expressing the difficult and damaging effects this law is having on them.
- While this committee print may address some of the issues that have been brought to my attention, the language is still vague and issues are still left unaddressed. Overall, I do not believe it is good enough.
- I'm still greatly concerned that small businesses, in particular, will not receive the relief they deserve.
- Mr. Chairman, I ask unanimous consent to enter into the record a letter I received from my constituent Randy Hertzler, who is here today, which expresses his concerns about the inconsistencies between the CPSIA and EN71, the European standard.
- He asserts the committee print before us today may be helpful, but the wording is ambiguous and does not give full assurance that his concerns and that of many others will be satisfied.

- I have grandchildren, and I want to be sure their toys are safe. But we need to do this in a way that is realistic, clear, and fair.
- I look forward to hearing from our witnesses today, and I appreciate them appearing before us.
- I yield back.

Mr. RUSH. Hearing no objections, so ordered.

[The information appears at the conclusion of the hearing.]

Mr. RUSH. The Chair now recognizes the chairman emeritus of the full committee, my friend from Michigan, Mr. Dingell, for 5 minutes.

OPENING STATEMENT OF HON. JOHN D. DINGELL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

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

As an author of the original Product Safety Act back in 1972 with my good friend, Mr. Moss of California, I am pleased with what the statute has done and I am a longstanding advocate for better protections to our Nation's consumers. I wholeheartedly support a stronger regulatory framework to ensure the safety of consumer products distributed in commerce in the United States, particularly those meant for use by children. When Chairman Rush, Chairman Waxman, Ranking Member Barton, Ranking Member Whitfield and I wrote the Consumer Product Safety Improvement Act in 2008, we did so in furtherance of this goal. That was a bipartisan piece of legislation, and it was a good one, and it came out of this committee unanimously, as my colleagues will remember, and passed the House unanimously. It then went to the United States Senate, and at that point unintended consequences arose and they have been exaggerated, exacerbated by the fact that the Senate resisted intelligent and necessary changes during the discussions in the conference, and this has created severe imposition of unnecessary, onerous regulatory burdens on businesses, particularly small business, with little appreciable positive impact on consumer safety and health. And indeed, the Consumer Product Safety Commission has had the misfortune to have to toe dance around and to try and write regulations that would make sense after the Senate imposed changes.

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

Finally, while I will not be seeking amendments to CPSEA, I will be seeking the assistance of you and Chairman Waxman and your strong assurances for the record that language clarifying the meaning of certain terms and provisions in the bill will be included in the committee's report. I find a real danger of ambiguity in these areas and hope that we can clarify those problems.

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

Mr. RUSH. The gentleman is assured that we will take in consideration his request, and staff will work together on these matters and other matters that might be of concern to you.

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

**OPENING STATEMENT OF HON. JOE BARTON, A
REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS**

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

I do want to express my strongest appreciation for agreeing to this legislation hearing. I have been asking for this for a long time. In fact, I requested a hearing almost as soon as the problems with the implementation with CPSIA became apparent. We sent letters in January and March of 2009, and then again when the subcommittee held a hearing in September with the then newly appointed Chairman Tenenbaum. Hearing Chairman Tenenbaum's views about the future of the CPSC was an important oversight task, but I believe then and still believe today that we need the facts about the implementation and the real-world effects of CPSIA if we are going to understand what the problems are and how to fix them.

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

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

We began this journey, Mr. Chairman, back in 2007 in response to a spate of calls for recalls for toys with lead paint. The law that was passed in response to those requests expanded into something that none of us really imagined, or at least I didn't. It has turned, in my opinion, in some cases into a regulatory and compliance nightmare. Products like Native American ceremonial regalia that were never intended to be covered have been ensnared by the law. There are now over 2,500 additional pages and that grow almost every day of rules and regulations. Golf clubs, bicycles, leather riding saddles as well as educational equipment like children's

brass band instruments and microscopes, believe it or not, are banned hazardous substances under this law. Let me repeat that: a brass trumpet and a microscope are banned hazardous substances and may not legally be sold for children's use.

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

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

To the witnesses before us today, I understand that most of you support this bill. I do too generally because it does move the ball forward in terms of child safety. I also understand that you have ideas that would make the bill even better. I want to emphasize to you today this is the chance to let your voice be heard. You rarely get a second bite at the apple in terms of Congressional hearings and you never get a third. My interest here is not to be obstructionist. In fact, Chairman Dingell, Chairman Waxman and myself met last week or the week before just to discuss this very hearing. We want each of your businesses to thrive. We want homemade product makers to go back to work. We want to save consumers unnecessary cost. We want companies that were forced by this law to lay off employees to rehire those laid-off workers. We want our children to have a childhood that is filled with children's saddles, golf clubs, leather footballs, bikes, brass instruments, books, microscopes and telescopes. We want to make sure that this fix is done right.

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

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

[The prepared statement of Mr. Barton follows:]

Statement of the Honorable Joe Barton
Ranking Member, Committee on Energy & Commerce
April 29, 2010
Subcommittee on Commerce, Trade, and Consumer Protection
Hearing on H.R. _____, the Consumer Product Safety Enhancement Act

Mr. Chairman, I want to express my strongest appreciation for agreeing to hold this legislative hearing. We have been asking for this hearing for some time. In fact, we requested a hearing almost as soon as the problems with the implementation of CPSIA became apparent. We sent letters in January and March of 2009, and then again when this subcommittee held a hearing in September with the then-newly-appointed Chairman Tenenbaum. Hearing Chairman Tenenbaum's view about the future of the Consumer Product Safety Commission was an important oversight task, but we believed – and still believe – that we needed facts about the implementation and real-world effects of CPSIA if we were to understand and fix the problem.

I am glad to have an array of stakeholders before us today who can finally have their voices heard. Their stories about how the 2008 CPSIA law impacts their lives and their ideas about how to remedy the unintended consequences of this law are vital to our reform efforts. I welcome each of you and look forward to hearing your ideas.

I would like to highlight, however, that it is a shame that we do not have the CPSC before us today. The CPSC is the agency charged with enforcing any law we pass. I believe it is necessary to hear the real regulatory impact of that law. Specifically, there are provisions in the proposed legislation that were requested by the CPSC, but which have never been examined during a legislative hearing. The witnesses

today certainly are not in a position to explain why the CPSC requested these provisions.

We began this journey in 2007 in response to a spate of recalls for toys with lead paint. Unfortunately, the law we passed expanded into something none of us imagined. It has turned into a regulatory and compliance nightmare. Products like Native American ceremonial regalia that we never intended being covered have been ensnared by the law and the 2500 (and counting) pages of rules and interpretations it has thus far spawned. Golf clubs, bicycles, and leather riding saddles as well as educational equipment such as children's brass band instruments and microscopes are all banned hazardous substances under this law. Let me repeat that: a brass trumpet and a microscope are banned hazardous substances and may not legally be sold for children's use.

Other objects that are not banned hazardous substances may still not be legally sold because they cannot be tested in accordance with the law. For example, an object such as a child's saddle made of real leather poses no risk of lead poisoning and it contains no plastic parts and thus no phthalate, yet the law requires it be tested for both. As I understand the problem, these items are one of a kind and these tests are destructive. Once you prove that saddle isn't made of lead or phthalates, the saddle is valueless because it's been destroyed.

Even if an object can be made in batches, these tests are cost-prohibitive for many small businesses. I appreciate and support the Chairman's willingness to provide small businesses with testing cost relief, but I am concerned about whether "alternative testing" methods consistent with CPSIA even exist – and the CPSC isn't here to answer that question. And if such testing does exist, we do not know

how long it will take for the CPSC to bless those methods by regulation. Further, those companies will always have the uncertainty of wondering when someone might challenge CPSC's determinations in that regard.

To the witnesses before us today, I understand most of you support this bill because it does move the ball forward a bit. I also understand that you have ideas that would make this bill even better, and perhaps more certain. I want to emphasize to you that today is your chance to let your voice be heard. You rarely get a second bite at the apple and it is unheard of to get a third. My interest here is not to be obstructionist. We want small businesses to thrive. We want home-made product makers to go back to work. We want to save consumers unnecessary costs created by unnecessary regulatory hoop-jumping. We want companies that were forced by this law to lay off employees to re-hire those laid-off workers. We want our kids to have a childhood – one filled with saddles, golf clubs, leather footballs, bikes, brass instruments, books, microscopes and telescopes. We need to make sure this “fix” is done right.

Mr. Chairman, when we began this discussion on children's products in 2007, and when we delivered the original bill to President Bush's desk, the Democrats and Republicans on this committee worked together and with stakeholders. From fact-finding letters to oversight hearings to drafting sessions to legislative hearings and markups, the process was open, transparent, cooperative, and bipartisan. I hope, as we move forward, that the spirit of bipartisanship and transparency re-emerge.

We still share the same interest in protecting our children from harm, but we must seize this opportunity to fix the problems we forced on thousands of Americans and replace the draconian and ineffective law with fresh thinking and better ideas.

Mr. RUSH. The Chair thanks the gentleman. You would have done a much better job had you spoken extemporaneously. You would have been more convincing.

Mr. BARTON. That is probably true, Mr. Chairman.

Mr. RUSH. The Chair recognizes the gentleman from Iowa, Mr. Braley, for 2 minutes.

**OPENING STATEMENT OF HON. BRUCE L. BRALEY, A
REPRESENTATIVE IN CONGRESS FROM THE STATE OF IOWA**

Mr. BRALEY. Thank you, Mr. Chairman, and thank you for holding this hearing on product safety, which is one of the most important responsibilities that this committee has.

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

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

Mr. RUSH. That concludes the opening statements.

Mr. GINGREY. Mr. Chairman.

Mr. RUSH. Oh, I am sorry. Please forgive me. The Chair recognizes the gentleman from Georgia, Dr. Gingrey, for 2 minutes for the purposes of opening statement.

**OPENING STATEMENT OF HON. PHIL GINGREY, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF GEORGIA**

Mr. GINGREY. Chairman Rush, thank you. I want to thank you for calling today's hearing on the committee print of the Consumer Product Safety Enhancement Act of 2010.

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

Ultimately, I believe that we all agree on the goal of ensuring that the products purchased by consumers can be used safely. That is why after concerns arose in 2007 this subcommittee and Congress as a whole acted swiftly to enact the Consumer Product Safe-

ty Improvement Act of 2008. However, since the law was enacted, we have been faced with a number of unintended consequences due to the law's implementation. From legislation that was only 63 pages long, the Consumer Product Safety Commission now has a set of regulations that are 2,500 pages long. Clearly, some of the products that will be subjected to the regulation under this bill pose no threat to children. Due to the testing methods that will be adopted, children will not have the ability to purchase a baseball mitt, a brass musical equipment or even a microscope to be used in a classroom, as the ranking member just testified.

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

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

I look forward to hearing the testimony from each of you today so we can work to improve upon this law, and I yield back. I see I have gone a little bit over my time, and I thank you for your indulgence, Mr. Chairman.

Mr. RUSH. The Chair now recognizes the gentleman from Louisiana, Mr. Scalise, for 2 minutes.

OPENING STATEMENT OF HON. STEVE SCALISE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF LOUISIANA

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

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

Mr. Chairman, I was not a Member of Congress when our subcommittee first took up the Consumer Product Safety Improvement Act in 2007, which is one reason I am glad that the subcommittee has decided to pursue regular order by having this hearing before

we hold the markup. I am sure we have all heard the horror stories and the complaints that have surfaced as this law has been implemented. We have all been made well aware of the severe unintended consequences and the significant burdens that this law has placed on manufacturers and small businesses, not just from national associations or corporations but from small businesses and mom-and-pop stores in our district that are struggling under the burdens and regulations of this law including some that have closed as a result of those unintended consequences. The testing requirements and compliance and administrative costs are having devastating effects on the businesses that produce the wide variety of products that now fall under the jurisdiction of CPSIA, many of which pose no risk or injury to a child and were never intended for children in the first place.

Unfortunately, the problems don't end there. The complex regulations being implemented are further adding to the plight of manufacturers and businesses. A 63-page law has produced almost 2,500 pages of rules and regulations and the CPSC is not even done writing all those yet. Not only am I troubled by the effects that CPSIA is having on small businesses, but I am also concerned about its effect on the CPSC. The regulations, testing and compliance procedures that CPSC is now responsible for are substantial. I hope that we have not forced the CPSC to sacrifice its obligations in other areas of product safety or prevented the Commission from properly doing its job. This is a particular concern for me and my constituents because the CPSC is currently involved in an ongoing investigation of toxic Chinese drywall. I hope that CPSIA is not keeping CPSC from providing answers to the thousands of homeowners across the country that have fall victim to toxic Chinese drywall.

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

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

Thank you, and I yield back.

Mr. RUSH. That concludes the opening statements of the members of the subcommittee, and now it is my pleasure to introduce to you the witnesses who are at the table this morning. Seated at my left is Mr. Rosario Palmieri. He is the vice president of infrastructure, legal and regulatory policy for the National Association of Manufacturers. Next to Mr. Palmieri is Mr. Paul Vitrano. He is the general counsel of the Motorcycle Industry Council. Seated next to Mr. Vitrano is Mr. Jim Gibbons. He is the president and CEO of Goodwill Industries International. Seated next to Mr. Gibbons is Mr. Dan Marshall, who is representing the Handmade Toy Alliance. And next to Mr. Marshall is one Ms. Rachel Weintraub, who is the director of product safety and is the senior counsel for the Consumer Federation of America. And next to Ms. Weintraub is Mr. Steve Levy. Mr. Levy is representing the American Apparel

and Footwear Association. And lastly, seated next to Mr. Levy is Mr. Rich Woldenberg. He is the chairman of Learning Resources Incorporated.

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

[Witnesses sworn.]

Mr. RUSH. Now we will allow the witnesses to have 5 minutes for opening statements and we will begin with Mr. Palmieri.

TESTIMONY OF ROSARIO PALMIERI, VICE PRESIDENT, INFRA-STRUCTURE, LEGAL AND REGULATORY POLICY, NATIONAL ASSOCIATION OF MANUFACTURERS; PAUL VITRANO, GENERAL COUNSEL, MOTORCYCLE INDUSTRY COUNCIL; JIM GIBBONS, PRESIDENT AND CEO, GOODWILL INDUSTRIES INTERNATIONAL; DAN MARSHALL, HANDMADE TOY ALLIANCE; RACHEL WEINTRAUB, DIRECTOR OF PRODUCT SAFETY AND SENIOR COUNSEL, CONSUMER FEDERATION OF AMERICA; STEVE LEVY, AMERICAN APPAREL AND FOOTWEAR ASSOCIATION; AND RICHARD WOLDENBERG, CHAIRMAN, LEARNING RESOURCES, INC.

TESTIMONY OF ROSARIO PALMIERI

Mr. PALMIERI. Thank you, Chairman Rush, Ranking Member Whitfield and members of the subcommittee, I appreciate the opportunity to testify today about the Consumer Product Safety Enhancement Act on behalf of the National Association of Manufacturers, or NAM.

We are the Nation's largest industrial trade association representing manufacturers in every industrial sector in all 50 States. We have a presence in every Congressional district, providing good high-paying jobs. The United States is the world's largest manufacturing economy, produces \$1.6 trillion of value, or 11-1/2 percent of GDP, and employs nearly 12 million Americans working directly in manufacturing.

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

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

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

Recently the CPSC staff has presented extremely problematic interpretations of words from the original Act that were not intended by Congress. In a first draft of rules meant to interpret the definition of children’s products, they took the plain language of the CPSC of “designed or primarily intended for children” and turned it into “designed and commonly recognized as intended for a group of users constituted by a significant proportion of children.” This could have resulted in items intended for general use to be inappropriately considered as children’s products and created new, unnecessary testing burdens, and also with the so-called 15-month rule they have turned the phrase “reasonable testing program” into anything but reasonable and are proposing to dramatically increase the testing burden for manufacturers. We encourage you to give clear direction and definition to what the CPSC must do to the amended exclusion process.

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

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

Thank you for your efforts to correct these and other unintended consequences of the Consumer Product Safety Improvement Act. I urge swift passage of the CPSEA to begin those corrections and to preserve critical manufacturing jobs.

Thank you, and I will be happy to answer any questions.
[The prepared statement of Mr. Palmieri follows:]



Testimony

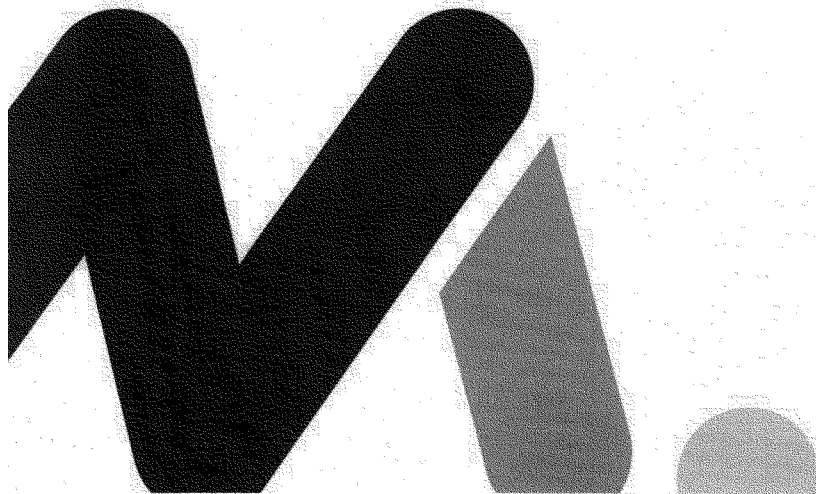
of Rosario Palmieri
Vice President

Infrastructure, Legal & Regulatory Policy
National Association of Manufacturers

*before the Subcommittee on Commerce, Trade & Consumer
Protection Committee on Energy & Commerce
U.S. House of Representatives*

on the Consumer Product Safety Enhancement Act

April 29, 2010



**COMMENTS OF THE NATIONAL ASSOCIATION OF MANUFACTURERS
BEFORE THE
SUBCOMMITTEE ON COMMERCE, TRADE & CONSUMER PROTECTION
COMMITTEE ON ENERGY & COMMERCE
U.S. HOUSE OF REPRESENTATIVES**

APRIL 29, 2010

Chairman Rush, Ranking Member Whitfield and members of the Subcommittee on Commerce, Trade & Consumer Protection, thank you for the opportunity to testify today about the Consumer Product Safety Enhancement Act (CPSEA) on behalf of the National Association of Manufacturers (NAM).

The NAM is the nation's largest industrial trade association, representing manufacturers in every industrial sector and in all 50 states. Manufacturing has a presence in every single congressional district providing good, high-paying jobs. The United States is the world's largest manufacturing economy. It produces \$1.6 trillion of value each year, or 11.5 percent of GDP and employs nearly 12 million Americans working directly in manufacturing. For more information about the NAM, visit www.nam.org.

The mission of the NAM is to enhance the competitiveness of manufacturers by shaping a legislative and regulatory environment conducive to U.S. economic growth, and to increase understanding among policymakers, the media, and the general public about the vital role of manufacturing to America's economic future and living standards.

My name is Rosario Palmieri and I am the Vice President for Infrastructure, Legal and Regulatory Policy for the NAM. I also chair the NAM CPSC Coalition which is a

group of consumer product manufacturers, component part manufacturers, sectoral manufacturing trade associations, and retailer associations that work together on product safety legislative issues and policy matters before the Consumer Product Safety Commission (CPSC). Today, I am testifying on behalf of the NAM only and not for the entire coalition.

On behalf of the NAM and the millions of men and women working in manufacturing in the United States, I wish to express support CPSEA.

Manufacturers of consumer products and their component parts are committed to producing safe products and ensuring a well-functioning and credible product safety regime – one that gives all stakeholders the confidence they need that products meet all applicable safety standards and regulations. This requires having clear and comprehensive rules, combined with a predictable and transparent enforcement regime, so that businesses can make decisions with a reasonable understanding of how to comply with those rules. Our members are responsible for millions of jobs in large and small businesses spread throughout the country. More importantly, our employees are also consumers, and we also demand that the products we buy – for our families and for ourselves – are safe and compliant.

In the wake of intolerable lapses in children's product safety, the Consumer Product Safety Improvement Act (CPSIA) was passed in 2008. The NAM supported provisions in that law that would give the CPSC more staff and financial resources to deal with the dramatic rise in imported consumer products and globalized supply chains. The implementation of that law, however, has not been smooth and significant unintended consequences have cost manufacturing jobs in industries producing safe products.

Starting in December 2008, the NAM in coalition with other manufacturing and retail associations began to petition the CPSC for relief and grants of exemption from the

lead content limits set to be imposed starting in February 2009. Our first petition requested immediate determinations of exclusions for inaccessible component parts of electronic products; exclusions for materials with low or no lead content like paper, textiles, and precious gems; and exclusions for materials with lead content above the limits that would present no risk of exposure or health effects like in recycled steel, brass, and glass.

In January 2009 some modest determinations of natural materials that could be excluded from testing were made in a proposed rule. The NAM and coalition members requested an emergency stay of the effective dates of the lead content limits on January 28, 2009. Without completed rules on inaccessibility, electronic parts, natural materials exclusions, or a petition process for exclusion of safe products with lead over the limits, millions of dollars worth of products on shelves would have been rendered unsalable and likely destroyed causing enormous economic dislocation. A few days later in early February 2009, an interim final rule was issued for inaccessible component parts and electronic products to render those exceptions immediately effective. And just days before full implementation of new lead content limits came into effect on February 10, a stay of enforcement was issued for testing and certification requirements with some limitations.

Although this appeared to limit some of the damage due to the lack of clarity in implementing this new law, much of the pain had already been felt. Retailers already had started to implement their own requirements and reviews of inventory and manufacturers had begun to eliminate safe products or halt production and distribution. A stay of enforcement might have been comforting, but the CPSC reminded everyone that while products did not have to be tested and certified they still had to comply with the new standards. The CPSIA also gave new enforcement powers to State Attorneys

General that were not bound by any stay issued by the agency. Many safe products were now illegal and the confusion only continued.

Unfortunately, a final rule on low lead determinations for natural materials was not made until August 2009. A process for petitioning the Commission for exclusions based on the safety of products that contained lead above the limits was not put in place until March. And throughout the summer of 2009 the CPSC denied every petition for exclusion that came before it because the words "any absorption" were interpreted to mean zero absorption.

A petition was filed by the writing instrument manufacturers to exempt ball point pens and was denied. A petition was filed by bicycle manufacturers to exempt children's bikes and was denied. A petition was filed by the fashion jewelry industry to exempt crystal and rhinestones and was denied. A petition was filed by the motorcycle, ATV, and snowmobile manufacturers to exempt youth model motorized vehicles and was denied. A process the CPSIA created to allow for safe products that did not meet the new lead content limits to continue to be sold failed to grant a single exclusion.

Many of these products, however, were granted a stay of enforcement while additional review was conducted. This also allowed manufacturers and retailers to continue to petition Congress for meaningful relief in the form of legislative changes to the CPSIA. All of that coupled with an extension of the stay of enforcement on testing and certification for another year brings us to the efforts of Chairman Waxman, Ranking Member Barton and other Democrats and Republicans to correct these unintended consequences in statute.

Multiple bills have been introduced in the House and Senate to grant specific exclusions for books and youth model motorized vehicles. Some bills have sought relief for thrift stores and the donated goods industry. And some bills have sought broader procedural changes to the exclusion process, testing requirements, or retroactive

application of the provisions. The NAM has supported many of these approaches to granting meaningful relief for manufacturers.

We applaud Chairman Waxman, Chairman Rush and their staff for the efforts so far to draft legislation that amends the CSPIA to fix these problems. We thank Ranking Member Barton and Ranking Member Whitfield and their staff for the efforts to address these challenges in legislation. We are hopeful that bipartisan cooperation will result in the swift adoption of legislation to allow manufacturers to continue to produce and sell safe children's products.

The CPSEA will begin to eliminate several of those unintended consequences I discussed earlier. Currently, products that present no risk to children from lead content like bicycles, motorcycles, ATVs, and snowmobiles have been effectively banned for sale. This legislation would amend the exclusion process to allow these products to once again be sold and be affordable. The NAM and its members appreciate the agreement of the Chairman and staff to further define critical words in the legislation such as "practicable" and "measurable adverse impact" in Committee Report language to give the CPSC the clear direction to apply reason, common sense, and sound analysis to decisions about granting exclusions. The CPSC must be able to review petitions for exclusion/exceptions immediately upon passage of this legislation. Any delay or necessity for the CPSC to write new rules to govern this process will put more manufacturing jobs at risk.

The unfortunate example of the misinterpretation of the words "any absorption" to mean zero under the current statute reminds us that maximum clarity is necessary to enable the CPSC to act according to Congress' intent. The word "practicable" has a dictionary definition that would not lend itself to facilitate the exclusion process. We appreciate that you are willing to clarify in Committee Report language that "practicable" has the same definition as it is applied in *Motor Vehicle Manufacturers Association of the*

United States, Inc. v. State Farm Mutual Insurance Co., 463 U.S. 29, 54-55 (1983). This means that a modification to a product requesting an exclusion/exception under this provision of the CPSEA would be deemed impracticable if the cost of compliance is unreasonable or excessive in contrast to the expected safety benefit. This grants the CPSC the authority and discretion to grant reasonable exceptions to the lead content limits. The further definition of "measurable adverse effect on public health or safety" to be consistent with the state-of-the-science on lead exposure and health effects consistent with the guidelines of the Food & Drug Administration and Centers for Disease Control will provide for the protection of children's health while allowing reasonable exceptions for safe products.

Additional language in that exception process, however, eliminates products that can be placed in the mouth or ingested despite the requirement that it not create an adverse impact on children's health. This provision is unnecessary to protect children from the harmful effects of lead.

Since passage of the CPSIA, concerns have been raised about the Act unintentionally and temporarily prohibiting certain phthalates in the plastic coating in electronic product wiring. This legislation recognizes that a component part can present no risk to children if it is inaccessible. It would extend similar treatment to inaccessible phthalates as the original Act did for inaccessible lead and relieve those parts from the content and testing requirements.

The legislation also recognizes the dramatic disruptions to the supply chain from retroactive application of lead content limits and applies the August 2011 reduction to 100 ppm lead (where technologically feasible) prospectively as recommended by the CPSC Commissioners.

This legislation also corrects the problem presented to charities in the donated goods industry. Testing and certification requirements for older, unique items resulted in

the destruction of many safe children's products that could have been put to good use. It will allow manufacturers and retailers to again donate safe children's products to charities.

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

Thank you for your efforts to correct these and other unintended consequences of the CPSIA. The NAM urges swift passage of the CPSEA to begin those corrections and to preserve critical manufacturing jobs.

Mr. Chairman, thank you for the opportunity to testify today and I will be happy to respond to any questions.

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Mr. RUSH. Thank you.

Mr. Vitrano, you are recognized for 5 minutes.

TESTIMONY OF PAUL VITRANO

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

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

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

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

First, the lead content in metal parts of ATVs and motorcycles poses no risk to kids. Second, everyone agrees that the key to keeping youth safe on ATVs and motorcycles is having them ride the right size vehicles. The ban has resulted in what CPSC correctly describes as "a more serious and immediate risk of injury or death" than any theoretical risk of lead exposure from these products. Finally, the unintended ban is significantly harming the economy and costing jobs, and if not corrected will result in about \$1 billion in lost economic value in the retail marketplace every year.

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

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

Throughout our discussions, we have encouraged the committee to include statutory language to provide CPSC with explicit guidance. In the absence of such language, however, it is critical that there be report language accompanying the bill that defines the terms “practicable” and “no measurable adverse effect” in section 2.

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

[The prepared statement of Mr. Vitrano follows:]

TESTIMONY OF PAUL C. VITRANO
Subcommittee on Commerce, Trade, and Consumer Protection
Committee on Energy and Commerce
United States House of Representatives
April 29, 2010

Chairman Waxman, Chairman Rush, Ranking Member Barton, Ranking Member Whitfield and distinguished Members of the Subcommittee on Commerce, Trade, and Consumer Protection, thank you for the opportunity to testify this morning on the need for amendments to the Consumer Product Safety Improvement Act. My name is Paul Vitrano. I am the General Counsel of the Motorcycle Industry Council. MIC is a not-for-profit, national industry association representing nearly 300 manufacturers and distributors of motorcycles and all-terrain vehicles; motorcycle, ATV and recreational off-highway vehicle parts and accessories; and members of allied trades such as insurance, finance and investment companies, media companies and consultants.

The CPSIA was intended to protect children from ingesting lead from toys. However, the lead provision has had unintended consequences and I am here to testify about one of them. The CPSIA has effectively banned the sale of age-appropriate youth ATVs and motorcycles because of the lead content of certain components. As a result of its broad reach, the Act has inadvertently crippled an industry unrelated to the toy manufacturers that were the intended target of the lead provision. In addition, the resulting ban has resulted in unsafe situations for youth off-highway enthusiasts.

Therefore, the MIC urges the Committee to pass the Consumer Product Safety Enhancement Act (CPSEA) with Section 2 included to stop this unintended ban. Moreover, the CPSEA and/or any other legislative solution should include specific language that provides clarity to the Consumer Product Safety Commission (CPSC) regarding Congress' intent to stop this ban.

It is estimated that over 13.7 million Americans enjoy riding off-highway motorcycles and over 35 million enjoy riding ATVs. Safety of our riders – particularly our youngest riders – is a top priority of the powersports industry. Vehicles, helmets and other gear and accessories are specially designed for youth riders to allow them to safely enjoy this family-friendly form of outdoor recreation.

In February 2009, however, ATVs and motorcycles designed and primarily intended for youth riders aged 6 to 12 became banned hazardous substances under the CPSIA because small amounts of lead – that pose no risk to youth – are imbedded in metal parts of those vehicles to enhance the functionality of those components.

As you know, the CPSC concluded that the language of the CPSIA prevented it from making common-sense decisions and resulted in the CPSC denying the powersports industry's petitions for exclusion from the lead content provision. The exclusion was denied despite the fact that the CPSC's own staff acknowledged that there was no measurable risk to children resulting from lead exposure from these products.

The CPSC tried to temporarily address the ban by issuing a stay of enforcement of the CPSIA's new lead content limits in May 2009. Unfortunately, this stay of enforcement has proven unworkable. Due to the risks of selling under the stay, many manufacturers and dealers are no longer selling youth model off-highway vehicles and there is now a limited availability of these products for consumers. Half of the major ATV manufacturers are no longer selling youth models despite the stay. Sales of the smallest youth ATVs have decreased by 85% more than overall ATV sales during the stay.

The CPSC has acknowledged that the ban on youth off-highway vehicles creates a compelling safety issue because it likely will result in children 12 years of age and younger riding larger and faster adult-size vehicles. For example, CPSC studies show almost 90% of youth injuries and fatalities occur on adult-size ATVs. Again, the CPSC's staff scientists acknowledge that the presence of lead in metal alloys in these youth models – needed for functionality, durability and other reasons that are safety critical to the components – does not present a health hazard to children. The Commission also acknowledges that children riding these vehicles only interact with a limited number of metal component parts that might contain small amounts of lead, like brake and clutch levers, throttle controls, and tire valve stems.

As a result, for over one year, MIC, its members, their dealers and many of the millions of Americans who safely and responsibly ride their off-highway motorcycles and ATVs with their children have urged Congress to amend the CPSIA to stop this unintended ban on youth motorized recreational vehicles. Off-highway vehicle stakeholders have sent over one million electronic messages and thousands of hand signed letters and made numerous calls and personal visits to Capitol Hill to advocate for a legislative solution to the ban.

Since the CPSIA ban took effect on February 10, 2009, we collectively have urged Congress to act for three important reasons:

First, the lead content in metal parts of ATVs and motorcycles poses no risk to kids. Experts estimate that the lead intake from kids' interaction with metal parts is less than the lead intake from drinking a glass of water.

Second, everyone agrees that the key to keeping youth safe on ATVs and motorcycles is having them ride the right sized vehicle. The CPSIA has unintentionally put kids at risk because youth ATV and motorcycle availability is limited. Unavailability of youth models results in what CPSC has described as a "more serious and immediate risk of injury or death" than any risk from lead exposure from these products.

Finally, the CPSIA is unnecessarily hurting the economy and jobs when everyone is trying to grow the economy and create jobs. MIC estimates that a complete ban on youth model vehicles would result in about \$1 billion in lost economic value in the retail marketplace every year.

In recognition of the need to end the unintended ban on youth ATVs and motorcycles, CPSC Chairman Tenenbaum and the other Commissioners unanimously asked Congress to provide the Commission with flexibility to grant exclusions from the CPSIA lead content provisions,

specifically noting the need to address youth ATVs and motorcycles. The Energy and Commerce Committee's leadership has responded by proposing the CPSEA and the Act's accompanying report. We appreciate the efforts that you are undertaking to address the unintended consequences of the CPSIA and recognize that it has been difficult to address these issues given the varying interests involved in this process.

As Representative Rehberg stated when introducing his bill to stop the ban on ATVs and motorcycles, "the original legislation Congress passed was meant to keep kids safe from lead content in toys. Ironically, the overreaching enforcement wound up putting kids at risk by forcing them to use larger more dangerous machines that are intended only for adults."

We believe that Congress never intended to ban youth model motorized recreational vehicles when it passed the CPSIA. We already have submitted evidence to CPSC sufficient to obtain exclusions for youth ATVs and motorcycles under the proposed language of the CPSEA. Ultimately, however, it is the CPSC that will interpret that language to determine whether or not to grant an exclusion for the metal parts of ATVs and motorcycles.

That is why the industry is strongly urging the Committee to provide as much clarity as possible in developing a legislative solution so that the CPSC is left with no doubt about Congress' intent to ensure the continued availability of youth model motorized recreational vehicles. Throughout our discussions, we have encouraged the Committee to include statutory language to provide the CPSC with explicit guidance. Although the Committee has not included this language in the proposed amendment, we do support the inclusion of report language accompanying this Act that defines the words "practicable" and "no measurable adverse effect."

The powersports industry supports Section 2 of the CPSEA. It also would welcome additional clarity either to expressly exclude our products – never intended to be included under the CPSIA in the first place – or to provide explicit guidance to CPSC to grant exclusions for youth ATVs and motorcycles. We urge Congress to complete its work, pass this bill and help solve this unintended consequence of the CPSIA once and for all.

Thank you.

Mr. RUSH. The Chair now recognizes Mr. Gibbons for 5 minutes.

TESTIMONY OF JIM GIBBONS

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

Goodwill is made up of 159 local community-based organizations throughout the United States, and many of you are familiar with Goodwill and our 2,400 stores. Our unique business model that leverages a donated good retail model to create employment employees for those 90,000-plus people and to serve those two million people throughout America is a unique model that really relies on the generosity of individuals to donate to Goodwill and each unique donation is a unique product that then enters into the retail space and provides and is transformed into both employment and resources to fund employment, training and other social services at the very local level. But the uniqueness of our model and that of other human service organizations that use donated goods retail model to fulfill their mission such as the Salvation Army, and Goodwill and the Salvation Army are the two largest human service providers that use a donated goods retail model, are totally tied to this one-at-a-time contribution, and for Goodwill, that is 60 million donation drop-offs a year, and because of that uniqueness and the uniqueness of every donation, we support section 3 of the Consumer Product Safety Enhancement Act because we think it truly drives the clarity in the legislation to allow us and other organizations like us to work with the CPSC in a very effective and meaningful way for implementation.

We have worked closely with CPSC over the years, and even before the requirements were placed on us legislatively for the recall process, we worked hand in hand with CPSC for them to train our people, to work with our people on compliance so that we build a recall capability strongly throughout our network, and to demonstrate and to really act on our values of protecting the families that shop at our stores and the people that we serve. That commitment to safety along with section 3 of the Consumer Product Safety Enhancement Act together we believe will allow the proper clarity for us to provide safety, to work with the Consumer Product Safety Commission in a very effective way, and to serve a growing need in communities because of today's economy where more and more people are knocking on our doors in your communities and communities around the country for services, whether that is due to dislocation or an industry leaving their neighborhood or for the young woman who is a mother of three with a high school education that

needs those services so she can skill up to be a producing member of our communities.

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

So thank you very much and I will gladly answer any questions.
[The prepared statement of Mr. Gibbons follows:]

**Testimony Submitted for the Record
U.S. House of Representatives
House Subcommittee on Commerce, Trade,
and Consumer Protection
April 29, 2010**

**Presented by
Jim Gibbons
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Testimony Submitted for the Record
U.S. House of Representatives
House Subcommittee on Commerce, Trade, and Consumer Protection
April 29, 2010

Mr. Chairman, Ranking Member, and members of the Subcommittee, on behalf of Goodwill Industries International® (GII), thank you for this opportunity to provide testimony about the *Consumer Product Safety Enhancement Act of 2010*. Goodwill appreciates the Committee and its staff for sharing recent discussion drafts of the *Consumer Product Safety Enhancement Act*. Goodwill believes that the draft includes effective provisions that would address Goodwill's concerns about retroactively applying the CPSIA's sales ban on children's products manufactured before the law's implementation. Goodwill believes that the provisions in Section 3, pertaining to the selling of used children's products, would allow Goodwill to support its mission through the sale of used children's apparel within the letter and spirit of the law.

Goodwill Industries International (GII) represents 159 local and independent Goodwill agencies in the United States that help people with barriers to employment to participate in the workforce. One of Goodwill Industries' greatest strengths continues to be its entrepreneurial approach to sustaining its mission. In 2009, the Goodwill network raised nearly \$3.7 billion through its retail, contracts, and mission services operations. Nearly 83 percent of the funds Goodwill raised in 2009 were used to supplement government investments. Today more than ever people rely on Goodwill. In fact, in 2009, Goodwill collectively served almost 2 million people. This number represents a 26 percent increase compared to 2008. With the economy continuing to be sluggish, we expect that we will continue to see the number of people who turn to Goodwill for assistance to increase dramatically.

The roots of today's Goodwill began as a simple idea in 1902 when Rev. Edgar Helms set out to help poor immigrants in Boston's South End by collecting clothes and household items from wealthier Bostonians to provide clothing and household items for the struggling immigrants. He discovered, to his surprise, that the immigrants were too proud to simply accept the items. So he took his idea a step further by enlisting volunteers to repair, clean, and sell the items at reasonable prices. He used the revenue to provide wages to the workers – and the first Goodwill store was born.

Especially during such trying economic times, Goodwill is very proud of its long history of helping people to find jobs and advance in careers. As the nation struggles to recover from the worst recession since the Great Depression and unemployment stubbornly hovers near 10 percent, Goodwill remains committed to partnering with stakeholders at the federal, state, and local levels by contributing the resources and expertise of local Goodwill agencies in support of public efforts and investments.

Goodwill's first priority is and has always been the safety of its customers and the people it serves. Goodwill has a long history of working in good faith with the Consumer Product Safety Commission (CPSC) to prevent unsafe products from being sold in its stores. Local Goodwill retail professionals check the CPSC's product recall lists to identify any recalled and donated products. Those found to have been recalled are not placed on stores' shelves for sale and are taken out of circulation. In addition, agencies avoid selling known high-risk items, such as metal jewelry and painted toys. We continue to work closely with the CPSC to pursue our common goal of preventing people from purchasing unsafe products. By continuing these efforts, we

believe amending the CPSIA – by exempting the sale by charitable organizations of used children’s clothes from the CPSIA’s sales ban – would allow Goodwill stores to sell used children’s apparel while protecting our customers’ children.

I’d like to spend a moment of our time to discuss Goodwill’s business model, since it is very different than that of a traditional retailer with a national footprint. First, it is very important to keep in mind that Goodwill’s footprint in the U.S. is actually 159 local and independent community-based organizations’ footprints that collectively make up the Goodwill network in the U.S. Each local Goodwill agency’s autonomy allows it to be a true community stakeholder and partner. For example:

- In 2009, the Chicago Goodwill provided services for 1,233 individuals, with 255 placed into employment at an average wage of \$9.40 per hour. Goodwill is investing in two new Workforce Connection Centers—one in Englewood, the other in the West Loop—to provide free, self-directed employment services.
- In 2009, the Los Angeles Goodwill invested millions of its own earnings to subsidize one-stops that serve over 59,000 people. Over 4,000 went to work to support their families and improve the economic well being of their communities.
- Goodwills in Dallas and Fort Worth helped over 36,000 people enhance their economic opportunities with job training in office technology, accounting, and healthcare; paid transitional jobs with supports; job placement; and other services.

- The Detroit Goodwill engaged over 28,000 people in improving their basic academic skills, computer training, earning while they learned in transitional jobs, and job placement.

Second, the nature of the donated goods business means that most of Goodwill's products are each individually supplied through the generosity of people who donate unwanted clothes, household items, and furnishings. Inventory control systems that allow national retailers to purchase inventory; plan for its sale; and provide product specifics and information simply do not exist in the donated goods retail business. Before donated products can be placed for sale in a Goodwill store, they must be sorted and their price must be determined. In addition, our retail professionals check product recall lists to identify and dispose of any donated items that have been recalled – therefore ensuring that these dangerous items are removed from the consumer marketplace.

We believe the nature of the donated goods charity model supports the need for legislation to exempt human service organizations that sell used children's apparel, among other products, from the CPSIA's retroactive sales ban. Goodwill absolutely agrees that children should not be exposed to products that have dangerous lead levels. This is a moral value Goodwill holds, yet it also makes good business sense. Doing anything less would have enormous potential to damage the Goodwill brand, thus hindering Goodwill's ability to provide the employment and training services to people with employment challenges.

Goodwill has worked in collaboration with the CPSC to develop constructive solutions to this important issue, exploring potential courses of action that that would allow local Goodwill

agencies to demonstrate a good faith effort to comply with the new law, while selling used children's products at a reduced risk to our customers and our agencies. The result was an enhanced partnership with the CPSC to educate the public, and inform and train our retail professionals. Goodwill believes that these efforts demonstrate the gold standard of good faith on the part of both Goodwill and the CPSC toward accomplishing our mutual goal of protecting children. Goodwill also recognizes that the long-term solution requires Congress to take action.

Conclusion

Goodwill deeply appreciates this Subcommittee's willingness to develop draft legislation that would address the CPSIA's unintended consequences on charitable organizations, such as Goodwill, that resell donated items, including children's products, to support the delivery of mission services. Goodwill is grateful that Section 3 of the current discussion draft of the *Consumer Protection Safety Enhancement Act* directly reflects comments we recently transmitted to the Committee. Goodwill also believes that these provisions would allow Goodwill stores to support Goodwill's mission through the sale of used children's apparel within the letter and spirit of the law.

Members of the Subcommittee, again I thank you for the opportunity to discuss these concerns with you, and for pausing briefly to hold this hearing with Goodwill and other stakeholders to ensure that the final bill protects children from harm while enabling local Goodwill agencies to support their efforts to annually serve nearly 2 million people in local communities nationwide.

Mr. RUSH. The Chair now recognizes Mr. Marshall for 5 minutes.

TESTIMONY OF DAN MARSHALL

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

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

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

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

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

We are willing and able to work with the CPSC through this additional rulemaking process and appreciate the opportunity we have had already to work with them but we feel that more flexible language would greatly simplify the standard. In particular, we would like the committee report language, or preferably the bill itself, to stipulate, one, that small batch toy makers be exempted from third-party testing for ASTM compliance. These destructive tests cost \$200 to \$350 per toy, which is a significant impediment to small batch toy makers; two, that the CPSC allow the use of XRF testing as an alternative testing method for lead in paint, lead in substrate and other mineral content standards; three, that EN-71 testing certification qualify as an alternative testing method.

This provision is critical for preserving access to quality European children's goods and removing the regulatory trade barrier created by the CPSIA. And four, that small batch manufacturers be fully exempted from batch labeling requirements. Even with these stipulations, we do fear that non-business hobbyists and crafters will lack the resources and understanding to fully comply with the law.

Our second primary concern with the bill pertains to the definition of small batch manufacturer. In particular, we are concerned about the \$1 million company revenue cap. We feel that this limit should either be removed altogether or should be based only on income generated by the manufacturer or importer of children's products without including other unrelated business income. If this limit is not changed or removed, we fear that this committee will continue to hear from constituents wondering why specialty products like adaptive toys for children with disabilities are no longer available.

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

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

[The prepared statement of Mr. Marshall follows:]



Handmade Toy Alliance
House Commerce Subcommittee on Commerce, Trade, and Consumer Protection Testimony
April 29, 2010

Hello. My name is Dan Marshall. I am the Founder and Vice President of the Handmade Toy Alliance. The HTA represents 435 small businesses affected by the unintended consequences of the CPSIA. I would like to submit this statement, two letters, and our issue statement to the official record.

My wife Millie and I own Peapods Natural Toy Store in St. Paul, Minnesota. For the past 12 years, we've supported our family selling cloth diapers, baby carriers, and wood toys, many of which are handcrafted by artisans in the US and Europe. I am here today with fellow HTA Board members Jolie Fay of Skipping Hippos in Oregon and Randy Hertzler of euroSource in Pennsylvania.

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

The deadline for third party testing is February 10 of next year. After that point, our member businesses face extinction. Although many of us have already paid for XRF testing of our products, we simply cannot afford to pay for the services of a CPSC-certified lab.

For that reason, The HTA has endorsed the Consumer Product Safety Enhancement Act. The provisions of the bill which allow alternative testing methods for small batch manufacturers are imperative to the survival of our members. We hope that it can proceed through this committee, the House and the Senate as quickly as possible.

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

We are willing and able to work with the CPSC through this additional rulemaking process, but feel that more flexible language would greatly simplify the standard. In particular, we would like committee report language or, preferably, the bill itself, to stipulate:

1. That small batch toymakers be exempted from third party testing for ASTM compliance. These destructive tests cost \$200 - \$350 per toy, which is a significant impediment to small batch toymakers.
2. That the CPSC allow the use of XRF testing as an alternative testing method for lead in paint, lead in substrate, and other mineral content standards.
3. That EN-71 testing certification qualify as an alternative testing method. This provision is critical for preserving access to quality European children's goods and removing the regulatory trade barrier created by the CPSIA.
4. That small batch manufacturers be fully exempted from labeling requirements.

Even with these stipulations, we fear that non-business hobbyists and crafters will lack the resources and understanding to fully comply with the law.

Our second primary concern with the bill pertains to its definition of small batch manufacturer. In particular, we are concerned about the \$1 million company revenue cap. We feel that this limit should either be removed altogether or should be based only on income generated by the manufacture or importation of children's products without including other unrelated business income. If this limit is not changed or removed, we fear that this committee will continue to hear from constituents wondering why specialty products like adaptive toys for children with disabilities are no longer available.

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

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

A full list of our 435 member businesses can be found at <http://www.handmadetoyalliance.org>.



April 20, 2010

To:

The Honorable Bobby Rush
 Chairman, Subcommittee on Commerce, Trade and Consumer Protection
 2125 Rayburn House Office Building
 Washington, D.C. 20515

The Honorable Ed Whitfield
 Ranking Member, Subcommittee on Commerce, Trade and Consumer Protection
 2322A Rayburn House Office Building
 Washington, D.C. 20515

The Honorable Henry Waxman
 Chairman, Committee on Energy & Commerce
 2125 Rayburn House Office Building
 Washington, D.C. 20515

The Honorable Joe Barton
 Ranking Member, Committee on Energy & Commerce
 2322A Rayburn House Office Building
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CC:

Robin Appleberry, House Energy and Commerce Committee
 Brian McCullough, House Energy and Commerce Committee
 Inez Tenenbaum, CPSC Chair
 Nancy Nord, CPSC Commissioner
 Thomas Moore, CPSC Commissioner
 Anne Northup, CPSC Commissioner
 Robert Adler, CPSC Commissioner

Re: Endorsement of the CPSIA Technical Correction Bill

To the Leadership of the House Commerce Committee:

Thank you for continuing to include us in the discussion of the CPSIA technical correction bill. We greatly appreciate being included in this important process and hope that we can continue to be an active participant in correcting some of the unintended consequences of the CPSIA.

At this point in time, we would like to offer our endorsement of the CPSIA Technical Correction Bill, known as the Consumer Product Safety Enhancement Act of 2010. We recognize that a great deal of discussion, time and effort has gone into the current draft of the amendment and feel that it will offer much of our membership significant relief from many of the burdens placed on them by the CPSIA. Our endorsement includes our desire for the bill to move through committee and to the House floor for a vote in the hopes to eventually be signed into law.

We truly appreciate the time and energy the committee has spent with us exploring solutions to meet the needs of our small businesses. We are hopeful that the process begun by this bill will ensure the continued viability of the small businesses we represent and the availability of the quality children's products they produce.

While we support this amendment and are happy with many of the provisions it puts forth, we would like to reiterate our concerns about the small batch company revenue cap. While our preference continues to be to remove the overall company revenue cap altogether, we appreciate greatly the committee's willingness to raise this limit to \$1 million. This limit will help to include many more children's product small batch manufacturers, retail store owners and specialty importers. We do feel that a fairer and more logical approach would be to base this income limit only on income generated by the manufacture or importation of children's products without including other unrelated business income.

We also recognize that much of our continued work will be in our interactions with the CPSC to properly implement this amendment in a way that best serves our membership and would therefore like to have the following report language attached to this bill to support our efforts.

Committee Report Language

We would like to see the following statements in the report language regarding alternative testing methods for small batch manufacturers:

- 1 The intention of this bill is for the CPSC to create or approve alternate testing methods for as many types of products as possible so as to reduce the compliance burden for as many small batch manufacturers as possible.
- 2 The intent of the committee is for the CPSC to allow the use of XRF testing as an alternative testing method for lead in paint and lead in substrate with the expectation that the CPSC will need to define protocols and requirements for such testing.
- 3 The CPSC should evaluate risk factors including the age which a product is intended for and the setting in which a product will be used. Toys intended for ages 6-12 and educational materials intended for use under adult supervision are two examples of product categories which should require less scrutiny and should therefore qualify for alternate testing requirements. We would appreciate it if the committee report specifically

referenced these two examples.

- 4 The issue of EU harmonization, while not directly addressed by this bill, should be accommodated by allowing EN-71 testing certification as an alternative testing method.
- 5 The CPSC should look at ways that flexibility in rule making can be made based on risk analysis.
- 6 We recognize that there are specific ASTM testing protocols that do not currently have means to be tested for outside of an accredited laboratory, but we would like the report language to specifically refer to ASTM standards and instruct the CPSC to provide small batch manufacturers with as much latitude as possible to use alternative testing methods for ASTM standards.

In conclusion, we wish to reiterate our appreciation for being included in this process. We hope that the committee will be able to move forward through its process and present this technical correction on the House floor. We feel that, although not perfect, this amendment will bring about a logical and meaningful correction to the CPSIA which should serve to preserve small businesses without compromising safety.

On behalf of the 431 small business members of the Handmade Toy Alliance, we thank you again for your attention to this important issue.

Respectfully,

The Handmade Toy Alliance

savehandmadetoys@gmail.com
www.handmadetoyalliance.org.

Board members:

Cecilia Leibovitz, Craftsbury Kids, VT	Dan Marshall, Peapods Natural Toys, MN
Jill Chuckas, Crafty Baby, CT	Mary Newell, Terrapin Toys, OR
Jolie Fay, Skipping Hippos, OR	Heather Flottmann, Lilliputians, NY
Rob Wilson, Challenge & Fun, MA	John Greco, Greco Woodcrafting, NJ
Kate Glynn, A Child's Garden, MA	



January 14, 2010

To:

Ms. Inez Tenenbaum
Chair, Consumer Product Safety Commission
c/o Matt Howsare, mhowsare@cpsc.gov

Ms. Nancy Nord
CPSC Commissioner

Mr. Robert Adler
CPSC Commissioner

Mr. Thomas Moore
CPS Commissioner

Ms. Anne Northup
CPSC Commissioner

RE: CPSC Recommendations to Congress for Improving the Consumer Product Safety
Improvement Act (CPSIA)

Dear Honorable Commissioners:

As the Commission prepares its report to Congress regarding its suggestions for improvements needed to the CPSIA, we would like reiterate our concerns with the CPSIA and how it affects our 403 member businesses who specialize in small batch children's products.

We appreciate the opportunities the Commission has granted us to share our concerns about the CPSIA. As we wrote in our letter dated October 25, 2009, our fundamental belief is that the CPSIA focuses resources on processes rather than safety and needlessly hampers the Commission's ability to make product safety determinations based on risk. Although the Commission has been able to address some of our concerns, including the need for exempting natural materials and allowing component testing, many other common-sense reforms require Congressional action.

The following is a list of legislative changes to the CPSIA that our member businesses need in order to survive:

1. Grant the CPSC authority to use risk analysis to allow enforcement flexibility of third party testing requirements and hazardous content limits. High risk items like paint or metal jewelry should be held to higher verification standards than low-risk products like bicycle valve stems and brass zippers on children's garments.
2. The definition of what is a children's product should be changed to items intended for children 6 years or younger, except where the CPSC identifies a product requiring a higher age limit based on risk analysis.
3. Educational products intended for use in classroom or homeschool environment under the direct supervision of an adult should be exempted from the definition of a children's product.
4. Harmonize CPSIA standards with the European Union's EN-71 standards to remove the regulatory trade barrier which the CPSIA created between the US and the EU. This would include changing the lead content standard from an untenable total lead standard to an absorbable lead standard.
5. Exempt manufacturers who make less than 10,000 units per year from all third party testing requirements and allow them to comply instead with the 'reasonable testing program' requirements which apply to manufacturers of non-children's products under the CPSA. This would protect small batch manufacturers and specialty product manufacturers, including companies that make adaptive products for children with disabilities. These manufacturers would not be exempted from the standards themselves, only from the third party verification requirements.
6. Tracking labels should be voluntary except for durable nursery items and products which are most likely to be passed down to younger siblings or resold where the CPSC's risk analysis determines that tracking labels would be most likely to prevent harm. Manufacturers who choose to implement tracking labels would benefit from a lesser burden in the event of a recall.
7. Revisit the retroactivity of the CPSIA based on a risk-based approach with the goal of preserving the market for second-hand children's products.
8. Inaccessible components, metals, minerals, hard plastics, natural fibers and wood should be exempted from phthalate testing.
9. Re-calibrate CPSIA penalties based on the scale and potential harm of any violation to protect small business owners' access to financing and insurance.
10. Allow the use of XRF technology to verify lead content in substrates.
11. Establish rules and procedures protecting manufacturers from false claims in the public

incident database.

12. Require and fund an ombudsperson within the CPSC to help communicate with small businesses. Such an ombudsperson would serve to expedite answers to questions and give input to CPSC staff about policy decisions.

13. Require the CPSC to implement an education strategy for consumers. Media attention in the wake of mass market toy recalls has improperly skewed the public's understanding the primary sources of lead poisoning, which remain lead in house paint, dirt near highly-travelled roads, and workplace exposure. Lead awareness campaigns from the 1970s and 80s have now been forgotten by today's parents even though the same problems persist. The CPSC should take steps to re-educate the public about the highest-risk sources of lead exposure.

We strongly believe that all these changes, if implemented, would protect small businesses, maintain a vibrant selection of children's products in the marketplace, reduce compliance costs, create a more effective CPSC, and promote common sense without sacrificing safety.

On behalf of our 403 member small businesses, we appreciate your willingness to consider our concerns. We are hoping to preserve the long American tradition of hand-crafted children's goods while ensuring safety for the children who enjoy them.

Respectfully,

The Handmade Toy Alliance

A listing of all 403 business members of the Handmade Toy Alliance is available at <http://www.handmadetoyalliance.org/members-of-the-handmade-toy-alliance>

Board members:

Cecilia Leibovitz, Craftsbury Kids, VT
 Dan Marshall, Peapods Natural Toys, MN
 Jill Chuckas, Crafty Baby, CT
 Mary Newell, Terrapin Toys, OR
 Jolie Fay, Skipping Hippos, OR
 Heather Flottmann, Lilliputians, NY
 Rob Wilson, Challenge & Fun, MA
 John Greco, Greco Woodcrafting, NJ
 Kate Glynn, A Child's Garden, MA

cc:

Senator Jeff Merkley, Senator John Kerry, Senator Amy Klobuchar, Senator Christopher Dodd



Save Small Businesses from the CPSIA

The Problem The Consumer Product Safety Improvement Act (CPSIA) is overly broad in its focus and puts unrealistic testing costs on small businesses that were already providing safe products. The result is a decreased capacity to protect consumers, and severe financial hardship for small business.

What should Congress do?

The CPSC has indicated that they are unable to fix the unintended consequences of the CPSIA without a technical amendment from Congress. We are seeking:

1. **Component-based testing** so that suppliers of our raw materials could provide the children's product manufacturer with certification of compliance within the law, which would eliminate the need for redundant and costly unit-based testing. Safety would be improved by driving compliance upstream in the supply chain, catching non-compliant materials prior to distribution, practically eliminating the chance that any given finished unit would be non-compliant.
2. **Exemptions from testing** for materials known by science not to pose a lead or phthalate contamination hazard, such as fabrics, certified organic materials, and many natural materials such as wood, paper and bamboo. Manufacturers would be spared the costs of testing these materials, and testing labs and the CPSC could better focus their efforts on high-risk materials such as metals and paints.
3. **Harmonization with European Standards.** Accepting the stringent EU standards in the United States as sufficient for the requirements of CPSIA would save countless US businesses that import from or export to the EU from the costs of performing multiple tests. US and EU regulators would be able to work together to oversee the global marketplace.
4. **Exempt permanent batch labeling** of products for hand crafted and micro businesses that have small batch runs. While permanent labeling may be efficient with large runs of plastic products, it would be extremely difficult and cost prohibitive for small batches made from wood or fabric.
5. **Revisit the retroactivity** of the CPSIA based on a risk-based approach.

Fixing the CPSIA now before any more law-abiding and well-intentioned small companies are forced out of business will preserve the integrity of the original legislation, prevent political backlash, and refocuses the efforts of the CPSC to fulfill the law's original purpose. To date, some businesses have discontinued their children's lines or have closed altogether. Libraries are sequestering children's books printed prior to 1985. Thrift stores have removed children's products from their shelves. Several European toy manufacturers have pulled out of the US market. ATV and motor bike manufacturers and storefronts have removed inventory intended for children 12 and under, including replacement parts. Without common sense changes to the CPSIA, the tragic result will in fact not be increased product safety, but the closing of small businesses that were already providing safe products.

About the Handmade Toy Alliance

The Handmade Toy Alliance (www.handmadetoyalliance.org) represents small toymakers, children's product manufacturers, and independent retailers whose businesses cannot survive without repairing the CPSIA. We believe that these changes will not only help our businesses, but many other companies large and small who have been caught in a snarl of unintended consequences, affecting everything from apparel to educational materials for children with disabilities. We need common sense reform to preserve the heart and soul of American toys and children's products.



HTA Member List
April 27, 2010

Abracadabra	Toymaker	Oregon
A Child's Dream Come True	Children's Product Retailer	Idaho
A Child's Garden	Toy Retailer	Massachusetts
Acorn Cottage Crafts	Children's Product Manufacturer	Florida
AHA(T)2 - All Harwood All the Time	Toymaker	Nebraska
All the Numbers Handmade	Children's Product Manufacturer	Massachusetts
American Toy LLC	Toymaker	Oregon
Amerikid	Children's Product Retailer	Michigan
Amish Avenue	Toy Retailer	Ohio
A Repeat Performance	Children's Product Retailer	Oregon
Arlene M. Coleman	Children's Product Manufacturer	Pennsylvania
Arm Bibs	Children's Product Manufacturer	Oregon
Art's Wood N Things	Toymaker	Vermont
A Toy Garden	Toy Retailer	California
Aunt Cindy's Attic	Children's Product Manufacturer	Indiana
Auntie Jill	Toymaker	Vermont
Aunty Em Diapers	Children's Product Manufacturer	Colorado
Baby Bean Vintage Daywear	Children's Product Manufacturer	Texas
Baby Leo Designs	Children's Product Manufacturer	California
Baby Sprout Naturals	Children's Product Retailer	California
Babyworks	Children's Product Retailer	Oregon
Bagnall Woodworks	Toymaker	Texas
Bama Babies & Birthdays	Children's Product Retailer	Alabama
Barclay Wood Toys & Blocks, Inc.	Toymaker	Indiana
Basket of Gifts	Toymaker	Maryland
Bazbies by Gigi	Toymaker	Utah
B.Bo & Me	Children's Product Manufacturer	Oregon
Beanblossoms	Children's Product Retailer	Kansas
Be Here Soon	Children's Product Retailer	Wisconsin
BEKA, Inc.	Toymaker	Minnesota
Bella Luna Toys	Toy Retailer	Maine
Better for Babies	Children's Product Manufacturer	Georgia
Birdsong Bows	Children's Product Manufacturer	Indiana
blabla	Children's Product Manufacturer	Georgia

Blessed Baby Boutique	Toy Retailer	Maine
Blossom Toys	Toymaker	Massachusetts
Blue Sky Rocket	Children's Product Retailer	Texas
Blynken and Nod	Children's Product Manufacturer	Utah
Bridgman Pottery	Concerned Citizen	Tennessee
Bright Minds Designs	Children's Product Manufacturer	Maryland
Bright Penguin	Toy Retailer	Texas
Brittany's Boutique	Children's Product Manufacturer	Missouri
Bruce Wolk, author of Made Here, Baby!	Journalist / Blogger	
Bubble Love	Children's Product Manufacturer	New Jersey
Buchman Toymakers	Toymaker	New York
BuggaLove	Children's Product Manufacturer	Pennsylvania
Bunny & Bee	Children's Product Manufacturer	California
Busy Little Elf	Toymaker	Ohio
Butterscotch	Children's Product Retailer	Oregon
Camden Rose Toys	Toymaker	Michigan
Carseat Couture	Children's Product Manufacturer	Kansas
Cars From Papa	Toymaker	California
Cate & Levi	Toymaker	Canada
Chalais Associates	Toymaker's Rep	California
Challenge and Fun	Toy Importer	Massachusetts
Channel Craft	Toymaker	Pennsylvania
Chapter One Organics	Children's Product Manufacturer	Illinois
Charli'z	Children's Product Manufacturer	
Chasing Birdies	Toymaker	Texas
chic crafty mom	Children's Product Manufacturer	Illinois
Chiossone & Co.	Children's Product Manufacturer	New York / Massachusetts
Chocolate Soup	Toy Retailer	New Jersey
Chubbas 'n Boop	Toymaker	Colorado
Chubby Cheek Boutique	Children's Product Manufacturer	Wisconsin
CircaToys, LLC	Toymaker	North Carolina
Claude Rothman	Concerned Citizen	Massachusetts
CLAUSson Toys	Toymaker	California
Clementine NW	Toy Retailer	Oregon
ColorMe Company	Toymaker	New Jersey
Community Homestead	Toymaker	Wisconsin
Conscious and Conscience Creations	Toymaker	North Carolina
Cool Mom Picks	Journalist / Blogger	
Country Classics	Children's Product Manufacturer	Utah
Craftsbury Kids	Toy Retailer	Vermont
Crafty Baby	Children's Product Manufacturer	Connecticut
Crafty Geek Mama	Journalist / Blogger	Ohio
Created by Kate	Children's Product Manufacturer	Georgia
Creative Brains	Toy Retailer	Texas

Crow Hill Crafts	Toymaker	New Jersey
Cubic Dissection	Toymaker	North Carolina
Cuckoo Boo	Toymaker	North Carolina
Cuddlebee	Children's Product Manufacturer	Maine
Cuddly Rigor Mortis, LLC	Toymaker	New Jersey
Cutter Number	Children's Product Manufacturer	North Carolina
Dancing Cauldron	Toymaker	California
D and Me Toys	Toymaker	Montana
David Platt	Concerned Citizen	Oregon
Denisa Stern	Concerned Citizen	New York
Diablo Woodworkers	Toy Industry Group	California
Diaper Cakes by Becca	Children's Product Manufacturer	Arizona
Diaper Cakes Mall	Children's Product Manufacturer	Pennsylvania
Dirty Peaches Clothing Co.	Children's Product Manufacturer	Florida
Dolly Outfitters	Toymaker	Indiana
Doodletown Toys	Toymaker	Minnesota
Down To Earth Trading Co.	Toy Retailer	Michigan
Down to Earth Wood	Children's Product Manufacturer	Minnesota
Dragon's Toy Box	Toy Retailer	Washington
D & R Freeland Enterprises	Toymaker	California
Early Work Station	Toy Retailer	California
Earnest Efforts Toys	Toymaker	Oregon
Earthetarian	Toymaker	Connecticut
East Bay Children's Book Project	Children's Product Manufacturer	California
Easy to Love Toys	Toymaker	Pennsylvania
Ecoleeko	Toymaker	New York
Edley Associates, Inc.	Children's Product Manufacturer	New York
Educkate Press	Children's Product Manufacturer	California
Elephantito	Children's Product Manufacturer	Florida
Elevenish	Children's Product Manufacturer	California
Elk Ridge Quilts	Children's Product Manufacturer	Montana
Ellie Bellie Kids	Toymaker	
Enchanted Toys	Toy Retailer	New York
Erica Daley	Toymaker	Maryland
Estella Baby Boutique	Children's Product Retailer	New York
ETA Cuisenaire	Children's Product Manufacturer	Illinois
European Expressions	Toy Retailer	California
Eurosource LLC	Toy Retailer	Pennsylvania
Fairy Finery	Toymaker	Minnesota
Figment's Nook	Children's Product Manufacturer	New York
For My Kids	Children's Product Manufacturer	Texas
Frill 'er Up Couture	Children's Product Manufacturer	Michigan
Frog Kiss Designs	Children's Product Manufacturer	Connecticut
Funky Doodles	Children's Product Manufacturer	Texas

Fuzbaby	Toymaker	Utah
Gem Valley Toys	Toymaker	Arizona
Genzlinger Family Crafts	Toymaker	Vermont
Girl Party Tutus	Children's Product Manufacturer	Michigan
Glass Woodworking	Toymaker	Alabama
Glückskäfer Kinderwelt	Toymaker	Germany
Grahams Toys	Toy Retailer	Connecticut
Grandpa's House	Toy Retailer	Tennessee
Greco Woodcrafting	Toymaker	New Jersey
Greenjeans	Toy Retailer	New York
Green Little Beans	Toymaker	Florida
Green Mountain Organics	Children's Product Retailer	Vermont
Green Pea Designs	Children's Product Manufacturer	Georgia
Grimm's GmbH, Spiel & Holz Design	Toymaker	Germany
Hands and Hearts Homeschool Supplies	Children's Product Manufacturer	South Carolina
Happily Ever After	Toy Retailer	Virginia
Happy Bambino	Children's Product Retailer	Wisconsin
Happy Squash Toys	Toymaker	Ohio
Harrilu	Children's Product Manufacturer	Texas
Hasenpfeffer	Toymaker	Washington
hatched	Toy Retailer	Massachusetts
Hearts and Bugs	Children's Product Manufacturer	Pennsylvania
Hello Maggie LLC	Concerned Citizen	
Hilltown Families	Journalist / Blogger	Massachusetts
Honeysuckle Dreams	Toymaker	Maryland
Hopscotch Childrens Store	Toy Retailer	Michigan
Hullabaloo Boutique	Children's Product Manufacturer	Pennsylvania
Humanity Organics	Children's Product Manufacturer	Maine
Il Cocco di Mamma	Children's Product Manufacturer	Massachusetts
Imagination Box Company	Toymaker	Idaho
impish	Toy Retailer	Massachusetts
INQUISITIVEkid	Toy Retailer	Canada
inspired mama creations	Toymaker	Idaho
I Used To Be A Tree	Toy Retailer	Massachusetts
Jancen Kilgore Creations	Children's Product Manufacturer	Missouri
J Designs	Toymaker	Indiana
Jen Lynn Designs	Children's Product Manufacturer	New York
Jennifer Murphy Bears	Children's Product Manufacturer	Minnesota
Jimbo Toys	Toymaker	Pennsylvania
John Parrish, Custom Woodworker	Toymaker	New York
Jonathon Green & Company	Toy Retailer	New Jersey
Joy's Waldorf Dolls	Toymaker	Washington
Just Lovely	Children's Product Manufacturer	Washington
JWTrent Woodworking	Toymaker	Florida

Kahala Kids	Children's Product Retailer	Hawaii
Kaity-Bug Designs	Children's Product Manufacturer	Washington
KangarooBoo	Toy Retailer	Iowa
Kate Kluttz	Concerned Citizen	North Carolina
Keiki Kuddlerz	Children's Product Manufacturer	Hawaii
Kendama, Inc.	Toy Importer	Nevada
Kennedy & Friends Co.	Children's Product Manufacturer	Missouri
Kid Bean	Children's Product Retailer	North Carolina
Kidcessory Haven	Children's Product Manufacturer	Florida
Kidgiddy	Children's Product Manufacturer	Maine
Kid Knitz	Children's Product Manufacturer	Connecticut
Kinderhaus Toys / Goesel Woodshop	Toymaker	Virginia
Kirstyn Cogan	Concerned Citizen	Washington
KLT works	Children's Product Manufacturer	Washington
Knockabout Toys	Toymaker	Maine
Kooky Dolls / LolaBEE	Toymaker	Wyoming
Kraft Lady Kreations	Children's Product Manufacturer	New York
Kung Fu Bambini	Children's Product Manufacturer	Oregon
Kunklebaby	Children's Product Manufacturer	Ohio
LaboraStory	Toymaker	New Jersey
Lala's Pequenos	Children's Product Manufacturer	Virginia
la retro gifts	Toy Retailer	Pennsylvania
LA Toy Store	Toy Retailer	California
Laura Villarreal, children's book author	Concerned Citizen	Florida
Lexi's Toy Box	Toy Retailer	Michigan
Liliputians NYC	Children's Product Manufacturer	New York
Lily Anna for Girls	Toymaker	Utah
Lily Bean	Toymaker	Michigan
Lindenwood Toys (Uncle Goose)	Toymaker	Michigan
Little Alouette	Toymaker	Ohio
Little Ants, Inc.	Toy Retailer	Indiana
Little Footprint	Toy Retailer	Canada
Little Gems	Children's Product Manufacturer	California
Little Sapling Toys	Toymaker	Idaho
Living Playing	Toy Retailer	Massachusetts
Livin'Hoopla	Children's Product Manufacturer	Ohio
Lofty Pursuits	Toy Retailer	Florida
Lucuma Designs	Toymaker	Florida
Lullabies & Lace	Children's Product Manufacturer	Maryland
Lumpkin	Children's Product Manufacturer	Pennsylvania
Lundeby's Eco Baby	Toy Retailer	Oklahoma
MacGregor Historic Games	Toymaker	Minnesota
Made by Ewe	Toymaker	New Jersey
Made Here Books, LLC	Journalist / Blogger	Colorado

Made Here in America	Toy Industry Group	California
Maja Treasures	Children's Product Retailer	Michigan
Mama K's Aromatic Play Clay	Toymaker	Washington
Mamanista	Journalist / Blogger	
Mama Roots	Toymaker	Missouri
Mama Runs With Scissors	Children's Product Manufacturer	Oregon
Mama's Little Monkeys	Children's Product Manufacturer	Louisiana
Maryland Seamstress	Children's Product Manufacturer	Maryland
Mary's Country Craft Corner	Toy Retailer	South Carolina
MBroidery Creations	Children's Product Manufacturer	Michigan
Mel's Country Crafts	Children's Product Manufacturer	Oklahoma
Michael Warring	Concerned Citizen	Colorado
Michelle Waters	Journalist / Blogger	
Milagros Boutique	Children's Product Retailer	Oregon
Mini Monster Baby Boutique	Toymaker	Virginia
Miscellaneous Oddiments	Toymaker	Maryland
Monkey Baby	Children's Product Manufacturer	California
Monkey Pork Bun	Children's Product Manufacturer	California
MonkeyShine Studio	Toymaker	Massachusetts
MoonDog Boutique	Children's Product Manufacturer	Nebraska
Moon Rabbit Toys	Toy Retailer	California
Morado Designs	Children's Product Manufacturer	Vermont
More4Kids	Toy Retailer	Tennessee
Mother Nature	Toy Retailer	Kentucky
Mother's Moon Natural Care & Products	Children's Product Retailer	Maine
Moth & Squirrel	Toymaker	Washington
MRA Toys	Toy Retailer	Arizona
Mud Pie Kids	Toymaker	Colorado
Mystic Mamma	Children's Product Retailer	California
My Unique Wooden Toys	Toymaker	Indiana
Nato Bello	Children's Product Manufacturer	Michigan
Natural Earth Farm	Toymaker	Vermont
Natural Pod	Toymaker	Canada
Nest Maternity and Baby	Toy Retailer	New Hampshire
New Hampshire Toy Factory	Toymaker	New Hampshire
North Star Toys	Toymaker	New Mexico
Noushka	Toy Retailer	Vermont
Nouveau Chic	Children's Product Manufacturer	Virginia
Nova Natural Toys	Toy Retailer	Vermont
Nova Natural Wholesale	Toy Importer	New York
Numsi	Children's Product Manufacturer	Minnesota
Oakland Ballistics	Toymaker	Michigan
Ogunquit Wooden Toy	Toymaker	Maine
Oh Baby! Baby Shower Specialists	Children's Product Retailer	Florida

Okidoke	Toymaker	Tennessee
Okidoke Studios	Children's Product Manufacturer	Tennessee
Olbapi! Design	Children's Product Manufacturer	Oregon
Old Fashioned Clothing	Children's Product Manufacturer	Texas
Old School Acres	Toymaker	
Oliebollen	Toy Retailer	Michigan
Olive & Ollie	Children's Product Manufacturer	Ohio
One Hole Country Crafts	Toymaker	New York
One Red Panda	Children's Product Manufacturer	Washington
Oops! That's Art!	Toymaker	Pennsylvania
Ophelia McPhee	Toymaker	Arkansa
Ozarkana	Toymaker	Missouri
Palumba	Toy Retailer	Michigan
Papa Don's Toys	Toymaker	Oregon
Pax and Love Blog	Journalist / Blogger	
Pea Pie Baby	Toy Retailer	Florida
Peapods Natural Toys	Toy Retailer	Minnesota
Pearly Grey	Children's Product Manufacturer	Washington
Phil Barbato	Toymaker	Virginia
Pickles & Peanuts	Children's Product Manufacturer	Maryland
Picolo Necklaces	Children's Product Manufacturer	Pennsylvania
Piggy Roo Toys & Gifts	Toy Retailer	Colorado
Pinafores & Knickerbockers	Children's Product Manufacturer	Arizona
Pioneer Pastimes	Toymaker	Tennessee
Pirum Holzspielzeuge	Toy Retailer	Germany
Plastica Obscura	Toymaker	California
Play Store Toys	Toy Retailer	California
Pnnkhouse Handworks	Toymaker	Texas
Polkadot Patch Boutique	Children's Product Retailer	Vermont
Posy Pins	Children's Product Retailer	Vermont
Pretty Dreamer	Toymaker	New Hampshire
Pretty Please Designs	Children's Product Manufacturer	Florida
Puj Baby	Children's Product Manufacturer	Washington
Purcell Toys	Toymaker	Georgia
Quiet Hours Toys	Toy Retailer	Pennsylvania
Quilt the Walls	Concerned Citizen	Minnesota
Raker Goldstein & Co., Inc.	Concerned Citizen	New Jersey
Rana Muck	Children's Product Manufacturer	Wisconsin
Rattlecake Diaper Cakes	Children's Product Manufacturer	Georgia
Real Diaper Industry Association	Toy Industry Group	Georgia
Rebekah's Bowtique	Children's Product Manufacturer	North Carolina
Rectangle Designs	Children's Product Manufacturer	Minnesota
Regimental Colors	Toymaker	California
Rich Aaron, children's book author	Concerned Citizen	

Righteous Baby	Children's Product Manufacturer	Colorado
Rocking Horse Haven	Children's Product Retailer	Washington
Rodney P Nicholas	Toymaker	Minnesota
ROMP	Toy Industry Group	New York
Rosie Hippo	Toy Retailer	New York
Rural Wooden Toy Shoppe	Toymaker	Wisconsin
Sage Dream Designs	Toymaker	Minnesota
Sakura Bloom	Children's Product Manufacturer	Massachusetts
Sarah's Silks	Toymaker	California
Sara's Toy Box	Journalist / Blogger	
Sassyfrass Kids	Children's Product Manufacturer	Idaho
Scrappy Nation	Toymaker	Illinois
Seahorse Sculptures	Toymaker	Massachusetts
Seasns Natural Toys	Toy Retailer	Florida
Selecta Spielzeug	Toymaker	Germany
Sew Cute By Me	Children's Product Manufacturer	Missouri
Sewing Patterns Online	Children's Product Manufacturer	Illinois
Sewing Patterns Online	Children's Product Manufacturer	Illinois
Sherri Crochets & Crafts	Toymaker	Texas
Shirts That Go LLC	Children's Product Manufacturer	North Carolina
Shoparooni	Toy Retailer	Ohio
Silken Sky	Toymaker	Massachusetts
Silly Kitty	Toymaker	Wisconsin
SINA Spielzeug	Toymaker	Germany
Skaldi Personalized Arts	Children's Product Manufacturer	New York
Skipping Hippos	Children's Product Manufacturer	Oregon
Small Magazine	Journalist / Blogger	Texas
Snuggle Me'z	Children's Product Manufacturer	California
Soft Star Shoes	Children's Product Manufacturer	Oregon
Sole Mate Toys	Toymaker	Louisiana
Sophie and Lili	Children's Product Manufacturer	Connecticut
Southern Yankee	Children's Product Manufacturer	Connecticut
Speak Nicely	Children's Product Manufacturer	New York
Specialty Toys Network	Toy Industry Group	Nationwide
SpeilWerk Toys	Toy Retailer	Oregon
Spiro Designs	Toymaker	Massachusetts
Stacey Rothrock Steinfeld	Concerned Citizen	New Jersey
stacyJean	Toymaker	California
Star Bright Baby	Toymaker	Pennsylvania
Starlight Arts	Toymaker	Montana
Steven Alford	Concerned Citizen	Minnesota
Stone Flower Pottery	Children's Product Manufacturer	New York
Sugath Mahinda Soyza	Concerned Citizen	SRI LANKA
Sullivan Toy Company	Toymaker	Oklahoma

Sunrise Hill Decor	Toymaker	North Dakota
Susan Warner	Toymaker	Virginia
Swaddle Babies	Toymaker	California
Sweet Designs	Children's Product Manufacturer	Alaska
Sweet Pea's Loft	Toy Retailer	Minnesota
Tactile Baby	Children's Product Manufacturer	Massachusetts
TAG Toys	Toymaker	California
Tanya Lewerenz	Concerned Citizen	Minnesota
Taylor Hill Studio	Children's Product Manufacturer	Massachusetts
Teacups & Tadpoles	Children's Product Retailer	Pennsylvania
Tedde	Toymaker	New York
Terrapin Toys (Mary's Soft Dough)	Toymaker	Oregon
Terressentials	Children's Product Manufacturer	Maryland
The Angels Company	Children's Product Manufacturer	Massachusetts
The Art of Meredith Dillman	Children's Product Manufacturer	Minnesota
The Baby Gardener	Children's Product Manufacturer	Alabama
The Backyard Amory	Toymaker	Texas
The Crayon Bin	Toymaker	New Jersey
The Giving Tree Store by Catholic Community Services	Toy Retailer	Washington
The Lazy Giraffe	Children's Product Manufacturer	
The Little Hat Company	Children's Product Manufacturer	Maine
The Little Seedling / Tree City Diapers	Toy Retailer	Michigan
The Lucky Pebble	Toymaker	Hawaii
The Mermaids Braid	Children's Product Manufacturer	New York
The Misty Manor, Mercers	Children's Product Retailer	Missouri
The Mommy Spot	Journalist / Blogger	
The Natural Baby Catalog	Children's Product Retailer	Ohio
The Natural Toy Box	Toy Retailer	Illinois
The Original Tree Swing	Toymaker	Minnesota
The Pajama Squid	Toy Retailer	Maryland
The Patchwork Bear	Toymaker	New Jersey
The Pattern Box	Toymaker	North Carolina
The Polkadot Platypus	Children's Product Retailer	Virginia
The Portobello Road Shoppe	Children's Product Manufacturer	Illinois
The Portobello Road Shoppe	Children's Product Manufacturer	Illinois
The Puppenstube	Toymaker	California
The Purple Giraffe	Children's Product Manufacturer	Massachusetts
These Are the Salad Years	Journalist / Blogger	
The Smart Mama	Journalist / Blogger	California
The Snuggle Herd	Toymaker	Texas
The Toycrafter	Toymaker	Texas
The Toy Factory	Toy Retailer	Oregon
The Urban Thimble	Toymaker	Illinois
The Wee Loft	Toy Retailer	California

The Wooden Wagon	Toy Retailer	Massachusetts
Three Sisters Toys	Toy Retailer	Florida
Tidbit Couture	Children's Product Manufacturer	Pennsylvania
Tigercandy Arts	Toymaker	New York
Tomo and Edie	Children's Product Manufacturer	Tennessee
Tots Only	Children's Product Manufacturer	Virginia
Toys and Dolls Made in USA	Toymaker	Montana
Toys by Michael Whitman	Toymaker	New Hampshire
Toys of USA	Toy Retailer	Tennessee
Treehouse in the Glen	Toy Retailer	California
Treehouse Togs	Children's Product Manufacturer	Virginia
TR Workshop	Toymaker	Texas
Tummba	Children's Product Manufacturer	Colorado
Turtle Park Tots	Children's Product Manufacturer	Colorado
Turner Toys	Toy Retailer	Vermont
Turtle Monkey Bug	Toymaker	Oregon
Two a T Bowtique	Children's Product Manufacturer	Illinois
Tyler Poncho Toys	Children's Product Manufacturer	
Ugga Mugga	Journalist / Blogger	Wisconsin
Victoria Velting	Children's Product Manufacturer	Michigan
Violet's Peapod	Children's Product Manufacturer	California
Viva Simone Designs	Children's Product Manufacturer	California
Wabi Sabi Wonders	Toymaker	Illinois
Waldorf Play Things	Children's Product Retailer	Maine
Walking Stick Toys	Toy Retailer	Montana
Warm Biscuit Bedding Co.	Children's Product Retailer	New York
Washy Dolls	Toymaker	Pennsylvania
Wee Essentials	Children's Product Manufacturer	Ohio
We Sell Hoops	Toymaker	Connecticut
Whimsmoore	Toy Retailer	Washington
Wild Apples	Toymaker	New York
Wildflower Diapers	Children's Product Retailer	Arizona
Wildwoods Craft Kits	Toymaker	California
Wonderment	Toy Retailer	Minnesota
Wondernommy	Toymaker	Alabama
Wood that's Fun	Toymaker	Wisconsin
Wood Toy Shop	Toymaker	Oregon
Wool Creations	Toymaker	North Carolina
Woolies	Toymaker	Arizona
Woolpets	Children's Product Manufacturer	Washington
World Discovery Box, LLC	Toymaker	Colorado
World of Mirth	Toy Retailer	Virginia
World's Greatest Bath Boats	Toymaker	Minnesota
Wy Not Arts	Children's Product Manufacturer	Tennessee

XoXoa Baby, LLC.	Children's Product Manufacturer	
Yo-Yo Guy	Toy Retailer	Florida
Yo-Yo Joe's Toys and Fun	Toy Retailer	Deleware
Zadyball	Toymaker	Arizona
Zid Zid Kids	Toymaker	Massachusetts / Morrocco

Mr. RUSH. Ms. Weintraub, welcome back to the subcommittee, and you are recognized now for 5 minutes.

TESTIMONY OF RACHEL WEINTRAUB

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

In 2008, the bipartisan Consumer Product Safety Improvement Act passed overwhelmingly in both the House and Senate. Before this law passed, Congress undertook at least a yearlong deliberative process to consider the implications of this Act. There were approximately 15 hearings and markups in the House and Senate covering issues and products related to the CPSIA and a conference in regular order between both chambers of Congress. The resulting law, the CPSIA, will make consumer products safer by requiring that toys and infant products be tested before they are sold and by practically banning lead and phthalates in children's products. This law also authorizes the first comprehensive publicly accessible consumer complaint database, gives the CPSC the resources it needs to protect the public such as enabling it to hire additional staff who do the work at the agency and increase civil penalties. The CPSIA's passage came in the wake of a record number of recalls of hazardous products from the market that injured and killed vulnerable consumers and a weakened federal oversight agency that failed in its meager efforts to protect the public's health and safety.

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

The Consumer Product Safety Enhancement Act was drafted in response to requests for flexibility and exemptions from some of CPSIA's provisions raised by various entities. The consumer community, which has strongly supported the CPSIA, believes that any changes made to the CPSIA must not weaken product safety standards and must not weaken public health protections. The current draft of the CPSEA grants CPSC more flexibility in decision making and provides additional assistance to manufacturers. However, overall, it does not appear that the public health will be harmed. We do not oppose the current text of the CPSEA.

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

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

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

Despite the delicate balance that the CPSEA achieves, however, there have been two proposals offered by others that if implemented would serve to considerably weaken public health. They would open a series of gaping loopholes in the CPSIA that allow more lead into a host of toys and other products. These proposals are not included in the bill and we would oppose any inclusion of them in any legislation.

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

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

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

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

[The prepared statement of Ms. Weintraub follows:]



Consumer Federation of America

Testimony of

Rachel Weintraub
Director of Product Safety and Senior Counsel
Consumer Federation of America

Before the
Subcommittee on Commerce, Trade and Consumer Protection
Committee on Energy and Commerce
U.S. House of Representatives

Hearing on the Consumer Product Safety Enhancement Act

April 29, 2010

2322 Rayburn House Office Building

Chairman Rush, Representative Whitfield and members of the Subcommittee on Commerce, Trade and Consumer Protection. I am Rachel Weintraub, Director of Product Safety and Senior Counsel at Consumer Federation of America (CFA). CFA is a non-profit association of approximately 300 pro-consumer groups, with a combined membership of 50 million people that was founded in 1968 to advance the consumer interest through advocacy and education. I offer this testimony on behalf of Consumer Federation of America as well as Consumers Union, Kids in Danger, National Research Center for Women & Families, Public Citizen, and the U.S. Public Interest Research Group.

As organizations dedicated to working to protect consumers from unsafe products, I offer testimony today to articulate our views about the Consumer Product Safety Improvement Act of 2008 (CPSIA) and the Consumer Product Safety Enhancement Act (CPSEA).

The bi-partisan Consumer Product Safety Improvement Act passed overwhelmingly by the House on July 30, 2008 by a vote of 424-1, by the Senate on July 31, 2008 by a vote of 89-3 and was signed into law by President Bush on August 14, 2008. Before this law passed, Congress undertook a year-long deliberative process to consider the implications of this Act: there were numerous hearings: approximately 15 hearings and markups in the House and Senate covering issues and products related to the CPSIA, and a conference in regular order between both Houses of Congress. This much-needed law institutes the most significant improvements to the Consumer Product Safety Commission (CPSC) since the agency was established in the 1970's.

CPSIA's significance, new requirements and implementation

The CPSIA's passage followed a period of a record number of recalls of hazardous products from the market that injured and killed vulnerable consumers, and a weakened federal oversight agency that failed in its meager efforts to protect the public's health and safety.

It has been almost two years since the CPSIA was passed. The relatively new law will make consumer products safer by requiring that toys and infant products be tested before they are sold, and by banning lead and phthalates in toys (although implementation of the testing requirement has been twice delayed by the CPSC). The law also authorizes the first comprehensive publicly accessible consumer complaint database due to be launched in March 2011; gives the CPSC the resources it needs to protect the public, such as enabling it to hire additional staff; increases civil penalties that the CPSC can assess against violators of consumer product safety laws; and protects whistleblowers who report product safety defects.

Consumers believe that the products they buy for their children should be safe. Many consumers believed that products were tested before they were sold -- that some entity issued stamps of approval for products before they were sold in the store. However, that was never true. Before passage of the CPSIA, the CPSC only had authority over products after they were sold. If a problem was identified as posing a risk of harm to consumers, the CPSC could recall the product, but that was only *after* the harm was already in consumers' homes and in their children's hands. The CPSIA significantly changes the reactive nature of the CPSC by requiring that children's products subject to mandatory standards be tested for safety before they are sold.

Since passage of the CPSIA, there have been many challenges to implementation: a CPSC that moved slowly and gave out confusing information; an economic downturn that has affected businesses; the realization that lead is more pervasive in consumer products than had been expected; and concerns about the law's implementation consistently raised by manufacturers, small businesses, crafters and thrift stores.

Proposed revisions

The Consumer Product Safety Enhancement Act of 2010 (CPSEA) was drafted in response to requests for flexibility and exceptions from some CPSIA provisions raised by various manufacturer and retailer entities, including small businesses, thrift stores and the ATV industry. The CPSC itself has requested additional discretion to implement certain CPSIA provisions, particularly regarding the lead requirements.

The consumer community, which has strongly supported the CPSIA and its capacity to boost product safety, believes that any changes made to the CPSIA must not weaken product safety standards and must not weaken public health protections. The current draft of the CPSEA grants CPSC more flexibility in decision-making and provides additional assistance to manufacturers. However, overall, it does not appear that the public health will be harmed from the proposal. We do not oppose the current text of the CPSEA.

The legislation will: alter lead-testing provisions to allow manufacturers to seek exemptions under "functional purpose" criteria; loosen requirements for used products; create an exception to third party testing for small batch manufacturers; and authorize an office to assist small businesses with their compliance of consumer product safety laws.

The functional purpose exemption, in section 2, contains a three--part test for manufacturers to seek exemptions from lead requirements: (1) that the product, material or component requires the lead because it is not practicable or not technologically feasible to manufacture the product, material or component in compliance with the lead provisions; (2) the product, material or component is not likely to be mouthed or ingested, taking into account normal and foreseeable use and abuse; and (3) the exemption will have no measurable adverse effect on public health or safety. We do not oppose the circulated report language explaining "practicable" and "measurable adverse impact" and we agree that the Commission must take into account excessive or unreasonable costs when considering whether compliance is impracticable, without weighing additional, unrelated factors, such as any potential benefits of the product. These criteria should not be weakened in any way.

Section 3 of the bill includes exceptions for thrift stores and other retailers. While this goes quite far in exempting used products from the lead limits of the CPSIA, the provision includes necessary limitations that do not allow exceptions for certain high-risk products, including: children's metal jewelry, painted children's toys, children's products composed primarily of accessible vinyl, any product that the donating party or seller knows is in violation of the lead limits, and any other children's product designated by the Commission. We could not support any weakening of this provision.

Special provisions for small businesses includes allowing certain businesses to be exempt from third party testing when the Commission finds that reasonable testing methods assure compliance with relevant consumer product safety standards. We believe, however, that the term “small batch manufacturer” is defined too broadly. We commend the fact that the language does not allow small batch manufacturers to obtain exceptions for durable infant or toddler products or lead paint, cribs, pacifiers, small parts, children’s metal jewelry, baby bouncers, walkers and jumpers. Because of the fatal nature of the defects in many of these types of products, as demonstrated by recalls in the past, all manufacturers should be required to meet the same safety and testing requirements. We could not accept a broadening of either the definition of small batch manufacturer or a limitation of those products not covered by this provision.

The Consumer Product Safety Enhancement Act balances upholding the protections provided in the CPSIA to protect public health with the requested flexibility under certain circumstances. This balance can easily be lost if public health protections in the bill are removed. Our organizations would oppose any weakening of the CPSEA.

Despite the delicate balance that the CPSEA achieves, however, there have been two proposals offered by others that, if implemented, would serve to considerably weaken public health. They would open a series of gaping loopholes in the CPSIA that would allow more lead into a host of toys and other products meant for children. Those proposals are not included in this bill and we would **oppose** any inclusion of them in any legislation.

Protections must remain for children 12 and younger

First, some have argued that the CPSIA should not apply to children’s products for children 12 years and younger but rather should cover only those products for children 6 and younger. This approach was rejected by Congress when it passed the CPSIA. Congress embraced the belief that there is a “shared toy box” in many families’ homes. We agree as it reflects the reality of what we know to be true in many homes across the United States. Children of younger ages play with toys of their older siblings. Younger children mouth their older siblings’ toys with frequency. Further, the voluntary standard for toys – ASTM F 963 – includes an even broader scope to cover toys intended for children 14 and younger. This means that many companies are already complying with voluntary safety standards that encompass toys intended for children 14 and younger. Thus, the reality that children’s toys and products are often shared by children within a family, plus the fact that many within the industry are already complying with a higher age standard, requires the scope of the CPSIA to remain as it is.

No known safe level of lead

Second, some have proposed that a risk analysis be applied for regulating lead in products. Requiring the CPSC to conduct risk analysis for lead is not acceptable. Risk analysis would reverse the presumption for the safety of products and allow all products to be sold and be exempt from testing for lead unless the CPSC finds otherwise. This would mean a return to the state of the law before the CPSIA was passed. As we witnessed in the years before the CPSIA, the record number of lead-laden products that were recalled from the market proves that this approach results in an unreasonable risk of injury to consumers. It will amount to a waste of Commission resources, has been rejected by Congress previously as not being sufficiently

protective of public health, and far exceeds the flexibility that the CPSC requested to regulate lead.

The American public demands that children's products not pose risks for the children who will play with or sleep in those products. Lead is a well-documented neurotoxin that has a wide range of effects on a child's development including delayed growth and permanent brain damage. There is no known safe level of exposure. Exposure to lead is cumulative over time and there are many pervasive roots of lead exposure. As a society, we have spent years trying to reduce lead levels in our air, soil and homes. We must continue to work to reduce lead in other products where it is not necessary. While ideally Congress would seek to remove lead from all household products, Congress in the CPSIA focused on the products most likely to be in contact with children. Nearly all toys and infant durable products do not require lead, should not contain lead and can be made effectively without lead. In the rare instance that children's products require lead, the CPSEA provides for a targeted exemption for functional purpose. This exemption is drafted tightly to ensure that children remain protected from harms of lead exposure. We would have grave concerns if any of the limiting factors were removed.

Consumers were outraged when it became clear that lead was present in children toys, clothes, lunch boxes, and other products. Even though CPSC had some existing authority to ban lead, it was not used effectively, and there were too many products that contained lead which posed a hazard to our children. Thus, not only did a bright line limit for lead gain widespread support, but third-party testing to make sure the products complied with the standards was also necessary and became law. Most importantly, the scientific evidence demonstrates abundantly that lead is a poison to children's developing brains and bodies. There is no known safe level of lead and there is no justification for allowing lead in children's products when safe alternatives exist.

Congress must support CPSC's mission

CPSC plays an incredibly crucial role in ensuring that consumer products are safe and is responsible for implementing the CPSIA. This draft legislation gives CPSC more discretion. It is imperative then that the agency be appropriately funded at all times to do its job properly. Congress must also monitor the agency's activities to ensure that the CPSC is exercising its existing and new authority in accordance with Congress' intent, and most importantly, to ensure that the agency is carrying out its primary mission to protect consumers from unreasonable risk of injury caused by hazardous products.

The proposed Consumer Product Safety Enhancement Act appears to carefully balance two distinct goals: to uphold the safety protections provided in the CPSIA while seeking to accommodate the adamant requests by some stakeholders to alter certain provisions. This fine balance can easily be destroyed if the limited public health protections in the bill are removed or narrowed. Our organizations would oppose any alteration of this legislation that would loosen product safety standards and once again leave consumers and their families vulnerable to unsafe products.

We look forward to working with you to protect the public from harms posed by hazardous products

Mr. RUSH. The Chair recognizes Mr. Levy for 5 minutes.

TESTIMONY OF STEVE LEVY

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

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

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

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

Are we an industry taking steps to eliminate these sources of lead? Absolutely. Is the amount of lead we are talking about a threat to public health and safety? Absolutely not. I can say this with confidence because the committee through its proposal to permanently exempt used clothing stores and the CPSC through its findings have confirmed this. The CPSC has not advised parents to go to their closets and remove all pre-CPSIA clothing if they were not able to verify that the lead levels of their clothing didn't meet the new standards in the CPSIA. So we do have and will continue to have apparel manufactured before the CPSIA being worn and being sold and exchanged through used clothing stores for many years to come. So the threat of lead in apparel is nonexistent. Just as an overview, the total children's wear children's industry recalls for 2008 was .0082 of more than 6 billion items of clothing and pairs of shoes sold in 2008.

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

Additionally, federal preemption of State safety regulations including proposition 65 in California, which had a special carve-out in the CPSIA, must be included in this amendment because there is a great deal of confusion and fear in the marketplace due to conflicting and overlapping regulations and requirements.

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

[The prepared statement of Mr. Levy follows:]



***Statement of Steven Levy
Star Ride Kids
On Behalf of
American Apparel & Footwear Association (AAFA)
House Energy and Commerce Committee
Subcommittee on Commerce, Trade, and Consumer Protection
April 29, 2010***

Good morning.

My name is Steve Levy. I'm Director of Operations of Star Ride Kids, a New York based wholesaler of children's apparel. Thank you for providing us this opportunity for me to appear before you this morning on behalf of American Apparel & Footwear Association (AAFA) – the national trade association of the apparel and footwear industry, and its suppliers.

At the outset, let me state our very strong support of a product safety system that ensures that only safe and compliant product be designed, produced, marketed, and sold. At Star Ride Kids, and throughout the industry, we take our product safety obligations seriously. We view this obligation as key to our business, not only because such an approach is the right thing to do, but because we are also parents and grandparents ourselves and believe very strongly that our kids should only be exposed to safe clothes, shoes, and other products.

Even before the passage of the Consumer Product Safety Improvement Act (CPSIA), AAFA has worked to educate the apparel and footwear industry on important product safety compliance initiatives. For several years, we have published a free Restricted Substances List (RSL) that helps companies understand international product safety standards and implement a chemical management program. For the past 18 months, we have conducted dozens of webinars, briefings, and trainings, throughout the United States and on four continents on the CPSIA. Next week, for example, we are holding two seminars in China.

Finally, AAFA staff and member companies have been active participants in many of the Consumer Product Safety Commission (CPSC) regulatory activities and have worked closely with the Commission's staff to ensure that the regulations were crafted in such a way that they did not hinder the ability of companies to make safe and compliant products. As a result of this partnership, which is on-going, some of the critical implementation issues faced by textile, apparel, and footwear businesses have been largely addressed. The recent determination that there is no lead in textiles – and therefore no need for testing and certification of such materials – is one such example. The imminent ruling to permit component level testing we hope will be another.

Unfortunately, some problems cannot be fixed through the regulatory process.

It is for this reason that we have been strong supporters of initiatives to amend the CPSIA and why we are pleased that this hearing is occurring today.

The proposed amendment, the Consumer Product Safety Enhancement Act (CPSEA) represents an important step forward in the process to fix some of the unintended consequences of the CPSIA that have caused considerable disruption to businesses over the past year and a half. I'd like to offer our assessments on several provisions in the draft CPSEA and suggest several areas of improvement as this process moves forward.

100ppm

We are especially supportive of provisions of the amendment that make the 100ppm lead standard that goes into effect August 14, 2011 prospective. The retroactive characteristics of the previous and existing lead standards were devastating, resulting in the destruction of many millions of dollars of safe, but suddenly non compliant, product. Making the new lead standard prospective will minimize the adverse impact on businesses without compromising children's health or safety.

Exclusions

We also support efforts to grant the Commission greater flexibility to exempt materials, components or products from the lead standard when there is no threat to public health and safety. It is now well-documented that the CPSIA's excessively strict lead standard exemption language prevented several categories of safe products, like children's apparel and footwear products containing crystals and rhinestones, from being sold. These determinations were made despite significant scientific data that the aforementioned products were safe. It is our expectation that the new exception language will give the CPSC the simple ability and flexibility to grant exceptions to these and other similar materials used in children's products when they do not present a danger to public health and safety.

Testing and Certification Relief

We also support efforts to give the CPSC authority to grant testing and certification relief from third party testing. While the CPSEA envisions such relief, it confines that relief to certain small volume manufacturers only. Inasmuch as the obligation to make safe and compliant products does not depend upon the number of employees or one's annual sales, we strongly believe that this relief should be available to all businesses, regardless of their size.

An on-going concern remains the impact of third party testing, which is already in effect for lead in coatings and takes effect for lead substrates next February. This is perhaps one of the greatest areas of concern for our members – regardless of their size. In about ten months, when the current stay of enforcement expires, companies will be forced to rely on third party testing for a variety of components, materials, and products. Based on our experience from the initial days of the CPSIA, we believe there will be incredible demands placed on a finite number of labs. While component level testing, combined with some of the determinations made thus far, may mitigate some of that impact, there is great concern that we will see widespread shortages of lab capacity, price increases, and delays when the stay is lifted. For an industry that is time- and price-sensitive, the economic impact of such an occurrence is unacceptable.

Moreover, this is not a good outcome for product safety. Putting product safety first includes making sure lab resources are directed at those components or materials that present the greatest risk or about which there is uncertainty. But the system we are about to see will treat all components and materials equally regardless of risk. Materials that are safe and compliant

will be subject to repeated, and expensive, third party testing. This will continue to occur despite the fact that most materials in a clothing and footwear have been lead free for years.

Consumer product testing is extremely important to our members. Although companies currently do not have to conduct third-party tests for lead substrate (because of the stay of testing and certification), they have implemented robust, efficient and effective testing programs throughout their supply chains to check production and ensure product compliance. Members use various technologies right at the production line to immediately test for a problem and, if they happen to encounter one, deal with it right away. We believe that this type of verification is the most effective and efficient way for a company to test for lead during production and, more importantly, ensure that products are safe for our children.

The CPSC should have full flexibility to authorize alternative testing requirements in lieu of third party testing. This flexibility is appropriately applied to all companies – not just certain small batch manufacturers. Allowing the Commission to approve alternative testing methods in lieu of third party testing will result in an increase in product testing and product safety assurance.

Preemption

More work needs to be done to ensure that the CPSIA fully preempts state and local product safety rules. Companies find it increasingly difficult to manage the conflicting and ever growing number of state regulations that are being promulgated. Companies labor to comply with the CPSIA only to find out – often after the fact – that they are not in compliance with a little known state standard. To comply with drawstring limitations, companies must meet conflicting standards established at the federal level and in the states of New York and Wisconsin. And this is just the tip of the iceberg, with new rules coming online in Illinois, Connecticut, Maine, and elsewhere. With regard to CPSIA, California Proposition 65, in particular, has created significant difficulties because it relies upon different standards and product coverage, even though it purports to address product safety as well. While I understand Congress exempted out Proposition 65 from the CPSIA, I think this is a mistake. We urge you to make federal preemption stronger to cover all these others measures so we can achieve a single, harmonized national product safety standard.

Final Thoughts

Let me conclude by addressing another critical issue not specifically addressed by the CPSEA.

We encourage the Committee to keep a close eye on the on-going regulatory process at the Commission. As the Commission continues to publish an amazing number of regulations to implement the CPSIA, we are finding that some guidance that is intended to help may in fact create more problems. A directive to run validation tests on third party testers is one recent example that will only lead to more testing costs with no product safety benefit. The most effective product safety system we can have is one that recognizes that the regulated companies are active partners of the Commission. But if these companies are constantly subjected to burdensome, costly, and, in some cases, silly requirements, that partnership is severely strained and, in the process, product safety takes a black eye. The Commission should be commended for the enormous amount of work they are doing in implementing the CPSIA. But the Commission also needs to focus on other important safety efforts – outside the CPSIA – as well. We encourage the Committee to recognize that this work is being done under enormous pressure, great expectations, and very tight timetables. It is our hope that the Committee will continue to revisit CPSIA implementation and indeed the work of the agency in future hearings.

Mr. Chairman, the CPSC and the regulated community have come a long way over the past two years. Thanks to your leadership we now have five Commissioners and an agency that is more fully funded. The CPSIA was indeed a “wake-up” call for the agency and for many in the business community to tighten their own product safety regimes. But the CPSIA also created considerable pain for companies who were already doing the right thing in this area. In some cases, that pain came with little gain for public safety.

With an eye to maximizing public health and safety, it is our hope that through this CPSEA we can give the agency additional tools it needs to create a stable, predictable, risk-based, and science based regulatory environment.

Thank you again for providing us this opportunity to discuss the CPSEA. I am available to take questions.

Mr. RUSH. The Chair now recognizes Mr. Woldenberg for 5 minutes for the purposes of opening statement.

TESTIMONY OF RICHARD WOLDENBERG

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

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

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

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

Our problems don't end with testing costs or increased staffing. We are being crippled by regulatory complexity. More than 20 months after the passage of the CPSIA, we still don't have a comprehensive set of regulations. Please consider how mind boggling these rules have become. Here are the CPSC rules that governed our company until 2008. At only 186 pages, these rules clearly defined our responsibilities and could be taught to our staff. Compliance with the law was a focused, manageable task. Today, the rules total almost 2,500 pages, and these are not all the rules, just the ones that pertain to my business. And the rules keep changing and they are not finished. We are acutely aware that each word in every rule is a potential source of liability now up to and including jail time. This three-inch wedge, 608 pages, is what the CPSC has published in the last month alone that pertain to my business. Can you imagine trying to master these rules and teach them to your staff while still doing your full-time job? Ironically, the recalls of 2007 and 2008 were never a rules problem. Those famous recalls were clearly a compliance problem. Imagine what will happen now with a 12-fold increase in rules.

The confusion from this tangle of rules and regulations hurts us every day. We spend an inordinate amount of time arguing with

customers over the rules, often having to call lawyers to resolve disputes. It makes doing business slow, tedious and very expensive, not to mention unpleasant.

Many companies are tiring of the continual fighting and are dropping products and vendors. Who will be served by the end of commerce in these safe products? Small businesses are particularly ill suited to managing these challenges. They lack the skills, resources and the business scale to absorb these responsibilities. It is no longer a level playing field for small businesses making children's products. Consequently, small businesses bear the greatest risk of liability under the law, despite being responsible for almost no injuries from lead in the last decade. The double whammy of massive new regulatory obligations and the prospect of devastating liability are driving small businesses out of the market today. The CPSIA went off track by taking away the CPSC's authority to assess risk. If the CPSC could again regulate based on risk, safety rules could focus on those risks with the real potential to cause harm to children.

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

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

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

[The prepared statement of Mr. Woldenberg follows:]

House Committee on Energy and Commerce
Subcommittee on Commerce, Trade, and Consumer Protection
April 29, 2010

Re: The Consumer Product Safety Enhancement Act

Statement of
Richard M. Woldenberg
Learning Resources, Inc.
380 North Fairway Drive
Vernon Hills, Illinois 60061

STATEMENT OF RICHARD M. WOLDENBERG

Chairman, Learning Resources, Inc.
Vernon Hills, Illinois

As an operator of a small business making educational products and educational toys, I have had a front row seat for the evolution and implementation of the Consumer Product Safety Improvement Act of 2008 (CPSIA). On the occasion of your consideration of the Consumer Product Safety Enhancement Act of 2010 (CPSEA), I want to highlight the economic damage and other unintended consequences wrought by the CPSIA on the corporate community without achieving any material improvement in safety statistics, and outline how market order can be restored without adversely affecting consumer safety.

Children are our business. As educators, as parents and as members of our community, we have always placed the highest priority on safety. We would not be in the business of helping children learn if we didn't care deeply about children and their safety. Our 25-year safety track record is sterling as a result of continuous effort to manage safety risks in our business. Nevertheless, the CPSIA has dramatically impacted our business model, reduced our ability to make a profit and create jobs, pared our incentive to invest in new products and new markets, and generally made it difficult to grow our business. We would accept the burdens placed upon our business if this law made our products safer, but the fact is that it hasn't. Our company, Learning Resources, Inc., has recalled a grand total of 130 pieces since our founding in June 1984 (all recovered from the market). Our management of safety risks was highly effective long before the government intervened in our safety processes.

The precautionary approach of the CPSIA attempted to fill perceived "gaps" in regulation by making it illegal to sell children's products unless proven safe prior to sale. Yet the law has yielded few quantifiable safety benefits other than a reduction in recent recall rates for lead-in-

paint. [Interestingly, lead-in-paint has been illegal in children's products for decades.] Recall statistics can be highly misleading because the rate and number of recalls depend on many factors and do not generally correlate to injuries to children. Thus, it is entirely possible for recall rates to fall precipitously while injuries to children remain steady or even increase. Whatever peace of mind has been generated by this precautionary approach came at a very high price.

The CPSIA significantly broadened the reach of federal safety regulation well beyond the lead-in-paint toy violations of 2007 and 2008. Under the CPSIA, the definition of a "Children's Product" subject to regulation now encompasses ALL products designed or intended primarily for a child 12 years of age or younger (15 U.S.C. §2052(a)(2)). This definition ensures that virtually anything marketed to children will be subject to the restrictions of the Consumer Product Safety Act (CPSA), irrespective of known or quantifiable risk of injury. Put another way, this definition ensures that many product categories with a long tradition of safety will be subject to the withering requirements of this law for the first time simply because they fall within the overly broad definition of a Children's Product. It is difficult to characterize this change as an "unintended consequence" but these safe products certainly span the U.S. economy, like books, t-shirts and shoes, ATVs, bicycles, donated or resale goods, pens and educational products.

The apparent justification for the broad definition of Children's Products is the presumption that a young child might gain access to the toys of older children in a so-called "common toy box" and somehow be harmed by lead content in an older child's possessions. How this assertion justifies the inclusion of products outside the toy category has never been made clear (e.g., how often is an ATV or kids' work boots found in a toy box?). To my

knowledge, there is no data to support the claim that the “common toy box” is a real threat because of their contents. Notably, while the “common toy box” theory emphasizes the “threat” posed by lead, it seems to accept the much more profound risk posed by small parts. Small parts are illegal in products suitable for children under three years old, but are perfectly legal for products for older children. If the common toy box is such a serious issue for lead, it is presumably an even more serious threat because of small parts. Of course, no one is calling for small parts rules to extend beyond three year olds – that would put an end to the LEGO era. Yet, on this flimsy justification, the overly broad definition of Children’s Products swept up many products that never posed any risk from lead.

The consequences of the change in the consumer safety laws to a precautionary posture has had notable negative impacts and promises to create further problems, namely:

- a. Increased Costs. The new law creates a heavy burden for testing costs. From 2006 to 2009, our company’s testing costs alone jumped more than eight-fold. We estimate that our testing costs will triple again after the CPSC lifts its testing stay in 2011. Testing costs are often thousands of dollars per product. Many of our safety tests are repeated endlessly and are often performed on materials that will never fail the test (e.g., testing for the presence of phthalates in polystyrene, natural wood or steel alloys, see <http://www.cpsc.gov/ABOUT/Cpsia/componenttestingpolicy.pdf>). Having employed one person to manage safety testing and quality control for many years, we now have a department of four, including me, plus an outside lawyer on retainer. This staffing is likely to increase just to manage more paperwork.

Personnel, legal and other out-of-pocket safety expenses (besides testing) have more than quadrupled in the last three years.

- b. Increased Administrative Expenses. The CPSIA requires that all products include tracking labels on both the packaging and the product itself. This is yet another precautionary measure meant to facilitate more precise recalls of defective products. While seemingly analogous to date labels on cartons of milk, in broad application to the vast array of “Children’s Products” under the CPSIA, tracking labels are nothing but pure economic waste. As noted, our company has a virtually unblemished 25-year track record of safety. In addition, our products are not durable, heirloom-style products, nor do they pose a proven risk of injury. Thus, for our business, tracking labels promises to add no possible value, just purposeless government-imposed overhead. We will have to devote the efforts of several employees to track and manage this process to ensure accurate recordkeeping and execution. Because each change in product or packaging is essentially a “product development project” at our company, we fully expect to see true new product development decline because of the capacity absorbed by useless tracking label changes. Given that we make many short production runs, we will have to manage overwhelming complexity in our component inventory to ensure matching serial numbers and data between packaging and the product. This massive investment will be totally useless unless we ever have a recall. With the increasingly strict laws governing product composition, we believe the already low chance of a product recall has been reduced further. Thus, we consider the entire tracking labels exercise to be bureaucracy gone wild.

An equally frustrating bureaucracy has sprung up around recordkeeping under this law. Burdensome requirements spawned by the government's new involvement in our quality control processes will mean considerable new and unproductive investments in information technology. In addition, the CPSC policy on component testing promises to convert the simple task of obtaining a complete suite of safety test reports into a major recordkeeping chore. We will be forced to manage each component separately, tracking each test report on each component one-by-one. This will multiply our recordkeeping responsibilities – and the related risk of liability for failing to comply – by more than an order of magnitude.

- c. Reduced Incentive to Innovate. The increased cost to bring a product to market under the CPSIA will make many viable – and valuable – products uneconomic. To cover the cost of developing, testing and safety-managing new products, the prospective sales of any new item (“hurdle rate”) is now much higher than under prior law. This will mean that low volume items will be less likely to come to market and many new small business market entrants may find themselves priced out of the market. In other words, it will be much harder to start a new business in the children's market now because the rules so heavily favor big business. We think that increasingly companies will be forced to abandon specialty and niche markets to concentrate on the mass market. Because of CPSIA transactional costs, high volume items now have a huge advantage over low volume items. This will hurt many small but important markets like educational products for disabled children. Our company, with its 1500 catalog items, is probably now a dinosaur

under the CPSIA – we have a strong economic incentive to restructure our product line to 50-150 items, a manageable undertaking under the new CPSIA rules, and focus on high volume markets only. Schools would suffer from the loss of our niche products.

- d. Crippled by Regulatory Complexity. Our problems don't end with testing costs or increased staffing. We are being crippled by regulatory complexity. More than 20 months after passage of the CPSIA, we still don't have a comprehensive set of regulations. Please consider how mindboggling the rules have become. The CPSC rules that pertained to our business until 2008 totaled 186 pages. These rules clearly defined our responsibilities and could be taught to our staff. Compliance with law was a focused, manageable task. Today, the rules and interpretative documents total almost 2500 pages. And the rules keep changing and are still being written. For instance, the CPSC has published over 600 pages of rules and explanations in the last month alone. We are acutely aware that each word in every rule is a potential source of liability now, up to and including jail time. How can we master these rules and teach them to our staff while still doing the full-time job of running our businesses? Ironically, the recalls of 2007 and 2008 were never a "rules" problem – those famous recalls were clearly a compliance problem. Imagine what will happen now with a twelve-fold increase in rules.

The confusion from this tangle of rules and regulations hurts us every day. We spend an inordinate amount of time arguing with customers over the rules, often having to call lawyers to resolve disputes. It makes doing business slow,

tedious and very expensive. Many companies are tiring of the continual fighting – and are dropping products and vendors. The loss of these products and relationships will shrink our markets permanently.

- e. Small Business Will Certainly Suffer. The CPSIA is written for big companies, but impacts small and medium-sized companies very negatively. Our company has already lost customers for our entire category on the grounds that selling toys is too confusing or too much of a “hassle”. This is our new reality. The highly-technical rules and requirements are beyond the capability of all but the most highly-trained quality managers or lawyers to comprehend. Small businesses simply don’t have the skills, resources or business scale to manage compliance with the CPSIA. The “small batch manufacturer” provisions of the CPSEA offers little relief (if any) from the burdens of the CPSIA and in any event, target companies well below the economic threshold where they could reasonably be expected to handle these responsibilities.

There is no longer a level playing field for small business making children’s products. Unfortunately, small businesses bear the greatest risk of liability under the law, despite being responsible for almost no injuries from lead in the last decade. The double whammy of massive new regulatory obligations and the prospect of devastating liability are driving small businesses out of our market.

The CPSIA went off track by taking away the CPSC’s authority to assess risk. If the CPSC could again regulate based on risk, safety rules could focus on those few risks with the real potential to cause harm to children.

I recommend several steps to reduce cost, liability risk and complexity all without sacrificing children's product safety:

1. Restore the CPSC's authority to base its safety decisions, resource allocation and rules on risk assessment by giving the Commission the discretion to set age and product definition criteria for the 300 ppm lead standard and phthalate ban. Freeze the lead standard and lead-in-paint standard at their current levels unless the CPSC determines that a change is necessary to preserve public health and safety...

2. The definition of "Children's Product" should not include anything primarily sold into or intended for use in schools or which is used primarily under the supervision of adults. Other explicit exceptions should include apparel, shoes, pens, ATVs, bicycles, rhinestones, books and other print materials, brass and connectors. Exclusions from definition should take these products entirely outside the coverage of the CPSIA (including mandatory tracking labels).

3. Lead-in-substrate and phthalate testing should be based on a "reasonable testing program", not mandated outside testing. The tenets of a reasonable testing program should be set by the reasonable business judgment of the manufacturer. Resellers should be entitled to rely on the representations of manufacturers. Phthalate testing requirements should explicitly exempt inaccessible components, metals, minerals, hard plastics, natural fibers and wood.

4. Definition of "Children's Product" should be limited to children six years old or younger and should eliminate the difficult-to-apply "common recognition" factor of Section 3(a)(2)(c) of the CPSA. Definition of "Toy" (for phthalates purposes) should be limited to children three years old or younger and should explicitly refer only to products in the form used in play.

5. Eliminate CPSC certification of laboratories (rely on the market to provide good resources). Fraud has only very rarely been a problem with test labs, and in any event, the CPSC already has the resources and authority to deal with fraud.

6. Impose procedural limits to insure fairness in penalty assessment by the CPSC under the CPSIA. Completely reformulate penalties to restrict them to egregious conduct (including patterns of violations), reckless endangerment or conduct resulting in serious injury.

7. Rewrite the penalty provision applicable to resale of used product such that violations are only subject to penalty if intentional (actual knowledge or reckless endangerment) and if the violation led to an actual injury. Eliminate the "knowing" standard with its imputed knowledge of a reasonable man exercising due care.

8. Mandatory tracking labels should be explicitly restricted to cribs, bassinets, play pens, all long life "heirloom" products with a known history of injuring the most vulnerable children (babies). Tracking labels should not be mandatory for other Children's Products and if tracking labels have been used, can be used by the manufacturer to limit the scale of recalls.

9. Public injury/incident database should be restricted to recalls only. Private, confidential database should be used for other incident reports to assist the CPSC in gathering market data. The proposed public database promises to be deadly to small businesses ill-equipped to manage a process designed for mega-corporations. The interests of the corporate community in this database MUST BE PROTECTED.

I urge your committee to address the fundamental flaws in the CPSIA to restore order to the children's product market and to protect small businesses from further damage. I appreciate the opportunity to share my views on this important topic.

Mr. RUSH. The Chair thanks all the witnesses and now the Chair recognizes himself for 5 minutes for the purposes of questioning the witnesses.

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

Mr. VITRANO. Thank you, Mr. Chairman. Our singular focus is to make sure that youth vehicles are available so kids can safely ride our products with their family. As I said in my testimony, we believe we have already submitted sufficient evidence to obtain an exception under the language that is proposed in the bill but we are not going to be the ones to make that decision. That is why it is absolutely critical that this committee provide as much guidance as possible to the CPSC to make it clear that the terms that are set forth in the bill are designed to grant us relief. We support many explicit instruction in the statutory language. We also support the committee report proposal that has been circulated which would provide clarity and more greatly ensure that we would obtain relief. Again, our goal is to make sure our products are available and we think there are any number of ways to accomplish that including the bill.

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

Mr. VITRANO. That is correct.

Mr. RUSH. Thank you so very much.

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

Mr. MARSHALL. Thank you. I think the analogy I have in my head of our 435 member businesses as well as all the small crafters across the country who might not even know about this law yet that we wouldn't even recognize as businesses but are merely crafting things in their own homes and selling them at craft fairs, of which there are thousands upon thousands. The image I have is of us in a river drifting downstream toward a waterfall, which is February 10, 2011, and this bill is the only branch we see to grab onto to get us out of that river. We have not ever believed that the perfect should be the enemy of the good, and even though there are things in here that we think long term would be improvements to the Consumer Product Safety Improvement Act, we feel that this bill as written would save a substantial number of those businesses that are heading toward destruction, and for that reason we emphatically endorse this bill and we do urge the committee to think thoughtfully about what this bill does and to move it through Congress as quickly as possible.

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

Mr. MARSHALL. Well, frankly, I mean, we are up against this testing deadline, which the CPSC has told us they are not going to extend further beyond February 10th of next year, and having alternative methods in place and in the hope that the CPSC will agree with us about what the definition of alternative testing method is will allow our members to document the safety of their products without having to pay the often-exorbitant costs of third-party lab testing.

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

Mr. RUSH. That concludes my time. Mr. Whitfield, you are recognized for 5 minutes.

Mr. WHITFIELD. Thank you very much, and thank you all for your testimony.

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

Mr. VITRANO. That is correct.

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

Mr. VITRANO. Absolutely. As I had testified, we have urged repeatedly that explicit guidance be provided in the statute. At this point the bill does not include that but we do appreciate and support if it is not going to be in the statute that the report language as proposed be included. Again, our singular focus is to make sure these vehicles are available. We believe that it is the intent of this committee to make sure that happens. Whatever can be done to

make sure that happens is what we are supporting. Statutory language would be better. The report language could get us there as long as it is clear to the CPSC.

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

Mr. LEVY. If I could just clarify the problem with lead and zippers, it is interesting. A zipper is actually made up of about five to seven different components, and what we have been finding or what we found in a few of the items is that one of the components—as an example, this is a failed garment. I can't reach the piece. There is a small piece inside of the garment that had lead levels higher than the 600 parts per million. So we have a garment here. It is not accessible to my fingers to get at it that now failed. There were thousands and thousands of garments involved. And under the—the way the agency is interpreting it, it is above the absolute level, and even though it's not common sense. We keep using that term. I can't access it. The CPSC has said that fabric is not a barrier to access and it devised a very small probe which they could stick in and touch and oh, that is lead, it failed.

Mr. WHITFIELD. So you cannot sell that and meet the requirements of this—

Mr. LEVY. This garment would not be saleable. However, if it was in someone's closet or it is at a Goodwill store, no problem with it.

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

Mr. WEINTRAUB. The problem is unfortunately that children mouth zippers all the time. I have three young children. My oldest child, who is almost six, he mouths zippers as well. So the problem is—

Mr. WHITFIELD. They get zippers and they mouth them. Is that what you are saying?

Ms. WEINTRAUB. Yes. So the problem is that children interact with clothing in dynamic ways, and though in this one instance the part that contains lead may appear to be inaccessible by the fabric, in another product it may not be. So the problem is the complexity of drafting a rule for huge variability in product types.

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

Mr. RUSH. The Chair now recognizes the chairman emeritus of the full committee, Mr. Dingell, for 5 minutes for the purposes of questioning the witnesses.

Mr. DINGELL. Thank you, Mr. Chairman.

This question to Messrs. Palmieri, Vitrano, Marshall and Levy. Section 2 of the Consumer Product Safety Enhancement Act amends the Consumer Product Safety Improvement Act to include a so-called functional-purpose exemption test for certain materials, products and components from the Act's lead limits. To be granted an exemption, a manufacturer must first satisfy a three-part test, the first condition of which stipulates the product, material or component part requires the inclusion of lead because it is not practicable or technologically feasible to manufacture such product, component part or material in accordance with subsection A by removing the excessive lead or by making the lead inaccessible. I believe the statute leaves some ambiguity as to the meaning of the term "practicable" and should be modified or clarified via report language. Do you agree, yes or no, gentlemen?

Mr. PALMIERI. Yes, sir.

Mr. VITRANO. Yes.

Mr. DINGELL. Then Mr. Marshall and Mr. Levy?

Mr. MARSHALL. In this case, I don't think—

Mr. DINGELL. Yes or no?

Mr. MARSHALL. Yes. This particular section I don't think will apply to our members. We don't have the capability to go through this process.

Mr. DINGELL. Next witness. Mr. Levy, yes or no?

Mr. LEVY. I would have to—I am not sure.

Mr. DINGELL. Now, to Messrs. Palmieri, Vitrano, Marshall and Levy, should any report language on this point define "practicable" as relating to the cost of compliance to the expected safety benefit of the compliance, yes or no?

Mr. PALMIERI. Yes, sir.

Mr. VITRANO. Yes.

Mr. VITRANO. Sure, that sounds reasonable.

Mr. DINGELL. I am sorry?

Mr. VITRANO. Yes.

Mr. DINGELL. Mr. Levy?

Mr. LEVY. Yes.

Mr. DINGELL. Thank you, gentlemen. Next question, the question to the same three witnesses. The third condition of the functional-purpose exclusion in section 2 of the bill requires that a product, component part or material will have no measurable adverse effect on public health or safety, taking into account normal and foreseeable use and abuse. Do you believe the phrase "measurable adverse effect on public health or safety" requires clarification in report language, yes or no?

Mr. PALMIERI. Yes, sir.

Mr. VITRANO. Yes.

Mr. MARSHALL. I am sorry. Our member businesses have no real opportunity to gather the evidence needed to follow that.

Mr. DINGELL. Thank you. Mr. Levy?

Mr. LEVY. No.

Mr. DINGELL. No?

Mr. LEVY. Yes.

Mr. DINGELL. Did you say yes or no? If you are content to leave the record ambiguous, I am content to do so too.

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

Mr. PALMIERI. Yes, sir.

Mr. VITRANO. Yes.

Mr. MARSHALL. Yes.

Mr. DINGELL. And you, Mr. Levy?

Mr. LEVY. Yes.

Mr. DINGELL. Now again to the same four witnesses, if you please. Likewise, should the committee make it clear in its report that it intends for the Commission to allow the use of XRF testing as an alternative testing method for lead in paint and lead in substrate, yes or no?

Mr. PALMIERI. Yes, sir.

Mr. VITRANO. Yes.

Mr. MARSHALL. Most emphatically, yes.

Mr. LEVY. Yes.

Mr. DINGELL. Thank you, gentlemen.

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

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

Mr. BARTON. Well, thank you, Mr. Chairman. I have got a number of questions.

First question is something that I don't believe anybody addressed in your testimony, and that is the issue of the requirement of tracking labels on products that are so inexpensive and small that it is almost impossible to comply with that. Does anybody have a comment about some exemption relief in terms of tracking labels?

Mr. WOLDENBERG. Tracking labels are very burdensome in our business. We have 1,500 products and we manufacture a number of those products several times a year. We would like tracking labels to be optional except in the case of high-value items that are durable like cribs and bassinets with demonstrated potential to harm. In our case, since we have an almost zero recall rate over 25 years, we would like it to be our choice as to whether or not we make that investment to future recall expenses.

Mr. BARTON. Ms. Weintraub, do you have a comment on that?

Ms. WEINTRAUB. I disagree. Tracking labels are important for consumers as well as for the agency to be able to know where the product is from. It can enable consumers to identify whether they in fact have—

Mr. BARTON. Even if it is a product that costs less than \$5 and comes out of a vending machine?

Ms. WEINTRAUB. That product could be deadly if there are excessive levels of lead. It shouldn't matter what the cost is. Any consumer product could pose a risk of harm, and the consumer should be able to identify whether a hazardous product—

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

Ms. WEINTRAUB. I think that—

Mr. BARTON. You would just ban that product? You would just basically take it off the marketplace?

Ms. WEINTRAUB. I think there are ways that we could come up with it. I think the CPSC has been working on it as well and has articulated that would be a reasonable way to identify products so that it is both practicable and useful for consumers so they have reliability that the products that are in their homes are safe.

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

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

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

Mr. BARTON. Mr. Palmieri, do you have a comment on that?

Mr. PALMIERI. I think that we believe that "measurable" is a helpful word in the definition as well as the report language so that it is an actual impact on public health as opposed to a theoretical one.

Mr. BARTON. I am not sure I understand what you just told me.

Mr. PALMIERI. What I am saying is that your suggestion was that lead in itself can be measured, but again, we are not talking about

the lead content of the product but whether or not it can actually have an impact on a child's health.

Mr. BARTON. Well, I agree with the last part.

Mr. PALMIERI. And I am just saying that is why we think the word "measurable" is helpful.

Mr. BARTON. But if you leave "measurable" in there, the test—there can never be an exemption, because I am told if you have any lead at all, you can measure it to the infinite decimal point, so there needs to be some practical definition and not an automatic exclusion but you could give the CPSC reasonable authority to make an exclusion if the advocate for the exclusion is able to prove that it should be given. That is all I am trying to get at.

Mr. PALMIERI. And it is our understanding both with that phrase and with the report language that this is completely different test than the "any absorption" standard which was in the original Act, which ended up being a zero tolerance for any leachable lead and that this is a different test and so we agree, strong report language clarifying what that means so that the Commission knows exactly how to act on it immediately is critical to this functioning.

Mr. BARTON. My time is expired but Mr. Levy wants to make a comment, and I would assume that Mrs. Weintraub also wanted to make a comment, so—

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

Mr. BARTON. Ms. Weintraub.

Ms. WEINTRAUB. Yes, sir. Thank you. We believe that these three prongs are all necessary and important. The first prong, is the lead in fact necessary. Why should there be lead in a children's product? Consumers don't want lead in their products. If it doesn't have to be there, it shouldn't be, and if it could move the market to reduce lead in consumer products, it should. So that is the first prong, is the lead necessary essentially. The second prong, is the product one that would likely to be mouthed or ingested, that is the most common route of exposure and the most dire types of consequences occur from mouthing and ingesting products. Unfortunately, the story of Darnell Brown that Chairman Waxman mentioned, the child died because he swallowed a trinket from a shoe that contained—it was almost 100 percent lead and the child died. What we want to do here, and I know what everyone agrees is the goal here is to protect children from unsafe products, and that is our collective desire. And the third prong, measurable adverse impact

on public health, I think that and all of these is a good compromise in terms of having a system, a test that is workable as well as one that will protect the public health.

Mr. BARTON. Thank you, Mr. Chairman.

Mr. RUSH. Ms. Schakowsky, you are recognized for 5 minutes.

Ms. SCHAKOWSKY. Thank you, Mr. Chairman. I wanted to ask Mr. Gibbons a question, not just because no one has asked him a question, but because I actually have a question.

I wanted just to get on the—first of all, in this economic downturn, I think it is particularly important that you be able to serve the market that you do, but I wanted to ask if you feel that the Consumer Product Safety Enhancement Act does provide the relief that your organization needs?

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

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

Mr. GIBBONS. Yes, I do.

Ms. SCHAKOWSKY. Thank you.

Ms. Weintraub, I want to—there has been consistent testimony here, and you as the only one really here who was involved in the original bill and defending the language, and I realize that you are not necessarily supporting the changes but you are not opposing the changes. There has been this talk about going back to what was risk assessment, and I wondered if you could just elaborate a bit more on why we have been there, done that and in my view and I think the reason that we passed the bill it didn't work. I think you would do a much better job articulating that.

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

pose harm to their children, and risk assessment in this and other contexts does not do the job.

Ms. SCHAKOWSKY. I just wanted to point out that on the issue of tracking labels, that the language in the bill as passed that required as practicable and also said that bulk-vended products actually are totally exempt from the tracking labels.

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

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

Ms. SCHAKOWSKY. Let me just ask you a question on that, though. If you have the RN number—

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

Mr. PITTS. Thank you, Mr. Chairman.

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

Mr. MARSHALL. Yes, and this is a significant factor. My store as well as dozens of others of our members made a niche business out of importing small batch goods from Europe. Speaking personally, at this point we have all but ceased importing toys and other goods from Europe because of the CPSIA and also a great number of companies that have already tested the European standards simply cannot afford to retest to CPSIA standards and have withdrawn from the market including some of our most important suppliers. There are some differences between the EN-71 standard, and I am not an expert in it. The most substantial, though, is the definition of lead content limits. EN-71 has an absorbable standard which more closely reflects the effect of lead content on a child's health whereas, as you know, the CPSIA is a total lead standard, but more to the point, labs that are testing for EN-71 aren't necessarily certified by the CPSC to be testing for CPSIA, and small batch manufacturers in Europe have exactly the same problem as small batch manufacturers in America in terms of paying for those tests. And so that is creating the same problem.

But I want to remind the committee what the definition under the CPSIA of a manufacturer is, and my store under the CPSIA,

as well as many other of our members, is considered a manufacturer when we import a specialty German toy to this country unless it goes through an importer that is based in the United States, we are importing directly and so we are the manufacturer. We are the ones responsible for—

Mr. PITTS. Let me ask you then, do you think American toy distributors should be able to sell European toys that are compliant with the European standard?

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

Mr. PITTS. Does anyone disagree with that? Ms. Weintraub.

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

Mr. PITTS. So you do not think the E.U. adequately protects their children?

Ms. WEINTRAUB. No, I am not saying that, but in terms of looking at how the test is conducted, it is very different than how the CPSC does it.

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

Ms. WEINTRAUB. Are you asking me?

Mr. PITTS. Mr. Marshall first.

Mr. MARSHALL. As far as I know, none of our members actually manufacture any products that are not in compliance with those standards of the CPSIA. It isn't really the testing costs that causes problems. Manufacturers that are selling to, for example, Europe from the United States and which we have a couple of members that do that, they do have this dual testing requirement that they—

Mr. PITTS. Mr. Woldenberg.

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

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

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

Mr. PITTS. And how can be sure that products are safe if they are not tested before going to market?

Mr. WOLDENBERG. Well, testing has always been part of our strategy. The problem with the testing regime here is we have to test and test and test again and again things that we know are safe. What we want to do is to be able to spend our money on testing in ways that inform us about problems we may have in our supply chain. Because of the efforts we put in controlling our supply chain, the risks of problems with our products is not random, so we don't need to test every single batch of every single thing. That is how we manage our business.

Mr. PITTS. Thank you. My time is up.

Ms. SCHAKOWSKY [presiding]. Thank you.

Mr. Braley.

Mr. BRALEY. Thank you.

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

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

Mr. WOLDENBERG. Yes.

Mr. BRALEY. Can you give us examples of safe products that have been killed off because of CPSI?

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

Mr. BRALEY. Can you give us examples of some companies that are being—their products are being killed off because of CPSI?

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

Mr. BRALEY. And what company is that?

Mr. WOLDENBERG. The company is called American Educational Products.

Mr. BRALEY. OK. Are there other products that you can identify that CPSI has killed off that are safe products?

Mr. WOLDENBERG. Well, we make decisions on product development in our company all the time, and the hurdle rate for volumes in our company has gone up because of expenses, and so now for us to introduce a new item, if we don't expect sales of over a higher bar, that item never comes to market.

Mr. BRALEY. No, but I am getting back to your statement that CPSI, the bill that we passed previously, has killed off safe prod-

ucts. This is your opportunity to share with us those products that have been killed off, to use your words.

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

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

Ms. WEINTRAUB. We don't agree.

Mr. BRALEY. Why is that?

Ms. WEINTRAUB. Children interact with products in schools just as they do at home, and unfortunately, there have been numerous recalls of educational-based products for high levels of lead.

Mr. BRALEY. The third recommendation was that in lead in substrate and phthalate testing should be based on a reasonable testing program not mandated outside testing, the tenets of a reasonable testing program should be set by the reasonable business judgment of the manufacturer. Do you agree with that recommendation?

Ms. WEINTRAUB. I disagree.

Mr. BRALEY. Why not?

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

Mr. BRALEY. The fourth recommendation was definition of "children's product" should be limited to children six years old or younger. Do you agree with that recommendation?

Ms. WEINTRAUB. I disagree.

Mr. BRALEY. Why?

Ms. WEINTRAUB. Children play with products that are in the household. As I mentioned, I have three children. I have an almost six-, almost four- and one-year-old. My children are very aware of what choking hazards are. They have toys that stay in their room. But there is an important difference between a choking hazard and lead, and that is, not only can I not identify whether the product has lead, they certainly can't either, so we need to have laws that protect children in concrete, reasonable ways that reflect how children actually interact with toys.

Mr. BRALEY. One of the other recommendations as part of recommendation number 4 is that the definition of "toy" for lead-based purposes should be limited to children three years old or younger. Do you agree with that recommendation?

Ms. WEINTRAUB. I do not.

Mr. BRALEY. Why is that?

Ms. WEINTRAUB. For similar reasons, that children of broader ages use those toys and that would be less protective of public health.

Mr. BRALEY. Thank you. My time is expired. I yield back.

Ms. SCHAKOWSKY. Mr. Radanovich.

Mr. RADANOVICH. Thank you, Madam Chair.

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

Ms. WEINTRAUB. I believe that it was—I will have to check that. It is my understanding. My understanding that the lead, it was almost lead itself and previous law was that there was a prohibition on lead in paint, not in the substrate. So I will have to check, but that is my understanding.

Mr. RADANOVICH. It is my understanding that there were laws already in the books that would have prevented that.

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

[The information appears at the conclusion of the hearing.]

Ms. SCHAKOWSKY. Without objection, so ordered.

Mr. RADANOVICH. Thank you, Madam Chair.

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

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

Mr. RADANOVICH. Can you put a price tag on it?

Mr. WOLDENBERG. I would estimate \$25,000 to \$50,000 per.

Mr. RADANOVICH. Per?

Mr. WOLDENBERG. Per, and that is probably on the low end. I am sure that some of the people at this table spent way more.

Mr. RADANOVICH. For you, Mr. Woldenberg again, if another microscope manufacturer is successful in getting an exception, does that mean that you can also sell your microscopes or must you also file for an exemption?

Mr. WOLDENBERG. I believe that I have to file for my products. My products are not identical to anyone else's.

Mr. RADANOVICH. All right. Ms. Weintraub, I understand that Legos is—and you had mentioned choking as an issue. But from what I understand, according to CPSC's report, toy-related deaths and injuries in 2006 through 2008, the causes most common of injury and death were drowning, motor vehicle involvement, falls, airway obstruction, aspiration, suffocation, choking, drowning, strangulation and blunt force. Lead exposure was not among them.

And under your theory, aren't the small pieces like those in Legos here that are found in common toy boxes far more dangerous than the item made with either .03 percent or .01 percent lead?

Ms. WEINTRAUB. I can't say—

Mr. RADANOVICH. This is the definition for anything that is small enough to be choking on.

Ms. WEINTRAUB. Yes.

Mr. RADANOVICH. I would like your response to that.

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

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

Ms. WEINTRAUB. Well, you know, I think the Consumer Product Safety Enhancement Act is a reasonable compromise, very—you know, the drafters of it very carefully listened to all stakeholders, and the desire is to deal with the types of concerns you raised, to take the interactive use of a product and whether there is a health impact, so I think the—

Mr. RADANOVICH. If I may just ask quickly, Mr. Woldenberg, would you agree with that?

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

Mr. RADANOVICH. Thank you, Madam Chair.

Ms. SCHAKOWSKY. Mr. Stupak.

Mr. STUPAK. Thank you.

Let me follow up a little bit with what Mr. Radanovich is asking. Mr. Vitrano, you indicated in your testimony that the motorcycle industry submitted evidence to the CPSC to obtain exclusions for

youth ATVs and motorcycles under the Act, but ultimately the decision is up to the CPSC to grant the exclusion. What clarifying language do you believe the committee must include to ensure that the CPSC interprets the language to grant exclusion for metal parts for ATVs, motorcycles, bicycles under the Act?

Mr. VITRANO. Thank you. We feel it is absolutely critical that the terms “practicable” and “no measurable adverse effect” be defined. We have urged throughout the process that those definitions be included in the statutory language. The bill does not include them but we have been presented with draft report language that does include those definitions and are providing the additional clarity that is absolutely necessary so that it is perfectly clear that this committee intends the CPSC to exclude our products from the lead content limits.

Mr. STUPAK. OK. Have you been asked to comment on those proposed regulations then, or rules on lead?

Mr. VITRANO. Throughout the process of development of this bill, we have been in discussion with staff and have provided extensive input into how we feel the definitions should read.

Mr. STUPAK. Do you feel your concerns have been taken into consideration?

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

Mr. STUPAK. OK. I wanted to get that clarified.

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

Mr. MARSHALL. Well, there are a couple things going on here, depending on the type of product, and one of the issues has been communication to the general crafting community and small business community exactly where the legislation and rulemaking now stands. For example, yarn and other fabrics have been exempted from lead testing by the CPSC. However, if you are making a toy, another thing that hasn’t—let us say they are making that yarn and making it into a small doll, that is now a toy, that needs to be tested to ASTM standards unless we get this bill passed, and

that is a whole other set of tests which are also very expensive. So, yes, that is exactly the concern that the testing requirements, to prove that a product is compliant are enormous, and component testing is another thing that the CPSC has been moving forward on. However, we do feel it is going to take years for that really to come to fruition where we develop a marketplace where there are CPSC lab-certified zippers and CPSC lab-certified buttons available to the small business community to make their products.

Mr. STUPAK. I have no further questions. Thank you.

Ms. SCHAKOWSKY. Mr. Scalise to conclude.

Mr. SCALISE. Thank you, Madam Chair.

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

Mr. PALMIERI. We are supportive of the improvements that this legislation makes.

Mr. SCALISE. Still more improvements may be to limit the scope or are you comfortable?

Mr. PALMIERI. If the exclusion process works, then it removes products that are safe from being included.

Mr. VITRANO. We feel very strongly that ATVs and motorcycles should be excluded from the lead content provisions.

Mr. SCALISE. So too broad.

Mr. Gibbons.

Mr. GIBBONS. I think the section 3 of the draft legislation helps to narrow things appropriately.

Mr. SCALISE. OK.

Mr. MARSHALL. We are talking about the original Consumer Product Safety Improvement Act?

Mr. SCALISE. And the bill before us.

Mr. MARSHALL. OK. Yes, the CPSIA we believe has been too broad and we do feel that we would get significant relief under the bill pending before this committee.

Ms. WEINTRAUB. We can—we do not oppose the CPSEA. We can live with it. If it is weakened, I don't know if that would be—

Mr. SCALISE. Do you think it is too broad?

Ms. WEINTRAUB. We can live with the language as it is now but it can't be made weaker and consumer protections can't be weakened.

Mr. LEVY. Congressman Scalise, I believe it is too broad. What started as the toy bill now includes books, clothing, ATVs. I think it is much too broad.

Mr. WOLDENBERG. Definitely too broad.

Mr. SCALISE. Thank you. Is there any reason why the Commission itself shouldn't have the discretion to determine the age that would be appropriate for restrictions on lead limits? Would you support—yes or no, would you support giving the Commission that discretion to determine appropriate ages for lead?

Mr. PALMIERI. I think that is one of the recommendations that the staff had a number of years ago, but again, we support the improvements that are in this draft legislation.

Mr. VITRANO. Our sole objective here is to make sure youth ATVs and motorcycles are available for young riders and we believe we could get there with the CPSEA.

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

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

Ms. WEINTRAUB. We adamantly disagree.

Mr. LEVY. I think the reconstituted CPSC and fully funded CPSC is more than capable today, so I think giving that discretion much different than 2 years ago, I think I would agree.

Mr. WOLDENBERG. The CPSC should have the discretion to make that judgment.

Mr. SCALISE. Thank you.

Ms. Weintraub, kind of following up a little bit on Mr. Radanovich's question on, you know, the toy box theory and how far you go when you are talking about products in treating a six-year-old the same as a 12-year-old or higher. If you just go to the example of like not just toys, a mother's purse or lead limits in keys, you know, I have got a one-year-old son, the first thing he goes for is the cell phone or the remote controls, and those aren't children's products but that is what they go for. So would you be supportive if you are trying to have the same apply to something like this which a child can get as easy access to as a Lego.

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

Mr. SCALISE. So even a cell phone you would want to have that same limit applied like keys in a mother's purse or the purse itself or the cell phone?

Ms. WEINTRAUB. Ideally, yes.

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

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

Mr. SCALISE. I appreciate that.

Mr. VITRANO. It is not an issue that we are addressing through the bill.

Mr. SCALISE. Thank you.

Mr. GIBBONS. Ditto.

Mr. MARSHALL. Obviously we have been negotiating this carefully so it applies to our member businesses. We are hoping that

we can set an example as alternative testing methods and other ways of certifying products, a fair approach that may well be extended to other types of products.

Ms. WEINTRAUB. I was still contemplating my answer to your previous question, so can you repeat it, please?

Mr. SCALISE. The previous question, would you want those same lead standards to apply to the cell phone that applies to the other children's products?

Ms. WEINTRAUB. That is what your question was to everyone?

Mr. SCALISE. That was the last question. This one relates to small batch processors having the same—if that works for them and addresses some of the cost issues that become prohibitive, would you support having that apply if it is safe for a small batch to apply to all manufacturers?

Ms. WEINTRAUB. I would not.

Mr. LEVY. I would say the same rules should apply, it is safe or it is not safe, to new clothes, to used clothes, and small business or big business, it should be the same rules.

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

Mr. SCALISE. I appreciate your candor.

Mr. RUSH. Ms. Myrick, you are recognized for 5 minutes.

Mrs. MYRICK. Thank you, Mr. Chairman, and I am sorry that I wasn't able to be here for your testimony but I did have a couple of questions to ask, please.

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

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

Mrs. MYRICK. Thank you.

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

Mr. WOLDENBERG. I estimate that our costs have increased in the last, since 2006 to 2009, about \$450,000.

Mr. MYRICK. That is a lot.

Mr. WOLDENBERG. I agree with that.

Mrs. MYRICK. How do you feel that it is unfair to small business other than the cost factor? What else is affecting you?

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

Mrs. MYRICK. I know.

Mr. WOLDENBERG. How many people do you think have actually read this.

Mrs. MYRICK. Right.

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

Mrs. MYRICK. And along the same line, you said it does not make children safer. How can you expand on that?

Mr. WOLDENBERG. Our efforts to make children safe rely on careful management of our supply chain. We very often find ourselves doing business with family businesses like our own where we know the mom, the dad, the brother, the sister, we have known them for years. Getting aligned with them on our practices, understanding how they operate their business, that is the best way for us to control quality, and we like to use inspections as well as testing to provide the controls so that we can assure the quality of a large stream of product.

Mrs. MYRICK. Relative to this bill, what is the appropriate definition for a small business in this bill, in your opinion?

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

Mrs. MYRICK. Very good point.

Yes, sir, you wanted to add to that?

Mr. MARSHALL. Yes. I would like to say if I could, the HTA would like to submit a list of businesses that have closed or withdrawn from the market.

Mrs. MYRICK. I would appreciate that very much. I was going to ask the chairman if I could submit this economic impact report on businesses that had been hurt by this, to put it in the record.

[The information appears at the conclusion of the hearing.]

Mr. RUSH. Hearing no objection, so ordered.

Mrs. MYRICK. Thank you, Mr. Chairman. That is all the questions I have. I yield my time.

Mr. RUSH. The Chair thanks the witnesses for your testimony. There is a vote pending and so now the committee stands adjourned.

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

[Material submitted for inclusion in the record follows:]

**Congressman Gene Green
House Committee on Energy and Commerce
Subcommittee on Commerce, Trade, and Consumer Protection
Legislative Hearing on the Consumer Product Safety Enhancement Act
April 29, 2009**

Mr. Chairman, thank you for holding this hearing and producing this legislation to make corrections to the Consumer Product Safety Improvement Act passed and signed into law last Congress.

The CPSIA was instrumental in restoring resources and authority to the Consumer Product Safety Commission, and I was a proud cosponsor of the original legislative product Chairman Rush, Chairman Emeritus Dingell, and Ranking Member Barton worked together jointly to craft.

As enacted the CPSIA set basic safety standards for children's products to restrict lead and phthalates and established a testing system designed to ensure that all products that enter commerce are safe.

The bill also reestablished a five-member Commission as was originally intended in the original Consumer Product Safety Act, but had been restricted through appropriations riders which had severely restricted the Commission's rule-making and enforcement authority.

Despite a thorough hearing process prior to developing the legislation, implementation of the CPSIA has not been seamless and has resulted in some unintended consequences.

It was never the intent of the legislation to have significant adverse impacts on thrift stores, libraries, or small domestic businesses.

For instance, our office was contacted by Harris County that public libraries are were implicated by the CPSIA because the retroactive applicability of the law would require used books to meet the new lead limits, though there is nearly no chance this lead would ever be ingested.

This issue was noted in the January 15th Report to Congress from the Consumer Product Safety Commission (CPSC) regarding difficulties encountered with enforcing the Consumer Product Safety Improvement Act.

The report noted the Commission's belief that Congress did not intend to impose the lead ban for ordinary books, but the CPSC does not have the flexibility needed to grant an exclusion.

The legislation we are looking at today, would give CPSC this flexibility, while still maintaining the strong protections intended in the law.

It would also address the concerns of the small manufacturers by allowing the Commission to establish an alternative, less burdensome testing method, as well as the concerns of thrift stores and other retailers by only applying the lead limits to newly manufactured products.

Mr. Chairman, thank you again for your work on both the original legislation and this amending bill, and I look forward to hearing from today's witnesses.

Statement of the Honorable Cliff Stearns
CTCP Subcommittee Hearing – April 29, 2010
H.R. ____, the Consumer Product Safety Enhancement Act
341 words

Mr. Chairman,

Thank you for affording us the opportunity to have a legislative hearing on the Consumer Product Safety Enhancement Act.

It is appropriate that our subcommittee gather with industry to discuss the unintended consequences of the Consumer Product Safety Improvement Act (CPSIA). Although this was originally a bipartisan, well-intentioned bill, the legislation has had unforeseen consequences and is wreaking economic havoc and confusion amongst a broad spectrum of industries, small businesses, and charitable organizations.

Since the moment the bill became law and we realized there were real compliance issues at hand, I have supported legislative fixes to the CPSIA that can bring relief to small businesses, manufacturers and other industries across our country *without* risking the safety and wellbeing of our children. I, along with my Republican colleagues on the subcommittee, have spent the past year calling upon Chairman Waxman to work with us on a legislative fix. I am an original cosponsor of Ranking Member Barton's Consumer Product Safety Solutions Act (H.R. 1815) which would have allowed retailers to "sell through" their current inventory and would create a compliance scheme for lead content testing and provide for regulatory flexibility in exemption authority. We introduced this bill in March of last year and were never granted a legislative hearing.

I continue to stand strongly behind toy safety legislation but remain concerned that the Consumer Product Safety Commission (CPSC) is being forced to spend the vast majority of its time dealing with the over-burdensome lead provisions enacted by this law. The CPSIA has handcuffed the Commission, rendering it unable to prioritize real risk for tens of thousands of other consumer products that it is tasked with regulating. Commissioner Northup has even stated that “regulating lead content so minutely [is a] waste [of] taxpayer dollars that could be put toward policing genuine risk.”

The draft bill we are considering today is certainly a step forward to addressing **some** of the problems with CPSIA. But any legislative fix we pass must be comprehensive. We can’t afford to get this wrong this time around.



April 27, 2010

Betsy Christian
Legislative Assistant
Congressman Joseph Pitts Office
United States House of Representatives
420 Cannon House Office Building
Washington, DC 20515

Dear Ms. Christian,

Thanks for your call today to provide additional information about the hearing before the House Subcommittee on Commerce, Trade and Consumer Protection. As you know I will be attending as part of the Handmade Toy Alliance delegation with Jolie Fay and Dan Marshall who will be testifying. I also found out later today that two seats immediately behind Mr. Marshall will be marked as reserved for the HTA, so finding seating in the hearing room should not be an issue.

We have spoken and corresponded about many issues with the CPSIA over the last several months. My primary concern has always been the inconsistency between the CPSIA and EN71 which guides European manufacturers in relation to toy safety. In the latest draft from Congressman Waxman, there is language that offers a bit of hope that the reconciliation could be allowed by the CPSC. This appears on page 9 of the discussion draft "... *the commission ... may ... provide alternate testing requirements ... The Commission may allow such alternative testing methodologies for small batch manufacturers with respect to a specific product or product class or with respect to a specific safety standard or component of a safety standard.*"

I, and the HTA, believe this statement provides opportunity for us to work on the regulation side of the CPSIA with the CPSC. It may be the only possibility for near term reform of the CPSIA on the legislative side before the stay of testing is lifted by the CPSC in February of 2011. We have had success working on the regulation side with the CPSC but run into trouble where the law provides them no flexibility. Do you or Congressman Pitts believe there is any additional chance of legislative reform in the next nine months? If the draft amendment on the table is the only opportunity, we are forced to accept it and then begin work with the CPSC to write rules saving small businesses.

I look forward to meeting you and Congressman Pitts again on Thursday.

With kind regards,

Randall Hertzler,
President

CC: Congressman Joseph Pitts

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Businesses Closed Due to CPSIA

As of April 30, 2010

The following businesses have closed in full or in part due to the CPSIA since August 2008. Please note that this is a very incomplete list and only includes businesses which have publicly announced that the CPSIA was a contributing factor in their decision to cease operations. We believe that this list will increase substantially after February 10, 2011 if the CPSIA is not amended.

1. Whimsical Walney, Inc. – Santa Clara, CA
2. Fish River Crafts – Fort Kent, ME
3. Kungfubambini.com – Portland, OR
4. Baby Sprout Naturals – Fair Oaks, CA
5. Gem Valley Toys – Jenks, OK
6. Angel Dry Diapers – Michigan
7. Abracadabra Educational Craft Kits for Kids – Bend, OR
8. Moon Fly Kids – Las Vegas, NV
9. Hailina's Closet – Ellensburg, WA (thrift store)
10. Eleven 11 Kids
11. Perfect Circle Consignment – Kitsap, WA
12. Jen Lynn Designs
13. A Kidd's Dream – Conway, AK
14. Hands and Hearts History Discovery Kits – Greenwood, SC
15. The Lucky Pebble – Kailua, HI
16. Storyblox – New Vienna, OH
17. My Sister's Closet – Arizona
18. Honeysuckle Dreams
19. Sullivan Toy Co.
20. Phebe Phillips, Inc. – Dallas, TX

Businesses that have stopped production of some or all of their children's lines due to CPSIA

1. Creative Artworks – Greenwood, AK
2. Craftsbury Kids – Montpelier, VT
3. Pockets of Learning – Rhode Island
4. Haba USA (Children's Jewelry Lines) -- New York
5. Kinderkram (Painted Wood Figures) – Germany

Businesses that closed and list the CPSIA as one of the factors

1. Due Maternity – San Francisco, CA
2. Frog Kiss Designs – Fairfield, CT
3. Waddle and Swaddle – Berkley, CA
4. Lora's Closet – Berkley, CA
5. Baby and Kids Company – Danville, CA
6. Baby and Beyond – Albany, CA
7. Obabybaby – Berkley, CA
8. Bellies N Babies – Oakland, CA
9. Oopsie Dazie
10. Essence of Nonsense Toy Store -- St. Paul, MN
11. Kidbean -- North Carolina

Businesses no longer Exporting to the US due to the CPSIA

1. Hess Spielzeug – Germany
2. Selecta Spielzeug – Germany
3. Finkbeiner – Germany
4. Saling – Germany
5. Simba – Germany
6. Bartl GmbH dba Wooden Ideas – Germany
7. Woodland Magic Imports – France
8. Brio -- Denmark
9. Helga Kreft – Germany
10. Eichorn – Germany
11. Kapla Blocks – France

Denny Rehberg
State of Montana

Appropriations Committee
Labor, Health and Human
Services, and Education
Energy and Water Development
Foreign Operations

Congress of the United States
House of Representatives
Washington, DC 20515

April 29, 2010

Rep. Denny Rehberg (MT-AL)
Statement for the Record

Energy and Commerce, Subcommittee on Commerce, Trade and Consumer Protection
Hearing on H.R. ____ - Consumer Product Safety Enhancement Act of 2010

Mr. Chairman, thank you for the opportunity to submit this Statement for the Record on H.R. ____ - the Consumer Product Safety Enhancement Act of 2010 (CPSEA). As you know, the Consumer Product Safety Improvement Act (CPSIA), while well-intentioned, created a situation in which off-road vehicles that are manufactured and marketed exclusively for children under the age of twelve; including all-terrain vehicles, off-highway motorcycles and snowmobiles, have been effectively banned due to the Consumer Product Safety Commission's (CPSC) interpretation of the lead content provision. While the Commission has issued a two-year stay of enforcement, permanent action to exclude these products from the CPSC's interpretation is sorely needed.

Under the CPSC's interpretation, engines, brakes, wheels and suspension parts would not receive an exemption from the CPSIA's lead testing provisions and must conform to the strict provisions included in the legislation. As I have expressed to the Commission and to my fellow Members of Congress before, it would be extremely difficult for children to physically handle these parts, many of which aren't easily accessible to even the most experienced mechanics. Quite simply, these parts should not be included in the CPSC's interpretation of the bill.

I appreciate the Chairman's work on crafting an enhancement bill that addresses many of the concerns and seeks to give the CPSC increased flexibility in their interpretation of the bill. However, I am concerned that as the bill stands now, the exception provisions are too broadly written and will only lead to increased confusion about Congressional intent. I firmly believe that the CPSEA's exclusion provisions need to specifically include an exclusion for youth-model motorcycles and ATVs. I ask the Committee to include the language of my legislation, H.R. 1587, that would exempt youth-model motorcycles and ATVs from the lead-content limits, in any final version of the Consumer Product Safety Enhancement Act.

Mr. Chairman, this issue is of utmost importance to outdoor enthusiasts everywhere and also affects thousands of small business owners across the country that base their livelihood on the sale of youth products. I appreciate your attention to this important issue, and please do not hesitate to let me know if I can be of any assistance to you as you strive to craft an enhanced consumer product safety bill.

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