

CRIB SAFETY: ASSESSING THE NEED FOR BETTER OVERSIGHT

HEARING BEFORE THE SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS OF THE COMMITTEE ON ENERGY AND COMMERCE HOUSE OF REPRESENTATIVES ONE HUNDRED ELEVENTH CONGRESS

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CRIB SAFETY: ASSESSING THE NEED FOR BETTER OVERSIGHT

THURSDAY, JANUARY 21, 2010

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC.

The Subcommittee met, pursuant to call, at 10:03 a.m., in Room 2322 of the Rayburn House Office Building, Hon. Bart Stupak [Chairman of the Subcommittee] presiding.

Members present: Representatives Stupak, Braley, Schakowsky, Christensen, Green, Sutton, Walden, and Burgess.

Staff present: Bruce Wolpe, Senior Advisor; Alison Cassady, Professional Staff Member; Michelle Ash, Chief Counsel, Commerce, Trade, and Consumer Protection; Will Cusey, Special Assistant; Dave Levis, Chief Oversight Counsel; Ali Golden, Professional Staff Member; Erika Smith, Professional Staff Member; Ali Neubauer, Special Assistant; David Kohn, Press Secretary; Elizabeth Letter, Special Assistant; Alan Slobodin, Chief Counsel for Oversight; Krista Rosenthal, Minority Counsel; Kevin Kohn, Minority Professional Staff Member; and Brian McCullough, Minority Professional Staff Member.

OPENING STATEMENT OF HON. BART STUPAK, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. STUPAK. Good morning. We are going to begin this hearing, the Subcommittee on Oversight and Investigations.

Our hearing today is entitled "Assessing the Need for Better Oversight on Crib Safety." Members will be recognized for opening statements. I will begin.

Today we are here to answer a painful and difficult question: Are we doing enough to protect infants and toddlers from injuries and death in their cribs? Most experts agree that the safest place for an infant to sleep is in a properly made crib that meets the highest safety standards. Babies sleeping on their backs in the crib with a firm mattress and without soft bedding are less likely to die from SIDS or accidentally suffocate. Our work today is critical because of the unique nature of a baby crib. As we will hear from our witnesses, a baby crib is the only product designed expressly so parents can leave their child unattended for a long period of time and be confident that their child will be safe. It is reasonable for parents to expect that the crib they purchase meets safety standards enforced by a strong regulator. Unfortunately, this Subcommittee

has learned that those reasonable expectations of crib safety have not been met.

The Consumer Product Safety Commission, CPSC, the government agency tasked with keeping consumer products safe for Americans, has recalled millions of cribs in recent years after investigating reports of broken and defective crib hardware, dropped sides that detach and poor wood quality. What is most shocking is that all these recalled cribs were certified as meeting the industry's voluntary safety standards. The crib recalls raise questions about the effectiveness of the current regulations and leave some parents who doubt whether any crib on the market is safe.

In November of 2009, the CPSC announced the recall of more than 2 million Stork Craft drop-side cribs, the largest crib recall in U.S. history, and just this Tuesday, the CPSC announced yet another voluntary recall involving 635,000 drop-side and fixed-rail cribs manufactured by Dorel Asia Corporation. Congress instructed the CPSC to revisit its safety standards for cribs under the Consumer Product Safety Improvement Act of 2008. CPSC is prepared to meet that obligation. Our hearing will detail the recent crib recalls and consider how CPSC plans to prevent cribs with significant defects from entering the market. We will also examine industry's role in ensuring that their products are safe and if crib standards are designed to keep consumers safe.

Today we will hear specifically about the safety concerns of drop-side cribs. A drop-side crib allows a parent to raise and lower the front of the crib for easy access to their baby as opposed to a fixed-rail crib, which has four sides that do not move up or down. According to the Juvenile Products Manufacturers Association, retailers sold approximately 500,000 full-sized cribs in 2008, of which 15 to 20 percent had drop sides. Since 2005, the CPSC has announced more than 30 recalls of 7 million cribs for a variety of safety problems, many of them involved drop sides. CPSC experts have found that mattress support brackets and drop-side hardware can break, deform or are lost. Design flaws permit consumers to intentionally or unintentionally install the drop-side railing upside down, putting unintended stress on the crib hardware. Many different problems can cause the drop side to detach, creating a dangerous gap between the crib railing and the crib mattress. As this simulated picture from the CPSC shows—it should be up here on our screen—in some cases the body of an infant or toddler can become trapped in the space and a child can suffocate.

Since 2007, the CPSC has issued recalls involving millions of drop-side cribs sold by different manufacturers. The CPSC has issued four recalls of drop-side cribs manufactured by Simplicity after receiving reports of dozens of incidents involving several deaths. In October 2008, the CPSC recalled nearly 1 million Delta brand drop-side cribs. The CPSC issued two recalls in 2009 of Stork Craft drop-side cribs for problems associated with the brackets that hold the mattress in place and problems with the cribs' plastic hardware. The CPSC linked four deaths associated with Stork Craft faulty cribs. In November 2009, a recall involved more than 2 million cribs, the largest crib recall in U.S. history.

The fact that most recalls have involved cribs that were built in compliance with current voluntary safety standards shows that our

system for measuring and ensuring and enforcing crib safety is not working. The Juvenile Products Manufacturers Association, a national trade association representing more than 250 companies, certified that Simplicity, Delta and Stork Craft cribs involved in each of these recalls met all U.S. standards and voluntary industry standards. The JPMA gave these cribs their seal of approval. Unfortunately, neither the mandatory nor the voluntary standards were or are strict enough. JPMA will be testifying at today's hearing, and I look forward to learning more about what the crib industry must do to improve its safety record.

In November 2008, the CPSC acknowledged that the mandatory and voluntary standards do not include adequate performance requirements for durability of drop-side crib hardware, the strength and quality of the wood used to make the cribs, and the utility and clarity of crib assembly instructions. I look forward to the CPSC chairperson's testimony today about what the Commission can do to develop and enforce stronger crib safety standards.

Today we will also examine the November recall of 2 million Stork Craft drop-side cribs as a case study on the need for better regulation and oversight of crib safety. First, what can Congress, the CPSC and crib manufacturers learn from these massive recalls? And second, how does the CPSC plan to address the ongoing safety problems with drop-side cribs under its rulemaking authority? The CPSC has the legal authority to tackle this problem and restore American consumers' confidence in the safety of cribs. Because of the work of some of the members of this Subcommittee, particularly Congresswoman Schakowsky, the Consumer Products Safety Improvement Act requires the CPSC to study and develop safety standards for durable nursery products including full-sized cribs. The Act directs the CPSC either to accept the existing voluntary safety standards for these products and make them mandatory or provide a stricter federal safety standard.

Our hearing today consists of three panels of witnesses. First we will hear from Mrs. Susan Cirigliano, who lost her son Bobby in 2004 when the drop side of Bobby's crib detached and he suffocated. Mrs. Cirigliano and her husband have been working to ban drop-side cribs in New York State. Second, we will hear from Michael Dwyer of the Juvenile Products Manufacturers Association, and Nancy Cowles of Kids in Danger, a consumer organization founded in 1998 by the parents of a toddler who died when a portable crib collapsed around his neck. These witnesses will be able to share their perspectives on crib safety, consumer protection, and comment on CPSC's rulemaking authority. And finally, we will hear from the chairperson of the Consumer Product Safety Commission, Inez Moore Tenenbaum.

I want to thank all of our witnesses for participating in today's hearing. Particularly, I want to thank the Ciriglianos for their time, their testimony, traveling from New York to share their personal tragedy with us and the American people.

In preparation for this hearing, the Subcommittee requested and received documents from the Consumer Product Safety Commission and the Juvenile Products Manufacturers Association. The CPSC and the JPMA have been very cooperative with the Subcommittee document request and produced ten of thousands of pages of docu-

ments over the holidays. I appreciate their cooperation with this important inquiry. In addition, the Subcommittee requested documents from Stork Craft, a Canadian-based crib manufacturer whose drop-side cribs were the subject of the largest recall in CPSC history. Stork Craft has pledged its cooperation, and just yesterday provided the Subcommittee with its first submission of some responsive e-mails. I urge Stork Craft to cooperate fully and complete its production of documents promptly. Stork Craft will not be testifying here today but we look forward to reviewing their submissions, the documents they submitted yesterday, and reserve the right to schedule an additional hearing if necessary to bring Stork Craft here and to explain their role in the recall process and its responsibility to ensure the safe manufacture of cribs.

With that, I will yield back the balance of my time.

I would next like to turn to the ranking member of this Subcommittee, Mr. Walden of Oregon, and they have been very cooperative. We have worked well on this one and I think we may have future hearings, but Greg, thanks for your efforts on this issue.

OPENING STATEMENT OF HON. GREG WALDEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OREGON

Mr. WALDEN. Thank you, Bart, and I appreciate your holding this hearing and the work that both sides have done on this issue. I first want to mention that I am also scheduled to be in a Telecommunications Subcommittee markup session that is going on right now. We are actually voting on a couple of bills, so I may have to step out and go down to that committee and then I will return.

I want to extend a warm welcome to the Ciriglianos. We really feel awful about the loss that you have suffered. It is unthinkable and it is the last thing any parent wants to go through, and so you have our deepest condolences and sympathy. Thank you for traveling here. Thank you for telling us your story. We look forward to your testimony, admire your courage and your willingness to speak up and make a difference in public policy.

The U.S. Consumer Product Safety Commission is charged, as you have heard from my colleague, with protecting the public from unreasonable risk of serious injury or death from thousands of products. Infant cribs are one of the products under CPSC's jurisdiction and a major focus of that agency. The Commission has acted in the past several months to recall millions of drop-side cribs. Today we have an opportunity to examine the recall process and product integrity questions raised by the latest Stork Craft brand crib recall and understand the roles of the company, the agency and the consumer play in ensuring the effectiveness of the recall and keeping children safe. Our goals here today are first to identify the strengths and weaknesses of the current system, and second, to discuss possible solutions to improve safety and oversight while still allowing access to a wide range of products with the assurance of the public's safety. We will also consider the ASTM international standards specifically for crib manufacturers that were released in December of last year. ASTM is an entity that develops technical product standards that guide the CPSC's evaluation of products. We will want an assessment from our wit-

nesses of whether the new ASTM standards will eliminate or significantly reduce the risk of serious injury.

I welcome CPSC Chairman Tenenbaum and look forward to her statement and the opportunity to ask questions. I am anxious to hear if and when the Commission will adopt the ASTM standard, and if not, why not. I am also interested in learning about the complex matrix the agency uses to determine when a certain number of isolated consumer complaints and incidents evolve into a full-blown investigation and lead to an ultimate product recall.

Congress has not been inactive when it comes to increasing federal regulation of juvenile products and increasing the effectiveness of product recalls. The Consumer Product Safety Improvement Act of 2008 addresses several of these issues that bring us here today. Ms. Tenenbaum will be able to talk about the new authorities of the Commission that they have under CPSIA including new rule-making procedures that allow the agency to revise its mandatory product standards more easily, new product registration programs and increases in the agency's budget. With the implementation in the last Administration of the early warning system, the CPSC staff and previous Commission leadership were already increasing their surveillance of cribs, bassinets and play yards. This system helped trigger the recalls of millions of cribs since that time. I hope the chairwoman will talk about this system and how it can be expanded, strengthened, improved under the new leadership of the Commission.

Since medical experts agree the safest place for an infant to sleep is in a crib, I want to know what we can do to increase consumer confidence in these products to ensure that parents are not discouraged from purchasing a crib at all. The consumer, the companies that manufacture these products, CPSC and Congress must work together to improve communications and quickly yet thoroughly respond to products that may pose a threat. I do hope that as we move forward, the CPSC will be able to maintain a strong level of collegiality amongst its five commissioners and that both Republicans and Democrats will work together to ensure that the CPSC effectively and wisely uses its new and additional resources and authorities to improve crib and product safety.

Thank you, Mr. Chairman. I look forward to the witnesses, and again at some point I will have to step out for this other markup.
[The prepared statement of Mr. Walden follows:]

**Opening Statement of the Honorable Greg Walden
Ranking Member
Committee on Energy and Commerce
Subcommittee on Oversight and Investigations
Hearing on
“Crib Safety: Assessing the Need for Better Oversight”
January 21, 2009**

Thank you, Mr. Stupak.

I want to start by extending a warm welcome to our first witnesses, Susan and Robert Cirigliano (SIR-RIG-LEE-ANO). The Ciriglianos experienced an unthinkable crib-related tragedy first-hand when they lost their son Bobby in 2004. Time does not blunt the deep sadness of losing one’s child and I extend sincere condolences to you. There is no greater grief than that which you’ve experienced.

Thank you both for traveling here today to tell your story and help us understand the issues associated with drop-side cribs from a consumer’s standpoint. I admire your courage and willingness to discuss your story to

help identify ways in which we can improve the safety of cribs, the recall process, and communication among consumers, companies, and regulators.

The U.S. Consumer Product Safety Commission (CPSC) is charged with protecting the public from unreasonable risks of serious injury or death from thousands of types of products. Infant cribs are one of the products under CPSC's jurisdiction and a major focus of the agency. The Commission has acted in the past several months to recall millions of drop-side cribs.

Today we have an opportunity to examine the recall process and product integrity questions raised by the latest Stork Craft brand crib recall and understand the roles the company, the agency, and the consumer play in ensuring the effectiveness of the recall and keeping children safe. Our goals here today are first, to identify the strengths and weaknesses of the current system; and second, to discuss possible solutions to improve safety and oversight while still allowing access to a wide-range of products with the assurance of the product's safety.

We will also consider the ASTM International standards specifically for crib manufacturers that were released in December 2009. ASTM is an entity that develops technical product standards that guide the CPSC's evaluation of products. We will want an assessment from our witnesses of whether the new ASTM standards will eliminate or significantly reduce the risk of serious injury.

I welcome CPSC Chairman Tenenbaum and look forward to her statement and the opportunity to ask her questions. I am anxious to hear if and when the Commission will adopt the ASTM standard, and if not, why not. I am also interested in learning about the complex matrix the agency uses to determine when a certain number of isolated consumer complaints and incidents evolve into a full-blown investigation and lead to an ultimate product recall.

Congress has not been inactive when it comes to increasing federal regulation of juvenile products and increasing the effectiveness of product recalls. The Consumer Product Safety Improvement Act of 2008 addresses several of the issues that bring us here today. Ms. Tenenbaum will be able to talk about the new authorities the Commission has under CPSIA

including new rule-making procedures that allow the agency to revise its mandatory product standards more easily, new product registration programs, and increases in the agency's budget.

With the implementation of the Early Warning System in 2007, the CPSC staff and previous Commission leadership were already increasing their surveillance of cribs, bassinets, and play yards. This System helped trigger the recalls of millions of cribs since that time. I hope the Chairman will talk about this System and how it can be expanded and strengthened under her leadership.

Since medical experts agree that the safest place for an infant to sleep is in a crib, I want to know what we can do to increase consumer confidence in these products to ensure parents are not discouraged from purchasing a crib. The consumer, the companies that manufacturer these products, CPSC, and Congress must work together to improve communications and quickly yet thoroughly respond to products that may pose a threat. I do hope that as we move forward the CPSC will be able to maintain a strong level of collegiality amongst its five commissioners and that both Republicans and Democrats can work together to ensure that the CPSC effectively and wisely

uses its new and additional recourses and authorities to improve crib and product safety.

Mr. STUPAK. Well, thank you, Mr. Walden. You make a good point. There is another hearing going on on the first floor and members will probably be bouncing in and out. It is a markup. By markup, it just means we might have a vote in committee so we may have to leave. I will stay and keep the hearing moving on.

Next, Mr. Braley for an opening statement, 3 minutes, please, sir.

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

Mr. BRALEY. Thank you, Mr. Chairman and Ranking Member Walden. I can't imagine a more important hearing for this Committee to hold than the one we are having today.

As a child growing up in the late 1950s, my parents had a drop-side crib. As a parent whose children were born in the late 1980s, I purchased, assembled and my kids all spent time in a drop-side crib, and to the Ciriglianos, I want to extend to you our sympathy and also our appreciation for your courage in using this tragedy to teach others about this danger, and I can't thank you enough for coming down and spending your time to help educate us on this important issue.

I am very, very concerned about the recall, not just of these recent cribs but of the millions of cribs that have been recalled in the last several months, and I believe we need to act immediately to ensure that all cribs sold in the United States meet the highest safety standards possible. You have heard the number, 635,000 cribs made in China and Vietnam by Dorel Asia recalled, this right on the heels of the largest crib recall in U.S. history two months ago, and this has been something that hits home for me personally because the most recent recall has been linked to the October 2008 death of a 6-month-old infant in my State of Iowa who strangled after getting trapped in a Dorel Asia crib when the drop-side hardware broke. In addition to that tragedy, the CPSC received 31 reports of incidents involving Dorel Asia drop-side cribs including six reports of children being trapped between the mattress and the drop side and also received 36 reports of broken slats on the Dorel Asia crib, and this gets back to my point earlier. I can tell you having purchased and assembled a drop-side crib 30 years after I was in one, that the quality of materials being used in these cribs is much less than it used to be in terms of the wood products, and that is why we need to have a strong response to deal with this clear pattern of problems.

In their statement, Dorel Asia said that the recalled cribs meet and exceed all applicable safety standards. If that is true, then this is just one more clear indication that we need to act as quickly as possible to strengthen and enforce any standards.

These deaths are inexcusable. They involve the most vulnerable members of our population and we have no excuse for not fixing this problem immediately. I am glad to hear that CPSC has taken initial steps to address these safety concerns for cribs as mandated by the Consumer Product Safety Improvement Act, which we passed hear in 2008 and which this Committee addressed in hearings, but I am concerned about the length of time this is taking and I look forward to hearing from Chairwoman Tenenbaum about

the additional steps the Commission is taking to improve and upgrade crib safety standards.

Unfortunately, these crib recalls also illustrate the dangers of free and unrestricted trade with companies that don't have the same safety standards for manufacturing that we do in the United States. To ensure the safety of American families, we need to ensure that the countries we import products from are on a level playing field with those that are manufactured here in this country regarding product safety regulations. That is why as chairman of the Populous Caucus, I am working to make sure that future trade agreements including strong product safety standards and that products imported into the United States meet or exceed U.S. health and safety standards, and I believe that the enactment of those provisions contained in the trade act would go a long way toward ensuring the safety of imported products including cribs.

So I want to thank you, Chairman Stupak, for holding this timely and important hearing. I look forward to the testimony of all of our witnesses and I hope that this hearing will be an important step forward toward the prompt implementation and strong enforcement of the highest crib safety standards possible. I yield back.

[The prepared statement of Mr. Braley follows:]

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

**Statement of Congressman Bruce Braley
Committee on Energy and Commerce
Subcommittee on Oversight and Investigations
“Crib Safety: Assessing the Need for Better Oversight”
January 21, 2010**

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Thank you, Chairman Stupak and Ranking Member Walden for holding this important hearing today on crib safety and federal safety standards for infant cribs. I'm deeply concerned by the recall of millions of cribs in recent years and believe that we need to act immediately to ensure that all cribs sold in the United States meet the highest safety standards possible.

Just this Tuesday, 635,000 cribs made in China and Vietnam by Dorel Asia were recalled, right on the heels of the largest crib recall in U.S. history just two months ago, when the Consumer Product Safety Commission (CPSC) announced the recall of over two million Stork Craft drop-side cribs. This most recent recall has been linked to the October 2008 death of a 6-month-old infant in my state of Iowa, who strangled after getting trapped in a Dorel Asia crib when the drop-side hardware broke. In addition to the death of the child in

Cedar Rapids, Iowa, the CPSC received 31 reports of incidents involving Dorel Asia drop-side cribs, including six reports of children being trapped between the mattress and the drop side. The CPSC also received 36 reports of broken slats on Dorel Asia cribs, including two reports of trapped children and seven reports of bruises and scratches.

These numbers indicate a clear pattern of problems with this product. If Dorel Asia's statement that "the recalled cribs meet and exceed all applicable safety standards" is true, this is just one more clear indication that we need to act as quickly as possible to strengthen and enforce these standards.

The deaths and injuries of infants caused by unsafe cribs are simply unacceptable, and we have no excuse for not fixing this problem immediately. I'm glad to hear that the CPSC has taken initial steps to increase safety standards for cribs, as mandated by the *Consumer Product Safety Improvement Act*, which Congress passed in 2008, but I'm concerned about how long this is taking. I'm looking forward to hearing from Chairwoman Tenenbaum about the Commission's plans to improve and uphold crib safety standards and about the support and resources the Commission needs from

Congress to help with and expedite this critical and long-overdue process.

Unfortunately, these crib recalls also illustrate the dangers of free and unrestricted trade with countries that don't have the same safety standards as the United States. To ensure the safety of American families, we need to ensure that countries we import products from are on a level playing field with regards to product safety regulations. That's why, as the Chairman of the Populist Caucus, I'm working to ensure that future trade agreements include strong product safety standards and that products imported into the United States meet or exceed U.S. health and safety standards. I believe that the enactment of these provisions included in the *TRADE Act* would go a long way towards ensuring the safety of imported products, including cribs.

Thank you again, Chairman Stupak, for holding this important and timely hearing today. I look forward to hearing the testimony of all the witnesses, and hope that this hearing will be an important step forward towards the prompt implementation and strong enforcement of the highest crib safety standards possible.

Mr. STUPAK. Thank you, Mr. Braley. Mr. Burgess, opening statement, 3 minutes, please, sir.

**OPENING STATEMENT OF HON. MICHAEL C. BURGESS, A
REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS**

Mr. BURGESS. Thank you, Mr. Chairman.

Mr. Chairman, of course we are here today because of a tragedy. It is a tragedy that we cannot reverse. Maybe we can prevent future tragedies. I am profoundly regretful that for so long the standards as they relate to crib safety have been voluntary and not mandatory despite more than 7 million cribs being recalled in the last 5 years.

We have a new commissioner at the Consumer Product Safety Commission, Inez Tenenbaum. One of her first speeches was last August and she correctly noted that a great deal of product safety occurs by relying on consensus standards coupled with regulatory authority to intervene quickly, and she prefaced this by saying that they should be voluntary consensus standards. This makes sense for a new commissioner who has witnessed the aftermaths of some of the mandates that were issued from the Congress through H.R. 4040, the Consumer Product Safety Improvement Act, because we in the Congress have yet to go back and fix some of the unintended consequences that we visited upon parents and consumers with that Act.

However, that being said, the Consumer Product Safety Improvement Act has beleaguered the Consumer Product Safety Commission. Yes, we have improved their funding. Yes, we have improved their staffing, but I will tell you, as one of the few Members of Congress who has been to the Consumer Product Safety Commission and watched the good men and women out there do their work, I will tell you that it is startling with the amount of work that the amount of safety which they are asked to assure the small staff and the rather primitive working conditions that they face on a daily basis. They don't have the manpower to implement the law and they don't have the finances and they are vainly trying to meet the deadlines imposed, and they issue stays and enforcement, stay after stay after stay and enforcement, while trying to come up with solutions and the only real solution is Congress going back and fine-tuning some aspects of that legislation and fixing the mistakes that we made when that legislation was drafted. Section 104 of the Consumer Product Safety Improvement Act specifically requires the Consumer Product Safety Commission to study and develop safety standards for durable nursery products such as infant bath seats, infant walkers and cribs. The Consumer Product Safety Commission could have either made mandatory existing voluntary safety standards or provided a stricter federal safety standard, and the Consumer Product Safety Commission worked to initiate two rulemakings by August 2009 and two more rules every 6 months until all durable nursery products have a mandatory safety standard. But to date, the Consumer Product Safety Commission has only proposed safety standards for infant bath seats and infant walkers but not cribs, the course of 30 recalls.

The crib issue is an issue of failure of those trusted by the American public to act. During the last Administration, the rule regard-

ing crib safety was being advanced but a new Administration came in and this rule has never been finalized. Here we are a year later, we see the same problems as we have seen before, and really, Mr. Chairman, we have no one to blame but ourselves for not regulating not one single product, and especially cribs.

I yield back the balance of my time.

Mr. STUPAK. Thank you, Mr. Burgess.

Mr. Green for an opening statement, please, 3 minutes.

**OPENING STATEMENT OF HON. GENE GREEN, A
REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS**

Mr. GREEN. Thank you, Mr. Chairman, for holding this hearing, our oversight hearing on this important issue. There have been 30 recalls since 2005. The largest such recall happened just 2 months ago when more than 2 million cribs were recalled in November of 2009. Again on Tuesday, there was a recall of more than 600,000 cribs. These major recalls demonstrate what we need to do in setting safety standards for cribs and testing and enforcement of those standards.

As a grandfather of four under 5, I want to thank all our witnesses today but particularly the Cirigliano family for the loss of their child. It leaves a hole in your heart for your whole life.

I also want to thank our Consumer Product Safety Commission Chair Tenenbaum for being here today. I look forward to hearing what actions the Commission plans to take as it reviews safety standards for cribs that are required by the Consumer Product Safety Act of 2008.

ASTM International, which provides voluntary technical standards manufacturers can follow, amended their standards last month and removed standards for what had been one of the most dangerous types of cribs, a drop-side crib, especially making any drop-side crib noncompliant with the ASTM standards. There is a serious problem in that these types of cribs are not addressed sooner either by ASTM or the CPSC when it was the drop-side crib that led to so many recalls because of the safety hazards they pose to infants and children.

In 2007, a 7-month-old in my hometown of Houston died due to a malfunctioning drop-side crib made by Simplicity. The CPSC recalled cribs made by that manufacturer but the overall issue of dangers posed by drop-side cribs is not addressed. Without knowing it, the family of the 7-month-old put the drop-side crib on upside down, the rail, and because of that the hinge on the rail broke. That allowed a gap between the mattress and the rail and the gap is where the child suffocated to death with their head against the mattress. This is not a unique problem on drop-side cribs but is one that was not specifically addressed until December 2009 when ASTM removed standards for this type of crib. CPSC now has the authority provided by the Consumer Product Safety Improvement Act to move forward with strengthening regulations relating to crib safety, and I hope it is not just setting standards but enforcing testing to ensure unsafe cribs never make it into consumer homes in the first place.

I am also concerned about the secondary market for cribs, whether it be through garage sales or resales, similar to car seats. You

can buy a car seat on the side of the road in Houston. It may be 20 years old but it doesn't meet the safety standards of today.

Again, I want to thank the chairman for holding this hearing and look forward to the testimony from all our witnesses on what Congress can do to help protect infants from these terrible accidents. I yield back my time.

[The prepared statement of Mr. Green follows:]

Congressman Gene Green
House Committee on Energy and Commerce
Subcommittee on Oversight and Investigations
“Crib Safety: Assessing the Need for Better Oversight”
January 21, 2010



Thank you Mr. Chairman for holding this oversight hearing on this important issue.

There have been 30 recalls since 2005 – the largest such recall happened just two months ago, when more than two million cribs were recalled in November 2009, and again on Tuesday, there was a recall of more than 600,000 cribs.

These major recalls demonstrate we need to do in setting safety standards for cribs and in testing and enforcement of those standards.

I want to thank Consumer Product Safety Commission Chairwoman Tenenbaum for being here today, and I look forward to hearing what actions the Commission plans to take as it reviews safety standards for cribs as required by the Consumer Product Safety Improvement Act of 2008.

ASTM International, which provides voluntary technical standards manufacturers can follow, amended their standards last month and removed standards for what has been one of the most dangerous types of cribs, the drop-side crib, essentially making any drop-side non-compliant with the ASTM standards.

There is a serious problem however, that these types of cribs were not addressed sooner either by ASTM, or the CPSC, when it was

the drop-side crib that led to so many recalls because of the safety hazard they posed to infants and children.

In 2007, a 7 month old in my hometown of Houston died due to a malfunctioning drop-side crib made by Simplicity.

The CPSC recalled cribs made by that manufacturer, but the overall issue of dangers posed by drop-side cribs was not addressed.

Without knowing it, the family of the 7 month old put the drop rail on upside-down and because of that, a hinge on the rail broke.

That allowed a gap between the mattress and the rail, and that gap is where the child suffocated to death with her head against the mattress.

This is not a unique problem among drop-side cribs, but one that was not specifically addressed until December 2009 with ASTM removed standards for this type of crib.

CPSC now has the authority provided by the Consumer Product Safety Improvement Act to move forward with strengthening regulations relating to crib safety, and I hope it is not just setting standards, but enforcing testing to ensure unsafe cribs never make it into consumers' homes in the first place.

I again want to thank the Chairman for holding this hearing today, and look forward to the testimony from our witnesses on what Congress can do to help protect infants from these types of terrible accidents.

Mr. STUPAK. Thank you, Mr. Green.

Ms. Christensen, opening statement, please.

Mrs. CHRISTENSEN. Thank you, Mr. Chairman, and I want to also thank you, Chairman Stupak and Ranking Member Walden, for holding this important hearing.

Becoming a parent marks the most important event in someone's life, and as parents and consumers, we trust that the products that we buy are safe for our children and we need to have that reassurance. However, we are here this morning because some of those products are not safe, in particular, faulty cribs that have resulted in injuries and even death, and I would like to also add my word of welcome to the Cirigliano family and extend my sympathy to them as well, and also commend them for being here today and turning their tragedy into a crusade to save lives and preventing other parents from experiencing the same misfortune.

We can all agree that we need to work diligently to strengthen crib standards and standards for every child entity and to ensure that they are meeting the highest of safety measures and providing protection to children in a manner that they are supposed to be designed to do, and I would also like to extend a thank you to all of the other witnesses for being here today and look forward to their testimonies.

Mr. STUPAK. Thank you.

Ms. Schakowsky, opening statement. I know you are probably at the other hearing but I mentioned your leading role in the Act that we just passed in 2008 and your interest in this area, so thanks for being here and thanks again for your diligence on this.

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

Ms. SCHAKOWSKY. Thank you, Mr. Chairman. I am happy that we are holding this hearing.

This is a life-of-death issue, the safety of cribs. Attending hearings where we hear testimony from families of children who have died in preventable accidents is one of the hardest things I do as a Member of Congress but of course nothing compared to what it means to the families like the Ciriglianos who mustered the incredible courage to come here and tell us their story so that they can prevent these accidents from happening to other children.

The Consumer Product Safety Improvement Act has taken a lot of heat over the last year or so, and it is true that under previous leadership the CPSC's implementation of the law as problematic and produced widespread confusion, particularly among small business owners, but we can't lose sight of why this legislation was passed: to protect children, children like Danny Keysar, for whom the bill is named, and Bobby Cirigliano, whose parents are brave enough to share their son's story today.

For years we have heard stories of the horrible injuries and deaths of children in cribs and it has been mentioned many times how literally millions of cribs have been recalled in the last few years. No need to go through that again. But I authored the provision in the CPSIA that requires the Consumer Product Safety Commission to develop the strongest possible mandatory standards for

durable infant and toddler products including cribs. It is my understanding that the CPSC has proposed rules for the first two products, infant bath seats and infant walkers. I am concerned that a year and a half after the bill became law, there is still no rule for cribs, and I am eager to hear from Chairman Tenenbaum, who I welcome today, about how we are moving forward on such a rule, and I also want to welcome other witnesses including Nancy Cowles, a leader with whom I have worked for years on children's product safety issues, and again, I thank you, Mr. Chairman, and yield back the balance of my time.

Mr. STUPAK. Thank you. That concludes all the opening statements of members.

I would like to call our first panel of witnesses now. Robert and Susan Cirigliano, if you would please come forward? I have a chair there. As you know, the Ciriglianos are from New York, and unfortunately and tragically they lost their son Bobby.

It is the policy of this subcommittee to take all testimony under oath. Please be advised that you have the right under the rules of the House to be advised by counsel during your testimony. Do you wish to be represented by counsel?

Mrs. SUSAN CIRIGLIANO. No, thank you.

Mr. STUPAK. The witnesses indicated they did not. Therefore, I am going to ask you to raise your right hand to take the oath.

[Witnesses sworn.]

Mr. STUPAK. Let the record reflect that the witnesses have replied in the affirmative. They are under oath. I would now ask for an opening statement, 5-minute opening statements. It will be part of the record, so if you want to submit a longer statement, you may, and it is my understanding, Susan, you are going to testify?

Mrs. SUSAN CIRIGLIANO. Yes.

Mr. STUPAK. Would you pull that mic up a little further and press the button. A light should go on there.

**TESTIMONY OF SUSAN CIRIGLIANO, MOTHER OF BOBBY
CIRIGLIANO, ACCOMPANIED BY ROBERT CIRIGLIANO**

Mrs. SUSAN CIRIGLIANO. Good morning. We are Robert and Susan Cirigliano, also known as Daddy and Mommy, but we have only heard three of our four children call us that because our son Bobby never had the chance.

On September 15, 2004, Bobby was 6 months and 3 days old when his head and neck were caught in the detached side rail of his crib. After the drop-side detached, Bobby's head was caught between the side rail and the mattress. With his face pressed against the mattress, he suffocated. Bobby was taken from his crib, put into an ambulance, arrived at the hospital and never came home.

We miss Bobby every day, but what is most important is what Bobby misses. Bobby has an older sister who never had the chance to teach him how to get in and out of trouble. Bobby has a younger brother and sister that he has never met. Bobby has two grandfathers that he never played catch with, two grandmothers whose cookies he was never able to taste. Bobby never had a chance to wear his first Halloween costume. He didn't get to sit on Santa's lap, and never blew out a birthday candle.

Our smiles have dulled and our family will never be complete again. Other than Mommy's and Daddy's arms, Bobby was in one of the safest places, his crib. The reality is, his crib was not safe and our lives will never be the same. We refuse to allow any other families to suffer the pain we have.

While we are happy to hear about the millions of crib recalls, we are convinced that the only answer is a complete ban on drop-side cribs. We do not believe that parents realize the severity of placing their children to sleep in a drop-side crib. The one place that you would leave your child alone has become a threat. If they cannot purchase a drop-side crib, they would have no option but to purchase a stationary crib. We do not believe a repair kit is the answer. If a crib has the ability to kill a child, it should not be manufactured. The recalls are downplaying the number of children that have been suffocated in a drop-side crib. Our son Bobby was not included in the CPSC's reports. Their reason for this is the location his drop-side rail detached was not the same as the other infants. Our problem with this is the investigator's report stated the bottom left rail was not secure while Bobby's rail detached on the lower right side. The point is, bottom left, bottom right, Bobby was asphyxiated and died when his drop-side rail detached and he was trapped between the mattress and the side just like infants before him and just like infants after him. The number of infants reported should not be determined where the rail detaches but by the end result.

We have in the last 5 months worked with Legislation in Suffolk County having a bill passed banning the sale of drop-side cribs. We have worked with Nassau County Legislation banning the sale of drop-side cribs and are waiting the bill's signing. We are currently working with Rockland County Legislation to have the ban passed there also, which by the way, it passed on Tuesday night.

We appreciate Congress inviting us to be here today to share our story. We hope you think of Bobby while you determine how to keep our babies safe. We are all they have. Their lives depend on it. Thank you.

[The prepared statement of Mrs. Cirigliano follows:]

Testimony of Susan Cirigliano
Before the House Committee on Energy and Commerce
Subcommittee on Oversight and Investigations
“Crib Safety: Assessing the Need for Better Oversight”
January 21, 2010

We are Robert and Susan Cirigliano also known as Daddy and Mommy. But we have only heard three of our four children call us that because our son Bobby never had the chance. On September 15, 2004 Bobby was six months and three days old when his head and neck were caught in the detached side rail of his crib. After the drop side rail detached Bobby's head was caught between the side rail and the mattress. With his face pressed against the mattress, he suffocated. Bobby was taken from his crib, put into an ambulance, arrived at the hospital and never came home.

We missed Bobby everyday but what is most important is what Bobby misses. Bobby has an older sister who never had the chance to teach him how to get in and out of trouble. Bobby has a younger brother and sister that he has never met. Bobby has two grandfathers that he never played catch with. Two grandmothers whose cookies he was never able to taste. Bobby never had a chance to wear his first Halloween costume. He didn't get to sit on Santa's lap and never blew out a birthday candle.

Our smiles have dulled and our family will never be complete again. Other than Mommy and Daddy's arms Bobby was in one of the safest places - his crib. The reality is his crib was not safe and our lives will never be the same. We refuse to allow any other family to suffer the pain we have.

While we are happy to hear about the millions of crib recalls we are convinced that the only answer is a complete ban on drop side cribs. We do not believe that parents realize the severity of placing their children to sleep in a drop side crib. The one place that you would leave your child alone has become a threat. If they cannot purchase a drop side crib they would have no option but to purchase a stationary crib.

Another reason we feel strongly about the ban is the CPSC's approach with the recalls. We do not believe a repair is the answer. If a crib has the ability to kill a child it should not be manufactured. The recalls are downplaying the number of children that have been suffocated in a drop side crib. Our son Bobby was not included in the CPSC's reports. Their reason for this is the location his drop side rail detached was not the same as the other infants. Our problem with this is the investigator's report stated the bottom left rail was not secure while Bobby's rail detached on the lower right side. The point is bottom left, bottom right Bobby was asphyxiated and died when his drop side rail detached and he was trapped between the mattress and the side rail just like infants before him and just like infants after him. The number of infants reported should not be determined by where the rail detaches but by the end result.

We have in the last five months worked with Legislation in Suffolk County having a bill passed banning the sale of drop side cribs. We have worked with Nassau County Legislation banning

the sale of dropside cribs and are awaiting the bill signing. We are currently working with Rockland County Legislation to have the ban passed there also.

We appreciated Congress inviting us to be here today to share our story. We hope you think of Bobby while you determine how to keep our babies safe. We are all they have. Their lives depend on it. Thank you.

Mr. STUPAK. Mr. Cirigliano, would you like to say anything at this time? Okay. That is no. Thank you again for being here and thank you for sharing your story.

Mrs. SUSAN CIRIGLIANO. You are welcome. Thank you for inviting us.

Mr. STUPAK. We are going to have members ask you questions, okay?

Mrs. SUSAN CIRIGLIANO. Okay.

Mr. STUPAK. Let me ask you this. In your statement, you said, "Our son Bobby was not included in CPSC's reports. Their reason for this is the location of the drop-side rail detached was not the same as other infants." Can you explain that?

Mrs. SUSAN CIRIGLIANO. When we saw an interview on television regarding the manufacture of our crib's recall, the chairperson at the time was asked why Bobby's death wasn't included in the recall, and her response was because of the location of where his drop-side rail detached.

Mr. STUPAK. There was no doubt that the rail detaching was the cause of his suffocation, it is just the location of it for—

Mrs. SUSAN CIRIGLIANO. Yeah.

Mr. STUPAK [continuing]. Their rules and regulations? Is that your understanding?

Mrs. SUSAN CIRIGLIANO. Yes.

Mr. ROBERT CIRIGLIANO. The recalled crib, the manufacturer highlighted the piece that malfunctioned on my son's crib, and that was one of the two pieces for the recall, and we would still like an explanation for it actually. We never got one. You know, the manufacturer put a picture on their website of the same exact piece that malfunctioned on my son's crib also.

Mr. STUPAK. Did you report your son's death to the CPSC, Consumer Product Safety Commission?

Mr. ROBERT CIRIGLIANO. They came down to the medical examiner's office and they inspected the crib.

Mr. STUPAK. But do you have any personal knowledge—I don't mean to push you on this. I am just trying to figure out, because it is my understanding, there is really no requirement to report it, so we really don't know how many deaths have been caused or even the number of injuries. Was there a requirement that you know of to report to the CPSC the injury to your son?

Mrs. SUSAN CIRIGLIANO. Well, I don't understand. I am sorry. Were we required to report it?

Mr. STUPAK. Right.

Mrs. SUSAN CIRIGLIANO. I don't know.

Mr. STUPAK. I mean, your son went to the hospital and unfortunately died.

Mrs. SUSAN CIRIGLIANO. Right.

Mr. STUPAK. Then who has the responsibility then to report it so we have accurate information of the information the—

Mr. ROBERT CIRIGLIANO. The last thing you are thinking about is reporting it to the CPSC.

Mr. STUPAK. I agree.

Mr. ROBERT CIRIGLIANO. But after a couple of weeks, we realized that they came down and inspected the crib, because at that point we didn't know what had happened.

Mr. STUPAK. When you say they came down and inspected the crib, "they" would be local officials or—

Mr. ROBERT CIRIGLIANO. I am not sure, but there was a report and actually there was some parts of the report that didn't make sense. The bottom right drop side was the malfunctioning side. They reported the bottom left, so that was wrong also, and also they said that they asked the medical examiner if they could come and interview us and they said the medical examiner said no, don't bother the family, and that turned out not to be true.

Mr. STUPAK. Okay.

Mr. ROBERT CIRIGLIANO. So I don't know. There is just a lot of in there that—

Mr. STUPAK. Well, that is what we are trying to—

Mr. ROBERT CIRIGLIANO. Right, and we would like some answers. That would be nice.

Mrs. SUSAN CIRIGLIANO. I am curious too because when you are in a situation like that. The last thing that goes through your mind is to contact anybody, you know what I mean? And I understand your question and it is a great question. From what I have on our CPSC report, they received their information from one of the newspaper articles, but that is a wonderful question. You know, as a parent when you are in that position, the last thing you are thinking about—

Mr. STUPAK. Nor should the burden be on you.

Mrs. SUSAN CIRIGLIANO. Right, and I am wondering, maybe the local police department, you know, somebody has to contact.

Mr. STUPAK. What we are looking for is a way to make sure that the Consumer Product Safety Commission and public authorities have the most complete information on this product or any product. I mean, just listening to the opening statements, Mr. Braley mentioned one in his area, Mr. Green mentioned one. We have you. We have at least four deaths reported in 2009. I will bet you there are many more in 2009 but no one knows because how do you get the information there, who is required to give it, in what timely manner, and then there is always the escape clause, if you will, that you have to have reason to believe whoever is doing the reporting that the crib is the one that was actually the cause of death, and there is always a way to see, well, it really wasn't the product, it was something else.

Mrs. SUSAN CIRIGLIANO. Right.

Mr. STUPAK. And in many of these cases, it looks like a lot of times they say well, the parents did this wrong. So that is why, and I don't mean to push you. I won't expect you to know who to report it to. I am just trying to—

Mrs. SUSAN CIRIGLIANO. No, I understand. We are trying to figure out the chain of, you know, how is it supposed to get to where it should be.

Mr. STUPAK. Correct. That concludes my questions.

Mr. Walden, questions, please.

Mr. WALDEN. Yes, I think you have covered most of it, Mr. Chairman, very well.

I guess the question I would have is, do you think that the new system for reporting, the early warning system and all, can be effective, as effective? I realize it wasn't in place in your situation,

the tragedy, but it looks like perhaps out of your situation and that of others. They have said, okay, we have to fix how we collect these data and how we evaluate them and how we spread that out so somebody catches these problems quicker. Are you familiar with the new early warning system? Do you think it would have made a difference in your situation?

Mr. ROBERT CIRIGLIANO. Well, yeah, there has been a lot of recalls from the early warning system, and, you know, basically the problem was that one agency wouldn't know what the other agency reported, and they couldn't get their data together and put the similarities together, and I think that is a big step that the CPSC has taken. I think it is working. I think they need—I think the big thing is to make it a mandatory. Every single crib needs to be tested and it shouldn't be voluntary. And we all know that. You know, and the other big problem is these countries that are importing these cribs into the United States and, you know, they are making them a lot flimsier. You can just tell. I mean, the plastic spring pegs have been a big issue and it is a little three-quarter-inch piece of plastic that is supposed to hold a whole side rail up, and, you know, back in the day they used to make them out of metal, and you know, they are just trying to make a cheap—they are making a cheaper product and that needs to be tested. Every single crib needs to be tested.

Mr. WALDEN. And the new standards that are coming out, and came out, I guess, the recommendations in December of last year, have you had a chance to review those, the ASTM standards?

Mrs. SUSAN CIRIGLIANO. No, I haven't seen them.

Mr. WALDEN. I would be curious to—and I realize you probably have other things going on in your life too than this, but I can certainly understand why this is such an important issue for you, but I would be curious to get your feedback at some point on the ASTM standards, because I think they address some of these issues.

Thank you, Mr. Chairman. That is all I have.

Mr. STUPAK. Thank you, Mr. Walden.

Mr. Braley for questions, please.

Mr. BRALEY. Mr. Cirigliano, I want to follow up on that point you just made because my recollection of the crib that was in our family for years is exactly as you described. The quality of the wood itself, you could probably run a tank into and it wouldn't have collapsed. I took 4 years of high school shop classes and I have assembled a lot of consumer products and I apply a lot of torque to make sure that they are properly tightened and yet I remember the one that I assembled. Even though it was on wheels and on a hardwood floor, there was a flimsiness to it just in the way that it stood there that I don't remember on the one that my parents owned. As a parent, can you just share with us where Bobby was in the number of children you had? Was this the first child you had this crib for, the second, the third? Tell us a little bit about that.

Mr. ROBERT CIRIGLIANO. No, we had the crib for my daughter, and at the time she was—

Mrs. SUSAN CIRIGLIANO. Well, we bought it for her when she was born.

Mr. ROBERT CIRIGLIANO. And when my son started using it, I guess 3 years later, and we never took the crib apart. I remember

putting it together. You know, you try and tighten everything down as tight as you can, and, you know, when you go and buy a crib, they have got all these safety labels on it. Maybe you have a false sense of security, and at that point we never realized that there were all these problems with these cribs. You just—it just wasn't out there. If it was, we would have never bought one. And I think that is a very important piece here, and Congress's voice is going to be huge in this. Getting the word out to everybody that has these cribs, they could be in the garage, up in the attic, and they go to bring it back out for a newborn in the family, they need to throw those out. They are no good. And I think the voice of Congress is going to be huge in this.

Mr. BRALEY. Mrs. Cirigliano, I want to talk to you about the safety certification on cribs in the marketplace because a lot of parents, a lot of young parents are constantly trying to educate themselves about product safety. They want to buy products that are going to take care of their children. We have seen information in preparation for this hearing that the thing that makes a crib unique, it is one of the few devices that an infant uses where you expect that child to be safe absent the constant attention of a parent. That is the whole underlying premise for having a crib so that you can go to sleep yourself at night with the confidence that child is going to wake up healthy and alive in the morning.

Mrs. SUSAN CIRIGLIANO. Right.

Mr. BRALEY. So one of the things we know is that most manufacturers who sell cribs in this country use this certification, meeting voluntary safety standards through the Juvenile Products Manufacturing Association and they certify with a seal on the product that it has been tested by independent labs and meets all current mandatory and voluntary safety requirements, and if you look up here on the screen, I believe this is the seal that is used. Is that your understanding?

Mrs. SUSAN CIRIGLIANO. Yes.

Mr. ROBERT CIRIGLIANO. Yes.

Mr. BRALEY. So was this crib that you bought for your daughter originally and that was used by Bobby, did that bear this seal?

Mr. ROBERT CIRIGLIANO. It looks very familiar. I am not sure exactly but I know it did have two seals on it, and that was one of the things that we were looking for when we went to go purchase a crib.

Mr. BRALEY. And when you look for that and see it on there, as parents, what does that say to you?

Mr. ROBERT CIRIGLIANO. It is safe, it has been tested.

Mrs. SUSAN CIRIGLIANO. It gives you a sense of security.

Mr. BRALEY. Would it surprise you to learn that the cribs involved in these latest CPSC recalls were certified by JPMA as meeting all applicable safety standards?

Mr. ROBERT CIRIGLIANO. It wouldn't surprise me, no.

Mr. BRALEY. In your opinion as parents who have purchased this product, what value does that certification seal have to parents?

Mrs. SUSAN CIRIGLIANO. Now or when we purchased the crib?

Mr. BRALEY. Now.

Mr. ROBERT CIRIGLIANO. It has no value right now.

Mr. BRALEY. And why is that?

Mr. ROBERT CIRIGLIANO. Because we've been doing a lot of research and it seems like, I mean, you are looking at millions and millions and millions of cribs that have been recalled, and the reasons for the recalls, you know, just little pieces of plastic that—and springs. You know, how long is a spring reliable?

Mrs. SUSAN CIRIGLIANO. You are talking about a spring and a plastic piece that are exactly what you use in a Bic pen. It's basically the size of what it is, and how long does a Bic pen last? I would think a majority of families do not go out and buy a new crib every time a new child is born. Most families buy one crib and they, you know, use it for the length of all of their children.

Mr. BRALEY. Well, I couldn't agree more, and Mr. Chairman, I hope that we will use this hearing as a way to identify ways to improve the safety certification process to protect the rights of consumers and the safety of infants, and I yield back.

Mr. STUPAK. Thank you, Mr. Braley.

Mr. Burgess for questions.

Mr. BURGESS. Thank you, Mr. Chairman, and thank you both for being here. I think you have already answered this with Mr. Braley, but this was a crib that you had purchased new yourselves?

Mrs. SUSAN CIRIGLIANO. Yes.

Mr. BURGESS. So this was not a hand-me-down, it was one that you had. Was this crib, did it end up on a recall list?

Mrs. SUSAN CIRIGLIANO. Yes.

Mr. ROBERT CIRIGLIANO. Yes.

Mr. BURGESS. How did you receive the notice of the recall?

Mrs. SUSAN CIRIGLIANO. By watching television.

Mr. BURGESS. So it was after the fact?

Mrs. SUSAN CIRIGLIANO. Yes.

Mr. ROBERT CIRIGLIANO. Right.

Ms. BURGESS. Now, I think, Mr. Cirigliano, you referenced this, the way the data is managed, the way the data is collected is obviously critical and the CPSC is trying to build a registry, so clearly that would be something that would be helpful and yet I get the impression from listening to your testimony that with the drop-side design, that even the registry is really insufficient, it is the design itself of the drop side. Is that correct?

Mrs. SUSAN CIRIGLIANO. That is my belief, yes.

Mr. BURGESS. And yet the drop side presumably developed at some point because someone thought it would be worthwhile to save wear and tear on mom's back as baby gets bigger and bigger and bigger to be able to change him, attend him and move him in and out. So there may be a tradeoff there but at the same time safety ought not to be the thing that we trade off, and I agree with Mr. Braley, consumers need to be informed about the potential dangers of the drop side if that indeed is what they are going to purchase. There are advantages but there are disadvantages as well. Do you think if CPSC had had registry when your crib was recalled, would that have been helpful to you all? I am worried that we don't get the word out. Now, you bought your crib new so if there was a warranty card that you returned or a website that you registered, that is one of the things that we struggled with when we did 4040, the big improvement act on consumer product safety that we did a year or two ago, but I will tell you, I am not good

about those warranty cards myself, and as I remember cribs from my kids were little, my wife's dad got a crib down from the attic in Arkansas and brought it down to Texas and that was a crib for a couple of years, and then it went on to its next life in her sister's home for a while, and I don't know where that crib is today but I think it is still probably in circulation out there. I don't know how, you know, if that crib were on a recall list, I don't know how folks would ever know. Where that becomes important in the resale industry, the Goodwills, the Christian Community Action stores in my district that do good work for providing low-cost products to young families who don't have the wherewithal to go out and buy new products, how do you get that information to them, and that is one of the things that we struggled with when we did 4040, and I guess listening to you today, sir, it would just be if a resale shop has a drop-side crib, they need to be very, very circumspect about whether or not they go ahead with resale to another family because at least the more recent product manufacturer has left you feeling that there is going to be some danger involved in that product. Am I overstating that?

Mrs. SUSAN CIRIGLIANO. No, I agree. I definitely think there's going to be danger. That is why we feel like the ban is very important, and we have been doing a lot of media and word of mouth. I am small but I have a large mouth when it comes to this and I make sure that every person I talk to, and sometimes I feel I am being a little hurtful to the pregnant mom that I am walking up to by explaining my story to her but I think that is the only way to get it out there.

Mr. BURGESS. Well, let me just ask you, and you heard my opening statement about whether or not these safety standards be voluntary or mandatory. Do you have a feeling about that? Should the standards be voluntary?

Mrs. SUSAN CIRIGLIANO. I think they should be mandatory.

Mr. BURGESS. And the last question I have, again, you already answered it. What would you fix about the drop-side crib? Well, you would fix it by not having it. Probably fix it with an ax.

Mrs. SUSAN CIRIGLIANO. We say we would break them, burn them and throw them away.

Mr. BURGESS. I can't even tell you the crib that my kids were in. It was probably manufactured in the 1930s, and like Mr. Braley's experience, I mean, I tried hard, I think, to destroy it trying to fit it in the back of U-Hauls over several moves, and that thing was—I mean, you just couldn't destroy it.

I think we have to be careful how we proceed, Mr. Chairman. We got into a lot of difficulty with the unintended consequences when we did that big 4040 bill. I got motorcycle dealers in my district who sell used motorcycles and they are banned from selling them in case the kid eats the battery, he could get lead poisoning. I mean, that is ridiculous. And we haven't gone back and fixed that. So I do want us to be careful at the same time. I mean, here is a problem, I have got a list of crib recalls going back to the 1970s, 2 million in 2009, 1 million in 2007, 104,000 in 2005, 6,000 in 1997, 1,600,000 in 1986, 400,000 in 1979, 70,000 in 1978. I mean, clearly there is a problem here that we need to solve.

All right. I will yield back the balance of my time.

Mr. STUPAK. Thanks, Mr. Burgess. Most people don't eat batteries so I don't think it is really necessarily the law but maybe the way we apply it, and that is the reason why the testimony of the Ciriglianos and others are very helpful. I agree with you, some of the applications of the law as it was passed have not been the best by any Administration, and that is part of our job, to make sure they are done properly.

Mr. Green for questions, please.

Mr. GREEN. Thank you, Mr. Chairman, and hearing both from Congressman Braley and Congressman Burgess. When my daughter was expecting, I went up to the attic and got our crib from our children, which is the 1970s. My wife explained to me very quickly that, you know, they were too far apart, and instead of putting it out on the curb, I actually took a sledgehammer to it so nobody else could use it, and that is what bothers me, I guess, because, you know, I was going to try and use it from generation to generation. It doesn't work. Our grandchildren actually stay in a Pack and Play when they come to our house.

But I want to go to the instructions that you all received, because the child, the 7-month-old in Houston who passed away, the parents actually put the rail upside down, and did you have problems with the instructions? Having put together lots of stuff, it sometimes is real difficult, and don't torque it too much because you might have to take it off and put it back together again. Did you all have problems with the instructions?

Mr. ROBERT CIRIGLIANO. I don't remember having problems with the instructions, but the one thing I found odd was, our instructions were on the mattress board. That is the board that is put under the mattress. So you are actually putting the instructions in place, and I just remember, I mean, it was just the oddest thing and I to this day can't believe that that was done. It wasn't a piece of paper. It was on a mattress board.

Mr. GREEN. The least they could do is make it on the upside so you can read it.

Mr. ROBERT CIRIGLIANO. It was pretty bizarre.

Mr. GREEN. And I think that is something that I—

Mr. ROBERT CIRIGLIANO. That is another problem.

Mr. GREEN. They need to make sure that, one, they are easily readable, but they are also common sense-wise that you have it. And again, for the loss of your child, like I said, we have had three in the Houston area over the last few years. What a tragedy.

I yield back my time, Mr. Chairman.

Mr. STUPAK. Thank you, Mr. Green.

Ms. Schakowsky for questions, please.

Ms. SCHAKOWSKY. I will pass on questions but I just really, really want to thank you for informing us with what is probably the most compelling testimony of all, and that is your personal experiences and your advice. I think right now there is some voluntary standards about not having any drop-side cribs. We want to make sure that they are eliminated from the marketplace so no one else has your experience, and I admire you for going up to pregnant women. It may be the most important piece of advice that they get during their pregnancy, and, you know, being pushy in that sense is a really good thing. So thank you very much for being here today.

Mrs. SUSAN CIRIGLIANO. Thank you.

Mr. STUPAK. Ms. Sutton for questions, please.

Ms. SUTTON. Thank you, Mr. Chairman, and thank you very much for your testimony, for coming forward today. We are so sorry for your loss.

Mr. Chairman, I want to thank you very much for holding this hearing because, you know, it is clear with millions of cribs being recalled because of problems with drop sides, it is time for the CPSC to take action, to protect the infants and address millions of parents' concerns. You know, we have the responsibility to act to ensure that parents can lay their infant down without fear in their crib, and I am deeply concerned also that when we hear about problems, oftentimes products that recalled were manufactured in other countries, and it is unconscionable when companies and importers pay more attention to cost than to our safety. Product safety has to always be the primary focus, and so parents, as I said, should not have to worry about laying their infant child in a crib and being exposed to grave danger. And so while we are happy that recalls advise parents but it is after the danger, you know, is present and identified. The products need to be safe when they are manufactured and put on a store shelf.

Now, Mr. Chairman, one of the reasons why I appreciate this hearing and your testimony also is that it sort of draws attention to this problem where we have products coming in that consumers assume are living up to our safety standards, and they may not even know—it is impossible to subject foreign manufacturers to U.S. law, and I am going to be introducing soon a bill called the Foreign Manufacturers Legal Accountability Act to protect American consumers and businesses from defective products manufactured abroad because we need to make sure that the products being consumed in this country are safe for consumption.

So thank you again for your testimony. We are very, very sorry for your loss. But thank you for being here.

Mrs. SUSAN CIRIGLIANO. Thank you.

Mr. STUPAK. I thank you both for being here, and thanks for your testimony and really helping us understand the issue more, and we are going to continue with this hearing. You are welcome to stay if you like but we will dismiss you now, and thanks again and thanks for working with us.

Mrs. SUSAN CIRIGLIANO. Thank you.

Mr. ROBERT CIRIGLIANO. Thank you.

Mr. STUPAK. I will call our next panel of witnesses. On our second panel we have Nancy A. Cowles, executive director, Kids in Danger, and Michael Dwyer, executive director, Juvenile Products Manufacturers Association, if they would come forward?

It is the policy of this subcommittee to take all testimony under oath. Please be advised that you have the right under the rules of the House to be advised by counsel during your testimony. Do you wish to be represented by counsel? Both indicated not. Then I am going to ask you to raise your right hand to take the oath.

[Witnesses sworn.]

Mr. STUPAK. Let the record reflect both our witnesses answered in the affirmative. They are under oath. We would ask for an opening statement of 5 minutes. If you have a longer statement and

supporting documents, we will be happy to make it part of the record. Ms. Cowles, would you like to go first?

Ms. COWLES. Sure.

Mr. STUPAK. Just pull that mic up and press the button. Thank you, and good morning.

TESTIMONY OF NANCY A. COWLES, EXECUTIVE DIRECTOR, KIDS IN DANGER; AND MICHAEL DWYER, EXECUTIVE DIRECTOR, JUVENILE PRODUCTS MANUFACTURERS ASSOCIATION

TESTIMONY OF NANCY A. COWLES

Ms. COWLES. Good morning, Chairman Stupak, Ranking Member Walden and committee members. First let me thank the House Subcommittee on Oversight and Investigation for holding this very important hearing on crib safety and for giving us the opportunity to participate. I do have a much lengthier statement, which I believe I have already submitted, so I will read very briefly through a shorter statement for this purpose.

Kids in Danger is a nonprofit organization—we are based in Chicago—dedicated to protecting children by improving children's product safety. As Congresswoman Schakowsky mentioned, we were founded in 1998 by the parents of Danny Keysar, who was killed in a portable child crib at his childcare location. Even though the home had just been inspected days before, the crib had been recalled 5 years earlier, had already killed four children, and yet there was no publicity. No one knew that it was recalled in that home. And our mission is to prevent this from happening to other children, to promote the development of safer children's products, advocate for children, and educate the public about these important issues.

And I think it has been said, the crib is first and foremost a safety device. Cribs are the only children's product that is made to leave a child unattended so that someone so aptly said, you can get a few hours sleep yourself. But concerns about this issue are not new. Crib durability, more strenuous testing, hardware failures, assembly problems have been raised at almost every one of the voluntary standard-setting meetings that I have attended since I joined that body in 2001 and yet there has been until very recently little or no change to the standard for years. And the mandatory standard has been stuck even farther back in time. Any new changes at all were made to the voluntary standard. Even the vital safety measure of banning corner posts on cribs, which led to many deaths, does not appear in the current federal standard.

The failure of the voluntary system to adequately protect children is what led Congresswoman Jan Schakowsky to first introduce the legislation that is now in the CPSIA calling for stronger mandatory standards and third-party testing back in 2001. Had we done it then, we may have a different outcome to Susan and Rob's story here. So it isn't that the problem wasn't known, rather it is that CPSC lacked the resources and authority and manufacturers lacked the will to strengthen the standards. Now with the statutory requirement in the CPSIA, we will be seeing a strong standard.

As has been mentioned, since September 2007, over 7 million cribs have been recalled by the CPSC. Most were tested to the voluntary standard and certified by the Juvenile Products Manufacturers Association. Many were recalled for hardware failures, drop-side failures, but some were recalled for clear violations of the mandatory standard. They were painted with lead paint or they simply did not meet the required dimensions. If manufacturers are making cribs that don't meet standards that can be confirmed with a tape measurer and a lead test swab, then how can we expect that they can be safe in terms of design to keep babies safe unattended?

This current situation leaves parents in a horrible position. We often get calls from parents asking for advice, what to do, especially as they hear about all these new recalls. We can be of limited help. We can't say to look for the JPMA label, even though it does indicate some minimum testing, since all of the recalled cribs primarily were certified to that standard. We can say to stay away from drop-side cribs but there is also incidents with mattress supports, hardware failure and breaking crib slats, and the last thing any of us want is for parents to get the idea that other places are safer for their baby than a crib. Babies are safest in a safe crib, and that is why this is so urgent that we solve this problem now.

Let me briefly talk about consumer use of cribs. Parents will use a crib for more than one child. They will pass them on to their sister or friends and sell them secondhand. It doesn't mean it is a 20-year-old crib they are passing on, it could be a 2- or a 3-year-old crib. I think we can assume that if someone spends, you know, up to \$1,000 on a product, they aren't going to use it for 2 years and then throw it out. It is not consumer misuse when a crib is assembled, taken apart and reassembled more than once. In addition to military families—I was an Air Force brat myself who moved frequently—other families move and many parents on the advice of their doctors start with the crib in their bedroom and then need to move it to the child's bedroom later on. In these tough economic times and in the midst of a growing green mindset, manufacturers should expect that this is what will happen to their products. They will be used for more than one child or even more than just two children in a row.

So if a crib can't handle being reassembled, it should not be sold. If the crib falls apart, losing screws or the little safety plugs or has a drop side that won't stay up, parents are going to try to fix it. They aren't engineers and they do not clearly understand the risk of that action. We need to give parents a crib that lasts, hardware that doesn't fall out and clear instructions on how to use that product. We are glad that CPSC is finally moving to a strong mandatory standard. In our written statement, we have a lot of suggestions for that. But I would just like to again talk about the misassembly. Far from seeing misassembly as solely a consumer use problem, I would assert that products designed in such a way that parts can be assembled in more than one way including ways that lead to death is a design problem and not a consumer misuse problem. As I said, I have specific things, but I would also like to just mention the public consumer incident database that the CPSC is working on because I think that will also be very important for safety. That way parents can get the information themselves. If

they are about to buy a crib or have a problem with their crib, they can find other people who have the same problem. So I applaud CPSC for moving ahead with that.

And secondly, I have something I would suggest for this committee, and that is, the big problem is recall effectiveness. These cribs remain out there once they are recalled. So of the 7 million cribs recalled, more than half of them are probably still in use. We need to improve recall effectiveness. One way you could help do that is to require CPSC to report to you annually on their recall effectiveness for each of these recalls. Each manufacturer is required to file a monthly corrective action report that says how many consumers have contacted them, how many products they have replaced or fixed. If that information was public—right now it is a very difficult FOIA process to get it—I think that alone would make manufacturers work much harder to get those products out of use.

So again, thank you so much today. I appreciate it, and I would be happy to answer any questions.

[The prepared statement of Ms. Cowles follows:]



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**Testimony of Nancy A. Cowles
Before the House Subcommittee on Oversight and Investigations
Crib Safety: Assessing the Need for Better Oversight
January 21, 2010**

Good morning Chairman Stupak, Ranking Member Walden and committee members. First, let me thank the House Subcommittee on Oversight and Investigations for holding this important hearing on crib safety and for giving us the opportunity to participate.

Kids In Danger (KID) is a nonprofit organization dedicated to protecting children by improving children's product safety. The organization was founded in 1998 by Linda Ginzel and Boaz Keysar, after the death of their son Danny Keysar in a poorly designed, inadequately tested and finally recalled portable crib. KID's mission is to promote the development of safer children's products, advocate for children and educate the general public about children's product safety.

KID works closely with other consumer groups, especially the Consumer Federation of America, Consumers Union and Keeping Babies Safe on the issue of crib safety and urge the committee to seek input from these groups as well. This testimony today represents the views of Kids In Danger along with the Consumer Federation of America.

Importance of Crib Safety

KID has always had a special interest in sleep environment safety, including cribs. The crib is first and foremost a safety device – meant to keep a child safe while sleeping and more importantly while the caregiver is sleeping. Cribs are the only children's product meant to be safe enough for a helpless infant to use while unattended by an adult.

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DON'T LEARN ABOUT RECALLS FROM YOUR BABY

The issue of sleep environments is larger than just cribs and yet the safety issues are similar across all products meant for sleeping –

- Again, cribs must be safe enough to leave the child unattended while sleeping, with the assumption that a baby will also spend some time awake, but unattended, in the product.
- Parents must understand the age, weight, height and developmental limits of each product. Bassinets can be used only until the time a baby starts to roll over or push up on her hands and knees. Crib mattresses must be lowered as a child grows. And most cribs are considered safe sleeping environments only until a child can attempt to climb out – usually around age two, but sometimes earlier.
- Cribs are usually set up in the home by the consumer. Rarely do they come pre-assembled or does a professional from the manufacturer or retailer come to the consumer’s home for installation.
- Cribs are probably the most expensive nursery item parents buy. It should be expected that parents plan to use cribs for more than one child or sell or hand it down when their children outgrow it.
- Cribs are often taken apart and reassembled, either between children or while moving or changing location in the home. In between, they may be stored in attics, basements or garages until needed again.

History of crib standards and safety efforts

While we appreciate the committee taking the historic step of holding a hearing about crib safety, concerns about this issue are not new. Back in 1984, the parents of Danny Lineweaver started the Danny Foundation after their Danny was strangled on the corner post of a crib. Their experience led to changes in the voluntary standard (ASTM F 1169) on that issue and others. I joined the ASTM

International subcommittees on juvenile products in the spring of 2001. Since that time, and even before, crib durability, more strenuous testing, hardware failures and assembly problems have been raised at every meeting, addressed by task groups, and the subject of testing on everything from humidity to side impact – with little or no changes to the standard for years.

At the same time, the mandatory standard has been stuck in time as well. All new changes have been made to the voluntary standard – even the vital safety measure of banning corner posts on crib was integrated into the ASTM voluntary standard and does not appear in the Federal standard.

In 2001, Marla Felcher's book, ***It's No Accident, How Corporations Sell Dangerous Baby Products***¹, was published. All the concerns raised here today are addressed in that book. The failure of the voluntary system to adequately protect children is what led KID to support the drafting of strong mandatory standards for cribs and other juvenile products and to require third party testing to those standards. Congresswoman Jan Schakowsky first introduced legislation calling for this in 2001; it was included in the Consumer Product Safety Improvement Act of 2008 (CPSIA) and has led to U.S. Consumer Product Safety Commission (CPSC) now developing a mandatory crib standard.

In the spring of 2005, working with freshman engineering students at Northwestern University through KID's Teach Early Safety Testing (TEST) program, KID asked students to review incident data from crib injuries or failures and design a product that would address a prevalent hazard. The students chose to develop an aftermarket device that parents could install to prevent drop-side failures. Nineteen year old students could see more than four years ago that this was a likely failure scenario.

¹ Felcher, E. Marla. *It's No Accident: How Corporations Sell Dangerous Baby Products*. Monroe, ME: Common Courage, 2001. Print.
KID Testimony, page 3

So, it is not that the problem wasn't known; rather it is that CPSC lacked the resources and authority, and manufacturers lacked the will, to strengthen standards. Now, with the statutory requirement in the CPSIA, a strong standard must be developed.

Current State of Crib Safety

Since September 2007, 5.8 million cribs have been recalled in the U.S. – this number does not include at least a million more of the same cribs that were recalled in Canada. Most were certified by the Juvenile Products Manufacturers Association, indicating compliance with the ASTM standard for full-size cribs, which includes the mandatory federal standards as well. Many were recalled for hardware failures and drop-side failures, but some were recalled for clear violations of the current mandatory standard – painted with lead paint or not meeting the required dimensions to keep a baby safely contained in the product. If manufacturers are making cribs that don't meet standards that can be confirmed with a tape measure and lead testing swab, it is not surprising that their designs lead to hardware failures that cause entrapments and deaths.

But recalls don't paint the full picture. Cribs still on the market have similar hardware and drop-side failure incidents to those that have been recalled. KID received information from an attorney² that detailed an incident in a Dorel Juvenile Group crib that appears identical to those involving both Simplicity and Storkcraft cribs that have been recalled. Kids In Danger is currently working with a mother whose new Graco crib's drop-side fails continually and yet the companies involved won't replace her product. A recent document sent to the ASTM task group that met these last two days on the crib standard listed more than 300 incidents.

² Kelly, Charles, Hersh & Hersh, "Citizen Letter on Dorel Industries Inc. Drop-Side Cribs." Letter to Theresa Nelson, CPSC. 7 Dec. 2009. MS.
KID Testimony, page 4

The current situation leaves parents in a horrible position. Kids In Danger get calls often asking which cribs are safe, which ones won't be recalled. We can be of limited help. We can't say to look for the JPMA label, even though it does indicate minimum testing – since most of the recalled cribs were certified. We can say to stay away from drop-side cribs, but there are also incidents and deaths with mattress support issues, fixed side failures, other hardware failure and breaking crib slats. Other parents, who may already have a drop-side crib, now hear of the move away from this design and wonder what to do with their crib. The last thing any of us want is for parents to begin to believe other places are safer for their baby than the crib. That is what gives urgency to the development of a strong standard with rigorous testing requirements – so parents can rest assured while their baby sleeps at night that the crib is safe.

Consumer Use of Cribs

Let me address consumer expectation and use of cribs and other sleeping environments. There is not a consumer out there who expects to pay anywhere from \$200 to over \$1000 for a crib, use it for two years for one child and then destroy it. We welcome the addition of 'lifetime products' that allow parents to convert a crib to a toddler bed and then an adult bed – increasing the likelihood a new crib will be bought for a new child. But in reality almost every crib is used for more than one child, for more than 2 years. Using the same crib for all of your children, even if you have many; lending it to your sister, donating it to charity or even selling it, is not a misuse of a product. In these tough economic times and in the midst of a growing 'green' mindset, it is exactly what manufacturers should expect will happen to their products.

At ASTM meetings, currently the only forum for discussing cribs, CPSC brings incident data on these products for the committee to review and consider if changes to the standard are needed to address a safety hazard. Automatically, the manufacturers in the room want to dismiss any incident in a crib older than five

KID Testimony, page 5

years that has been used more than once – somehow blaming the family for thinking their product should last through more than one child. Here are the facts of consumer use:

- Parents will use a crib, bassinet and portable crib for more than one child. They will offer these products to their family and friends and even sell them secondhand. It isn't consumer misuse when a crib is assembled, taken apart and reassembled more than once. In addition to our military families who move frequently, other families do move and many parents, on the advice of their doctors, initially set up a crib in their room and then move it. Portable cribs are meant to be set up and taken down numerous times. So if a crib can't handle being reassembled – it should not be sold.
- If a crib falls apart, losing screws or little safety plugs, or has a drop side that won't stay up – parents are going to try to fix it. They aren't engineers in most cases and don't clearly understand the risk that a different screw or even duct tape might pose. Give parents a crib that lasts, hardware that doesn't fall out and clear instructions on how to assemble, store, and use the product.

CPSC Development of a Strong Mandatory Crib Standard

CPSC staff, in particular Patricia Edwards and Jonathan Midgett, have been strong advocates for standards and testing requirements to address the failures being reported to the agency. KID is confident that now, as they work on the mandatory standard required by the CPSIA, that the staff will continue to press for a strong standard that will assure parents of the safety of their crib. KID applauds the CPSC's decision to move up the development and release of that standard to this year – it is a crisis situation that needs an immediate response.

There are not adequate performance requirements in either the mandatory or ASTM voluntary standards pertaining to: (1) the durability of drop-side systems
KID Testimony, page 6

and related hardware, (2) the durability of other crib hardware, (3) wood strength or quality, (4) the hazards that can result from incorrect assembly and reassembly/storage issues and (5) warnings to parents to ensure safe usage.

ASTM just spent two days at CPSC working to address these shortcomings in the voluntary standard. Once this process is complete, hopefully at the full ASTM juvenile product subcommittee meeting in March, CPSC can more easily integrate the voluntary standard into the new mandatory one.

We also urge CPSC to look beyond ASTM and consider all current test methods in other standards, including crib standards from Underwriters Laboratories (UL) developed in 2001, British Standards Institute (BSI), Health Canada, and the International Organization for Standardization (ISO), as well as retailers' internal testing methods that have been shared with CPSC (such as those from Toys"R"Us). The UL standard was developed with input from many parties and appears to be the most rigorous standard currently available – exactly what is needed to stop the myriad failures seen in the field.

Recommendations for a Strong Mandatory Standard

The ASTM F1169 standard now contains an effective ban on the drop-side design of cribs. While the need for durability testing for drop-side hardware and other hardware issues has been discussed for years, the ban on the design was a new proposal in the past year. While it solves the problem for drop-side crib failures, it does nothing to subject cribs to more strenuous testing that would weed out designs that weren't durable and bring to light hardware issues. Consumer groups support the ban – the injury and death rate in these cribs has been too high, but still believe the durability question of hardware in general needs to be addressed.

One of the most important provisions to include in a CPSC mandatory crib standard is a durability test which is sometimes called a "racking test." This test

includes moving the crib and applying forces that more accurately imitate a child in a crib for longer periods of time and might loosen hardware or stress plastic parts.

The ASTM standard also addresses the issue of wood slat strength, after thousands of cribs were recalled because slats were breaking – some with only the force of a toddler waking up from a nap. CPSC should closely examine the performance standard and tests included to make sure they are adequate to address the hazard.

In 1997, Brandon Dorian was found hanging through the side rail of his Cosco metal crib³. His face was pressed against the mattress and he was suffocated. When assembling the crib, Brandon's grandfather had inadvertently replaced one of the side rails with the mattress support. The parts fit perfectly with one deadly difference – the slats were farther apart on the mattress support, allowing Brandon's body to slip through while his head was trapped. And Brandon wasn't the only baby trapped – the CPSC had 47 reports of misassembly and 27 reports of additional entrapments. After Brandon's death, the company recalled the crib, but due to the ineffective nature of recalls, another baby was trapped and killed a year later.

So here it is 2010 and cribs are still easily misassembled and assembly instructions are confusing and unclear. The new standard must address assembly issues as well as the likelihood that a product will be taken apart, stored and reassembled at least once in its useful life. The standard should address what type of hardware should be allowed for parts a consumer will assemble, how parts fit together and ways to increase the likelihood it will be properly assembled or reassembled. Far from seeing misassembly as solely a consumer use problem, I would assert that products designed in such a way that parts can be assembled in

³ "Plaintiff vs. Cosco, Inc., Montgomery Ward, and Juvenile Products Manufacturers Association," Summons & Complaint, State of Michigan Circuit Court for the County of Oakland, Case #97 547894-NP, July 16, 1997
KID Testimony, page 8

multiple ways, including ways that lead to death, is a design problem that must be solved.

In the new mandatory standard, CPSC should carefully review the warning labels and instructions. Consumers need basic straightforward information written not to appease the lawyers, but to communicate clearly to parents what is safe and what is not. Warnings should be placed where parents as well as occasional caregivers will see the information. When possible, hazards should be eliminated rather than warned against. So rather than warning parents to avoid putting the side rail on upside down, manufacturers should design the crib so that isn't possible. To avoid parents going to the local hardware store to get replacement parts, manufacturers can make screws and bolts an unusual size or shape to make that unlikely.

As CPSC writes a new mandatory standard and develops a strong third party testing program for cribs, the process must be open and inclusive. Manufacturers are an important sector of the standards setting process—their knowledge and experience is vital—but other stakeholders must be involved in the process. In particular, the process by which products are tested and certified to meet the new mandatory standard must be transparent, with testing results available to consumers and others.

Other Actions to Keep Cribs Safe

In addition to the new standard that is underway and a rigorous and transparent testing program, CPSC can do more to improve crib safety.

First, CPSC should continue work already started on the public consumer incident database. This important source of safety information is scheduled to be up and running by March of 2011. The database is a vital approach to get safety information to consumers, even before there is a recall and will provide essential data to CPSC to act quickly on emerging hazards or troubling products.

Second, CPSC, with oversight from Congress, must strengthen recall effectiveness. It is not enough to recall a product if CPSC's own data shows that

most of the dangerous items remain in use. Just this week, while preparing for this testimony, I found an Evenflo Happy Cabana Portable Crib for sale through eBay, without the manufacturer's 'fix' for the hazardous product. This product was recalled in 1997 after the death of Jared Adams⁴. The provision in the **Danny Keysar Child Product Notification Act**, part of the CPSIA which require a product registration program for cribs and other durable infant and toddler products, will help get unsafe products out of consumer use. CPSC must be rigorous in monitoring not only the collection of the data and its use in a corrective action plan, but in publicizing the value in participating in the manufacturers' program as well as registering for CPSC's own recall notices.

This Committee, as part of your ongoing oversight role, could ask CPSC for an annual report on recall effectiveness. The report could include information from the monthly Corrective Action Plan reports that manufacturers file with CPSC. Currently that data is only available to the public through the lengthy FOIA process at CPSC and filings appear to be incomplete. By making this information public, the Committee will provide incentive to companies to improve their recall programs.

Finally, CPSC should use their enforcement powers to require adequate corrective actions for recalls. While manufacturers might prefer to send out a new plastic part to fix the plastic part that broke, it is often in the best interest of the consumer to replace or refund the product. A recent survey KID conducted with families in Illinois showed a marked increase in participation when a refund or replacement is offered.

Again, many thanks to CPSC staff for their hard work on crib safety and for beginning this process for a strong mandatory standard. And thanks to this Committee for airing these issues and taking seriously Congress's role of oversight of consumer safety.

⁴ Jared, a toddler from Antioch, was the third child to die in the Evenflo portable crib, a product that has the same flawed design as the Playskool Travel-Lite that killed Danny Keysar. Another child died in 2003 in Wisconsin.
KID Testimony, page 10

Mr. STUPAK. Thank you.

Mr. Dwyer, your opening statement, please, sir.

TESTIMONY OF MICHAEL DWYER

Mr. DWYER. Thank you. Good morning, Chairman Stupak, Ranking Member Walden and members of the committee. I appreciate the opportunity to testify today about crib safety. The timing of this hearing is fortuitous since my fellow witness, Nancy Cowles, and I just spent two very productive days at the CPSC developing the new voluntary standard for full-sized cribs which the CPSC is hoping to promulgate later this year as a new federal standard. JPMA has long advocated the adoption of the more expensive ASTM F-1169 as a mandatory federal standard. At the behest of Chairman Tenenbaum, juvenile products manufacturers, ASTM and consumer advocacy groups have worked with CPSC technical staff to update CPSC crib regulations. This rulemaking comes on the heels of similar rulemakings for infant walkers, bath seats and upcoming rulemakings on toddler beds and bassinets and cradles. These rulemakings are all occurring pursuant to section 104 of the CPSIA passed by Congress in 2008 with extensive input from the full committee.

JPMA has been working and will continue to work collaboratively with all stakeholders towards our common goal of promoting the safest and most effective juvenile product safety standards in the world. Our members produce products that help prevent injuries to our children. While tragic accidents often occur or may occur, these products save many lives. As an example, child restraint seats or car seats save an untold number of children's lives in motor vehicle accidents. Similarly, cribs have helped assure that children are placed safely to sleep.

JPMA offers a certification program to manufacturers who are willing to have their products tested to ASTM standards by independent third-party CPSC-accredited laboratories. The certification program was created in 1976 when manufacturers approached ASTM through the association about setting a voluntary safety standard for high chairs. That standard has evolved but it is still in effect today. Since then, JPMA has expanded the certification program to cover 19 additional products with two more pending. ASTM is one of the largest voluntary standard-setting organizations in the world with over 22,000 members worldwide. ASTM standards are developed on a consensus basis by all interested parties. Any reputable stakeholder can join a standards development committee and vote on all aspects of the standard. Every standards development committee member with a vote can influence this process.

For years, JPMA has worked alongside consumer advocacy organizations such as Consumers Union, the Consumer Federation of America, Keeping Babies Safe and Kids in Danger on the development of a variety of juvenile products standards including the full-size crib standard. The first federal full-sized crib standard was promulgated in 1973, as we heard earlier, and ASTM developed its first full-size crib standard in 1988. The voluntary standard fully incorporated the federal standard and added numerous performance testing requirements including corner posts, height restric-

tions and additional warning labels and instructional requirements. Since then it has been modified multiple times to address emerging hazards including last December's modifications which eliminated traditional drop sides and established crib slat integrity criteria and testing procedures.

F-1169 has been extremely effective. During a 2007 hearing on the CPSIA, the CPSC testified to an 89 percent reduction in crib-related fatalities due to the establishment and effectiveness of the voluntary standard. The federal standard has been updated once since its inception 37 years ago. The CPSC has relied on the ASTM voluntary standard as the best tool for promoting crib safety in the marketplace. The JPMA certification program provides consumers the best way to know that their crib meets both the mandatory and the voluntary standards.

Here is how the program works. A manufacturer must apply to participate in the program and agree to have all of its models and product category tested to the applicable ASTM standard. We do not test products ourselves nor do we maintain our own standards. JPMA relies on the experts at independent third-party CPSC-accredited labs to verify compliance to the applicable ASTM standard. JPMA has never used or promoted its own safety standards. All products including full-size cribs bearing the JPMA certification logo must meet all parts of the applicable ASTM standard.

Achieving compliance, however, is just the beginning of a manufacturer's obligation under the program. Manufacturers must also submit to ongoing testing. This testing occurs quarterly for at least 25 percent of their models so that all models are tested at least once per year. In addition, an independent third-party CPSC-accredited laboratory pulls JPMA-certified products at random from retail shelves and tests those products for compliance. JPMA is proud of our role in promoting safe sleep for the most vulnerable segment of our population.

According to First Candle, one of the Nation's leading nonprofit organizations dedicated to safe pregnancy and the survival of babies through the first years of life, there are about 4,700 incidents each year involving infant sleep environments. At least 80 percent involve parents and caregivers putting their children in an unsafe place outside the crib. A properly assembled, fully functional ASTM-compliant crib remains the safest place for our babies to sleep. Unfortunately, tragic accidents can occur with improperly assembled, second use or heirloom cribs. We believe that better information and education can help reduce these rare fatalities involving missing hardware or improperly assembled or reassembled cribs. That is why JPMA has designated safe sleep as the theme for this year's Baby Safety Month, which takes place in the ninth month of each year. JPMA is working with the CPSC, our retail partners and any interested consumer safety advocacy groups to promote safe crib assembly and safe sleep practices. JPMA welcomes all efforts in this regard.

Again, I thank you for the opportunity to appear today.

[The prepared statement of Mr. Dwyer follows:]



Statement of Michael Dwyer, CAE
 Executive Director of the Juvenile Products Manufacturers Association
 House of Representatives Committee on Energy & Commerce
 Subcommittee on Oversight & Investigations
 Hearing On "Crib Safety: Assessing the Need for Better Oversight"
 Thursday, January 21, 2010

The Juvenile Products Manufacturers Association, Inc. (JPMA) is a national industry association representing 95% of the \$2.7 billion juvenile products industry (in manufacturers' sales). JPMA was formed in 1962 with 29 industry companies and has grown to include more than 250 member companies in the United States, Canada and Mexico. These companies manufacture and/or import infant products such as cribs, car seats, strollers, bedding, and a wide range of accessories and decorative items, but not toys and not apparel. Our members produce some of the most effective, life-saving infant products in use.

Core Mission –

The core mission of JPMA is to be an information source, and to provide leadership for the industry and consumers on the production and safe use of infant products. Towards this goal, JPMA publishes *Safe & Sound for Baby*, a full-color, 16-page brochure to promote baby product use and safety. The brochure outlines safety measures for the home and car that will help ensure baby's safety and is available in English and Spanish. More than 4 million copies of the complimentary brochures have been distributed to consumers through our retail partners and the JPMA website.

JPMA also sponsors Baby Safety Month each September to help educate parents and other child caregivers on the safe selection and use of all baby products. Retail outlets and the media use Baby Safety Month to increase consumer awareness about baby safety. In the past, JPMA has partnered with CPSC and NHTSA on this program. We have also partnered in the past with Safe Kids Worldwide to promote infant safety.

Focus On Improving Safety –

The juvenile products industry has a long history of ensuring that juvenile products are built with safety in mind. Our mission is safety, and the recent recalls of drop sided cribs concern us greatly. As a father blessed with three healthy children, I know the importance of crib safety, including the proper storage, assembly and disassembly of drop sided cribs.

The primary goal of JPMA is to develop consumer education programs related to product safety. JPMA wants all parents to be confident the juvenile products they purchase are designed and built with baby safety in mind. For this reason, JPMA initiated a voluntary certification program in 1976 with the introduction of a program for high chairs. JPMA worked with consumer advocacy groups, representatives from the U.S. Consumer



Product Safety Commission, and other interested parties to develop the standard on high chairs under the auspices of ASTM International (formerly the American Society for Testing and Materials), a highly regarded non-profit organization that publishes numerous, well-regarded standards for materials, products, systems and services.

The CPSC is also a valued partner in the voluntary standard setting process and JPMA is very proud of our 30+ year relationship with the agency.

How the JPMA Certification program works –

Currently there are 20 product categories in the JPMA Certification Program: bassinets/cribles, bath seats, booster seats, carriages and strollers, changing tables, children's folding chairs, frame infant carriers, full-size cribs, gates and enclosures, hand-held infant carriers, high chairs, infant bouncers, infant swings, play yards/non-full size cribs, portable bed rails, portable hook-on chairs, soft infant carriers, stationary activity centers, toddler beds, and walkers. With the recent publishing of new ASTM standards, JPMA is also currently working on adding commercial cribs and infant bath tubs to the program. Currently, 80 companies participate in the JPMA Certification Program and we saw an increase of 15% in participation in the program in 2009.

Manufacturers seeking the JPMA Certification for their products must apply to participate in the program. They must agree to have all of their models in a product category tested by one of two official, independent third party CPSC accredited laboratories, Bureau Veritas or ITS (Intertek Testing Services). JPMA does not test products itself – we rely on the experts at certified product testing laboratories. Nor does JPMA maintain its own safety standards. Manufacturers participating in the program must have their products tested to the relevant ASTM standard for that product.

ASTM and the standards setting process –

ASTM works with regulators, safety advocates, other outside experts, and industry to develop and publish voluntary consensus standards for a wide range of products and services. Committees within ASTM, which are comprised of a balance of manufacturers, consumer groups, representation from the U.S. Consumer Product Safety Commission and other interested parties, develop and revise the standards as necessary. A full consensus standard is developed by a cross-section of stakeholders with an interest in its use. When there is a need for new standards, requests can come from trade associations, government agencies, and professional societies that do not create their own standards. Manufacturers, consumer groups, and even individuals may also request a standard. The request is presented to an ASTM technical committee and the process of standards development begins.



The ASTM process transcends what entities could do individually because it bridges gaps of technology, combines resources and overcomes lines of competition. The result is a product of the highest credibility, integrity, and marketplace acceptance.

ASTM standards are developed through a three-tiered hierarchy of main committees, subcommittees, and task groups. Task groups perform most of the “leg-work” and research that forms the basis of draft standards. Once the group completes its work, it forwards these drafts through the hierarchy for review and voting. The standard must gain subcommittee, main committee, as well as full Society approval before becoming an official ASTM International standard (there are currently 22,000 members of ASTM). At each level, voting requirements are enforced to ensure fairness. When a draft standard has been reviewed and accepted at all levels, the draft becomes an ASTM standard and is published. Depending upon the need for the standard, drafting and approval can occur in a few months, a year, or more. Fairness in ASTM standards development is ensured through: 1) a required balance of interest between producers, users, and general interest members and 2) a voting process that ensures due process.

Ongoing commitment to infant safety –

Once a manufacturer has become JPMA Certified, their testing responsibility does not end. Manufacturers must test 25% of their models each quarter with the goal that all models are tested at least once a year. If a manufacturer has invested in its own testing lab, it can perform the quarterly testing itself only if it also agrees to send the test reports to an independent lab for review and submit to site inspections by that third party lab to ensure the manufacturer’s lab is capable of performing the required tests on an ongoing basis. Otherwise, a manufacturer seeking JPMA Certification must send its products to an independent third party CPSC accredited lab to meet the regular follow up testing requirements we impose.

To provide additional rigor to the program, the third party lab also pulls product from retail shelves on a quarterly basis and performs testing to all or part of the appropriate ASTM standard.

A manufacturer may only use the JPMA seal on its products after it has fully complied with these program requirements, including full safety testing of all product models to the ASTM standard by independent third party testing labs and submission to the ongoing quarterly testing requirements. Manufacturers who agree to these requirements may place the seal on their products, packaging, and in advertisements (a copy of the seal is attached herein as Attachment A). The manufacturer must adhere to all the guidelines of the program in order to remain a JPMA Certification Program participant.

JPMA publishes a *Directory of Certified Products* which is available to retailers. The directory lists the manufacturers and the products bearing the JPMA Certification Seal. It



is updated twice a year, and is also posted on the JPMA Web site for access by consumers, retailers, media, and the public.

In a 2007 Senate hearing on the reauthorization of the U.S. Consumer Product Safety Commission (CPSC), the CPSC testified that an 89% reduction in crib-related fatalities and an 84% reduction in serious injuries related to the use of infant walker was due to the establishment and effectiveness of ASTM Standards for these products.

Crib Safety –

The safety of our nation's children is always a concern to us. As a result of our extensive experience in this area, JPMA has been positioned to be part of the solution to solving children's product safety issues for over 30 years. JPMA has led the way on crib safety development from the outset. Last year JPMA members took the lead in addressing crib slat integrity and drop side failure issues, working with the ASTM crib subcommittee, which includes representatives from the CPSC and consumer advocacy groups as well as crib manufacturers. Our members' efforts resulted in a modified voluntary standard which incorporates a new crib slat integrity test and the elimination of traditional drop side mechanisms. That updated standard has just been published.

We are also proud of our history of working with advocacy groups such as the Danny Foundation, with whom JPMA collaborated to improve crib safety. Working with the CPSC, the Danny Foundation and the industry, cribs today are safer and fewer children die from corner posts, catch points, problems with structural integrity and other unsafe crib designs. When the Foundation started its programs of education and advocacy, baby cribs caused approximately one hundred deaths per year. According to recently released data from the U.S. Consumer Product Safety Commission, annual crib deaths have been reduced 89% from these levels. JPMA was involved in urging updates to the voluntary ASTM standard to address the hazards that could be addressed by improved designs and dynamic performance testing. Similarly, JPMA has worked to promote crib round-ups with the CPSC for products that have previously been recalled.

The ASTM voluntary standards process is often able to more quickly address evolving safety issues than the mandatory federal standards. The previous changes in the standard regarding crib corner posts is another example. Together, these changes demonstrate that standard setting is an evolving process in which JPMA and our members, as well as the CPSC and the advocacy groups, have been actively involved. This process works because it's based on consensus, and it provides the flexibility necessary to address emerging hazards.

The JPMA Certification Program is a verification process, similar to that included in the Consumer Product Safety Improvement Act. As noted above, products are provided to an independent third party CPSC-accredited lab to verify that they meet the requirements of the ASTM standard. When products are tested, they are assembled and used in accordance with the manufacturer's stated intent as embodied in the assembly and use

Juvenile Products Manufacturers Association, Inc.

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instructions. If the instructions are not followed, risks associated with use of any product may be exacerbated.

Not all recalls occur because of a violation of a regulation or product standard. In addition, recalls do not account for certain factors typically not measurable in a lab, such as unintended use, improper assembly, and excessive wear and tear over time. Most of the reported fatalities with cribs involve multi-use or heirloom cribs that may not have been properly maintained or assembled. Other heirloom cribs handed down do not meet current or recent safety standards.

Tough standards don't necessarily mean a product won't ever get recalled. JPMA is dedicated to promoting the development through ASTM of effective safety standards and promoting infant safety and well being, wherever there are defined risks. JPMA frequently conducts information and education campaigns to reminds parents: not to use any crib with missing, broken, or loose parts; to check hardware from time to time to keep the crib sturdy; to make sure the drop side or any other moving part operates smoothly; to check all sides and corners of the crib for disengagement; and not to use tape, wire, rope or any makeshift hardware to re-assemble any crib.

Safe Sleep –

A very important fact to remember is that cribs remain, by far, the safest place for infants to sleep. Between eighty and ninety percent of the 4,700 or so incidents involving sleep environments and children each year involve parents and care givers putting their children in an unsafe sleep environment that can result in entrapments, suffocation or positional asphyxiation (on the floor on pillows, on adult beds or other household furniture, certain co-sleeping conditions, makeshift sleep environments, etc.).

According to First Candle, a leading infant health organization, research and statistics continue to indicate that babies who sleep in adult beds are at up to 40 times greater risk of dying than those sleeping on their back in a safe crib. In fact, in many jurisdictions, makeshift sleep arrangements are directly implicated in more than 50 percent of all sudden, unexpected infant deaths.

Properly assembled, functional cribs remain the SAFEST place for a baby to sleep. JPMA believes that experts and opinion leaders should take care to stress that point even if a particular crib model is recalled for any reason.

Attachment A



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Mr. STUPAK. Thank you. We will go to questions from members.

Ms. Cowles, let me ask you, in your statement, and explains a little bit more on page 2 and going on the top of page 3, you talk about the corner post of the crib. In fact, both of you mentioned the corner post of the crib, and then you go on to say at the top of page 3, "At the same time, the mandatory standard has been struck in time as well. All new changes have been to the voluntary standard. Even the vital safety measure of banning corner posts on cribs was integrated into ASTM voluntary standard does not appear in the federal standard." So it was mandatory and now it is voluntary?

Ms. COWLES. No, it was never mandatory. It has always been in the voluntary standard. They first—as Mr. Dwyer mentioned, that standard was passed in 1988 but they first started working on it in 1984 after unfortunately another child named Danny died when he strangled on his corner post of his bed. So it has always been in the voluntary standard.

Mr. STUPAK. So right now I could make a crib. I could have this post here. It is a voluntary standard not to do it?

Ms. COWLES. You could have it. You would probably have difficulty if you wanted to sell it through traditional retailers, who probably wouldn't take it, but certainly with the extent of the Internet and CPSC would probably recall it if they got it, but you could certainly try and sell it. It does not violate the mandatory standard.

Mr. STUPAK. Does not violate the mandatory standard?

Ms. COWLES. Right.

Mr. STUPAK. Mr. Dwyer, let me ask you this. The Consumer Products Manufacturers Association—we will just call it JPMA—is a trade association that represents the manufacturers of children's products, of course. You offer your members a certification, as you testified, and there is a fee that certifies a product such as a crib meets all applicable mandatory standards as well as voluntary standards of the ASTM, correct?

Mr. DWYER. That is correct, sir.

Mr. STUPAK. The JPMA encourages its members to use your seal of approval. I think we had it on the board there at one time. And then they are advertising to show consumers that they are JPMA certified. I want to show you this ad. I think it is in tab 11 there, if you want to look at it right there in the book in front of you. In this ad the JPMA ran in several magazines for new parents, this ad says, and I quote, "Be confident that juvenile products you purchase are designed and built with safety in mind." What does safety in mind mean in the ad?

Mr. DWYER. That parents can be assured that the products that we certify meet the applicable voluntary and mandatory standards for those products.

Mr. STUPAK. In a way, would it be safe to say you are certifying the cribs as being safe then?

Mr. DWYER. We are verifying that the manufacturers who meet at ASTM along with all other stakeholders to discuss incident data, and Ms. Cowles mentioned the data, that is used to drive the activity of the committee, and if there are issues related to a product concern, that they address those and incorporate those into the standard and that the manufacturers meet those standards.

Mr. STUPAK. So what you are really saying is, we met all the standards, this product meets the standards, whether voluntary or mandatory, not verifying safety, just that the standards are met. Is that what we are saying?

Mr. DWYER. We believe that by meeting all of the standards that the products are safe and that manufacturers take into account certainly the safety of their ultimate customers, our babies, when they build these products.

Mr. STUPAK. The ad goes on, and again I want to quote from the ad. It says, "Buying a JPMA-certified product in any of the below categories ensures that the product has gone through an extra set of rigorous testing." Over the past several years, and we have heard testimony today, cribs involved in some of the largest recalls are Simplicity, Delta, Stork Crafts, all earned the JPMA seal of safety certification. So my question, Mr. Dwyer, would be, has JPMA changed the requirements for the certification program in light of the recalls we have seen? In fact, even Tuesday we had one of 635,000 cribs. Have you changed the certification that would be found in this ad?

Mr. DWYER. Well, just to make sure everybody is clear, the certification is a verification that they meet the standard.

Mr. STUPAK. Correct.

Mr. DWYER. The standard—as the standard changes, the certification changes inasmuch as that is what it is, it is a verification to the change in the standard. I am not quite sure I understand the question.

Mr. STUPAK. Since the recalls in 2008 and 2009, Stork Craft had two big recalls, have those standards changed at all?

Mr. DWYER. The ASTM standards?

Mr. STUPAK. Yes.

Mr. DWYER. The standard changed with a recent change in December that would ban the drop sides and also added a slat integrity test and requirements to the crib standard as well—

Mr. STUPAK. So—

Mr. DWYER [continuing]. In December of 2009.

Mr. STUPAK. So when you certify now, so when you run this ad, that means the slat has been changed and no more drop side, right?

Mr. DWYER. It verifies that the cribs meet the standards. However, the certification program does allow for 180-day sell-through period, so we will certify to the new version of the standard 6 months after it has been implemented.

Mr. STUPAK. When is the 6 months up?

Mr. DWYER. It will be in June. I don't know the exact date.

Mr. STUPAK. Right.

Mr. DWYER. But I do know that manufacturers at this point to move product out of the marketplace, they are no longer manufacturing drop-side products.

Mr. STUPAK. Right, but just so we are clear, we have until June. So there still could be drop-side cribs out there right now for sale with the JPMA certification because they have until June, 180 days, right?

Mr. DWYER. That is correct.

Mr. STUPAK. I guess my time is up. Mr. Walden, questions?

Mr. WALDEN. And that would be unless CPSC recalls that?

Mr. DWYER. That is correct.

Mr. WALDEN. So that would be the only check then, is if there is an identified problem, and CPSC could step in, issue a recall and take those out of the marketplace but parents may still have those cribs, legacy cribs, if you will?

Mr. DWYER. That is correct.

Mr. WALDEN. Ms. Cowles, you were recently quoted in the press as saying the same problems have existed for 10 years and nothing has been done and we are glad to see that it is now a crisis and people are acting. Do you want to talk about that quote?

Ms. COWLES. Sure.

Mr. WALDEN. So nothing has been in 10 years?

Ms. COWLES. Well, I have sat on the ASTM committee since 2001 and there have been other consumers who have been on those committees before that, and in those committee meetings the same issues that we are talking about here today, the same issues we talked about the last 2 days where we actually finally made real progress such as putting in a test that has been in Canada during all that time. It is called a racking test. It subjects the crib to much more rigorous shaking and testing, much more similar to—

Mr. WALDEN. Like a child would do.

Ms. COWLES. Like a child might do, and we have asked repeatedly since 2001 to add that test to the ASTM standard and it was never added.

Mr. WALDEN. So on the ASTM standards, and your committee, I am not familiar with how that operates. How many members are on that committee?

Ms. COWLES. Mike might know better than I do. I would say around 50 but I am—

Mr. WALDEN. Mr. Dwyer.

Mr. DWYER. I would say actively participated in F-15, it is at least 50.

Mr. WALDEN. So 50 members, 15 that actually participate?

Ms. COWLES. Fifty.

Mr. WALDEN. Fifty, five zero?

Ms. COWLES. Correct.

Mr. WALDEN. And during that 9-year period that you have been on it and this has been an issue floating around, have there been recommendations that have gone forward that you voted against because they are not strong enough or—

Ms. COWLES. Yes. As one of the sometimes three, sometimes four consumers in the room out of those four, our votes unfortunately did not go too far.

Mr. DWYER. Can I just follow up on that?

Mr. WALDEN. Yes, Mr. Dwyer.

Mr. DWYER. I mean, and again, I don't—I am not representing ASTM, they are not here at the table, but I do participate in the process as Nancy does, and, you know, anybody who participates in that process has the opportunity to cast a negative vote on any ballot, and if that ballot is—if that argument is found persuasive through the ASTM process, it can be upheld and modifications can be made to the ballot before the final rule is issued. I just want

to be very clear that everybody that participates in the process has an equal vote in that process.

Mr. WALDEN. Okay. And then Mr. Dwyer, I wanted to—in light of recent events, do these companies like Stork Craft lose their membership status in your organization?

Mr. DWYER. No, they would not lose their membership status. The certification program is separate and apart from membership in the organization.

Mr. WALDEN. Okay, so same for Delta and other brands that are JPMA certified?

Mr. DWYER. Correct.

Mr. WALDEN. Okay. So they can still be a member?

Mr. DWYER. Correct.

Mr. WALDEN. Okay, even though they have these—in your testimony, JPMA lists over 20 product categories that are currently in your certification program and including cribs and infant carriers. Which products should CPSC list as their top priorities for safety issues and issue safety standards for as soon as possible?

Mr. DWYER. In my opinion, sir, which products?

Mr. WALDEN. Yes.

Mr. DWYER. I would say cribs, and that is why we spent 2 days and why the chairman reached out to the manufacturers and the consumer groups and asked us, as I testified, to please help us accelerate rulemaking on full-size cribs.

Mr. WALDEN. And Ms. Cowles, are you satisfied with the new recommendations that came out in December?

Ms. COWLES. I think banning drop-side cribs is an important step. However, the real problem with drop sides, as the family testified, is the hardware failures, using plastic hardware, and those hardware pieces are still in other parts of the crib so we do believe we still need this stronger racking test to test hardware for durability, and that in fact is being talked about in the meetings that we have been to, so we are satisfied that the new mandatory standard will have sufficient strength in it once we get to that point.

Mr. WALDEN. And did you all vote then on this new standard that came out in December?

Mr. DWYER. Not yet. The process—

Ms. COWLES. In December, he is asking.

Mr. DWYER. Oh, I am sorry.

Mr. WALDEN. And did you support that then?

Ms. COWLES. Yes.

Mr. DWYER. I abstain from voting on the ASTM committees. We support an administrative role but I do support the activities.

Mr. WALDEN. Okay. You know, I think that is—yes, that is a good point. The manufacturing problems I think is probably the issue we are all kind of looking at here. What should be done there?

Ms. COWLES. In terms of the manufacturing of the product itself? Well, I would submit, and I will talk to that, but just let me briefly say, many of these are design issues, if you design a product with bad hardware, but manufacturing, and I think one of the reasons the older cribs that people are talking about that seemed to have held up well were made under the same lax regulations but were made, you know, here under our—so I think that manufacturing

plays a role and I am hoping that both JPMA, CPSC in their oversight role, you know, work to make sure that, you know, if you choose to make a product overseas that you are selling to American consumers, you need to make sure it is as safe as if you made it here. That is really the manufacturer's responsibility.

Mr. WALDEN. Thank you.

Mr. Dwyer, do you want to comment on that?

Mr. DWYER. Manufacturers of these products are incredibly responsible. Ultimately their customers are babies. I am the father of three children. I used a drop-side crib that was handed down to me by a friend of a friend, disassembled it three times, put it together three times, took care to follow the instructions every time, and manufacturers—ultimately children's lives are the most precious commodity and I believe manufacturers have always had that—

Mr. WALDEN. You know, if I can interrupt you just a second, the family behind you made the comment about the instructions being on the bottom of the mattress or the bottom of the slat and sort of glued on there. Is that done so that it continues on if somebody takes it apart?

Mr. DWYER. Correct.

Mr. WALDEN. Because I don't know anybody that keeps the instructions for anything we put together.

Mr. DWYER. Correct. It is part of the standard because just that, so that the instructions don't get lost if the crib is handed down or if it disassembled in between each child, which a product should be made to be able to disassembled multiple times, as Nancy indicated, and the instructions are on there so they don't get lost.

Mr. WALDEN. That is why they are glued on there?

Mr. DWYER. Correct.

Mr. WALDEN. Okay. Thank you, Mr. Chairman. I know I have exceeded my time. Thanks for your courtesy.

Mr. STUPAK. I thank you, Mr. Walden.

Mr. Braley for questions.

Mr. BRALEY. Mr. Dwyer, I want to follow up that last comment you made, manufacturers of these products are incredibly responsible. You stand by that statement?

Mr. DWYER. I do.

Mr. BRALEY. In the statement you submitted, it indicates that your manufacturers association has grown to include more than 250 member companies in the United States, Canada and Mexico, and that these companies manufacture and/or import infant products. So do you have members that are manufacturers in China and Vietnam?

Mr. DWYER. No, we do not.

Mr. BRALEY. Okay.

Mr. DWYER. That actually are manufactured in the country or manufacture in those countries.

Mr. BRALEY. Right, but my point is, since you have the word "import" in there I assume some of your members are importing products that are being manufactured, and that is who the manufacturer is you are referring to when you said manufacturers are incredibly responsible?

Mr. DWYER. The manufacturers that are members of the association must have a place of business in North America but yes, some of them do manufacture their products overseas or import their products from overseas.

Mr. BRALEY. Right, and isn't it customary that the inspections that you rely upon are done at the point of manufacturing?

Mr. DWYER. The inspections for the certification program?

Mr. BRALEY. Yes.

Mr. DWYER. They are done both domestically and overseas.

Mr. BRALEY. Okay. And you are aware that it is much more difficult to ensure the integrity of those inspection processes when they are being done in a country like China which has very strict controls on access?

Mr. DWYER. Our members take great care to visit with their factories overseas every year and to make sure that quality control practices are taking place at the highest levels.

Mr. BRALEY. Have you ever tried to serve a Chinese manufacturer of a defective product that is marketed in the United States?

Mr. DWYER. Serve?

Mr. BRALEY. Serve for legal process.

Mr. DWYER. No, I have not.

Mr. BRALEY. Do you know what is involved in that process?

Mr. DWYER. I do not, sir.

Mr. BRALEY. Do you know that international treaties have to be complied with and that service has to be performed domestically through the Chinese government that erects roadblocks that can prolong the actual accountability of foreign manufacturers who are selling defective products in this country for years and years if you are ever successful?

Mr. DWYER. I am not familiar with that process, sir.

Mr. BRALEY. Are you aware that certain States like my home State of Iowa have domestic laws that provide immunity to sellers of products like some of your members if the manufacturer is accountable and can be served and that may put you into this endless limbo of trying to get service in a country that doesn't want its manufacturers to be served? And that is exactly what Representative Sutton is talking about in this bill she is about to introduce. Are you familiar with that problem from your work with these many people selling products that affect infants' lives and safety in this country?

Mr. DWYER. No, sir, but, you know, our program is built with safety in mind and we have testing. We have multiple testing. We had multiple testing before the Consumer Product Safety Improvement Act was even implemented. Our program, section 104, the requirements of certification, are more robust and they mirror what this Congress, what this committee has put together. I am not familiar with the challenges with serving Chinese manufacturers with, you know, warrants for defective products but we are here to talk about our certification program, the ASTM standards.

Mr. BRALEY. Well, in your certification program, have you ever encountered incidents where the instructions on assembly are written in that country of origin, in some form of English that would not make sense to anybody in this room and yet is being used by the manufacturer and the subsequent seller of that product as a

guide for people in assembly of that product. Are you aware that takes place?

Mr. DWYER. There is pretty clear guidelines both at the voluntary and the mandatory level for the standards that dictate how the instructions should be put together, and I am not aware that there are issues with communication on the instructions. It is an issue that the group is working on and looking at adding some additional warnings and looking at instructions. Eliminating moving parts would help with any disassembly issues, but I am not aware that there are any issues with instructions, sir.

Mr. BRALEY. As part of your certification requirement, do they look at the assembly instructions being supplied by the manufacturer?

Mr. DWYER. Yes, they do.

Mr. BRALEY. And do they look at whether or not the language that is being used is in plain English that can be easily understood and adapted by the consumer in the assembly of that product?

Mr. DWYER. Well, the product and the certification program, the product has to be assembled to the manufacturer's instructions and so that is a requirement.

Mr. BRALEY. Well, and that is my point. My point is, the manufacturer in the latest recall is located in China, located in Vietnam, and they sometimes have a very different understanding of the English language than American consumers putting that product together. I am not just talking about from a professional standpoint. I am talking from the standpoint of a parent who has assembled many of these products and is frequently mystified by what the intention is in the assembly process because it is obviously being written by somebody who doesn't live in this country.

Mr. DWYER. Are you specifically talking about the Dorel recall, the Dorel Asia recall?

Mr. BRALEY. Yes.

Mr. DWYER. Six hundred and thirty-five thousand units?

Mr. BRALEY. Yes.

Mr. DWYER. Which are not JPMA certified, and I am well aware of extenuating circumstances in that case where that crib was put together with duct tape by parents, and criminal charges were charged against those parents for endangering their child.

Mr. BRALEY. And I would like to bring that up before I close, Mr. Chairman, because what happens in these cases is everybody engages in finger pointing, and one of the first people on the line are the parents dealing with the tragic loss of their child who are frequently blamed and subject to criminal prosecutions which are many times later dropped, and I think that it is important that if there are manufacturers profiting from the sale of these products, they take a good look in the mirror and do everything they can to address the problem, not always blame the parents, and that is why this work we are here for today is so important, and I yield back.

Mr. STUPAK. Thank you, Mr. Braley. It should be noted too in that case where the parents, charges were brought, they were dropped, and so just so the record is clear.

Mr. Burgess, when he comes back, I will reserve his spot. So I guess we are to Ms. Schakowsky for questions.

Ms. SCHAKOWSKY. I want to talk a little bit more about the role of parents. In November of last year, we talked about this, but the CPSC and Stork Craft recalled more than 2 million cribs due to reports of broken or missing drop-side hardware. As part of that recall, Stork Craft crated an instructional video and posted it on YouTube—and so whoever is working on that, let us get it up there—to show consumers how to identify problems with their cribs and how to install the repair kits the company supplied, so if you will play that.

[Video playback]

Ms. SCHAKOWSKY. So let me ask you, Ms. Cowles, it is responsible or realistic, rather, to expect that parents will follow this recommendation in the real world?

Ms. COWLES. No, I don't think any parent does that every time they put a baby in a crib any more than you open your hood and check everything before you get in your car to drive. It is certainly something that we might expect them to do occasionally but no, I think parents assume they put together a crib, it is going to stay together.

Ms. SCHAKOWSKY. Mr. Dwyer, do you think that a tired mother or father, baby wakes up at 2:00 in the morning and you put the baby back in bed is going to go around and do a crib inspection every time before putting the baby back to sleep?

Mr. DWYER. Having been a very tired father at one time, no, ma'am.

Ms. SCHAKOWSKY. So Mr. Dwyer, the JPMA put together a frequently asked questions page about drop-side cribs. It is on tab 10 of the document binder. And here is what your association FAQ sheet says: "JPMA reminds parents and caregivers that when you assemble a crib to the manufacturer's instructions and use it properly, a crib provides the safest sleeping environment for a baby." What do you mean by—what does JPMA mean by use it properly?

Mr. DWYER. That it is assembled according to the manufacturer's instructions.

Ms. SCHAKOWSKY. And inspected every time, right?

Mr. DWYER. We would recommend that parents be aware that inspection may be needed and we also have safe sleep guidelines for what not to put in the crib that is part of the whole process such as heavy blankets or pillows or that type of thing.

Ms. SCHAKOWSKY. Stork Craft's CEO Jim Moore issued a statement after the November recall in which he asserted that parents improperly used the drop-side cribs implicated in infant entrapments. Here is how the news accounts quoted Mr. Moore: "In the majority of instances, the cribs were being used with broken parts, parts with pieces missing, parts that were damaged or with modified or homemade parts." So Ms. Cowles, what do you think of the Stork Craft response?

Ms. COWLES. Well, I think that it is particularly damaging to the recall process, that when manufacturers come out, and as Mr. Dwyer has done here, continue to blame the individual parent whose child either has died or was hurt. It basically says to every other parent using that crib, oh, I am sure you don't need to worry about your crib because you are a smart parent who is using it correctly, and so I think that kind of language, especially after the

CPSC has to spend time negotiating what is in the press release and they come to an agreement of what is going to be said about it, then the company comes out later that day or the next day with those kind of damaging comments I think again both discourages parents from participating with the recall because they think theirs must be okay because they obviously put it together right and downplays the problem. I mean, all that list of things, if that crib wasn't falling apart, parents wouldn't have to do any of those things, so it is the crib, I think, that we are here to talk about and not how individual parents may decide to fix the problem when their crib does in fact break.

Ms. SCHAKOWSKY. And Mr. Dwyer, what were you saying kind of I felt sort of self-righteously about how these parents were on the Dorel Asia cribs charged with criminal negligence or whatever it was.

Mr. DWYER. I just wanted to clarify for Mr. Braley that those products were not certified by the association and that I was aware, made aware that there were extenuating circumstances, that that crib, that there were photos of the crib that showed duct tape holding the pieces of the crib together, and that one side was broken from the crib and had been pushed against the wall, and I was aware that criminal charges had been brought for child endangerment, and also there were drug charges. I was not aware that those charges had been dropped but I was specifically addressing we do not want those cribs that were recalled lumped into because they were not certified by the association.

Ms. SCHAKOWSKY. Did you want to comment, Ms. Cowles?

Ms. COWLES. I just wanted to say about the charges, I know that is not why we are here today but having worked with many parents whose children have been killed, more times than you can imagine, that is at least threatened or brought before the medical examiner can ascertain that the product itself was defective, so I have had parents charged with that, with child abuse, with all kinds of things. And so the initial charge made by the police is no indication of what is actually responsible for that child's death, especially in a case like this where the charges are dropped.

Ms. SCHAKOWSKY. Thank you.

Mr. STUPAK. Ms. Sutton for questions, please.

Ms. SUTTON. Thank you, Mr. Chairman, and I want to follow up on two things. First of all, Representative Braley's line of questioning about foreign manufacturers, and I just want to invite all of our colleagues to seriously consider getting on this bill—it is a bipartisan bill—to make sure that we can serve process and submit people who are selling products in this country to the jurisdiction of our courts and the enforcement of our laws. That is what I think the American people expect, and those are the consumers. Your customers are infants with parents, and they are counting on us to deliver a degree of safety.

But I also want to follow up with Ms. Schakowsky's line of questioning because I think this idea of parental error versus product defect is an important one, and along the same lines, in September of 2007, CPSC recalled more than a million Simplicity-brand drop-side cribs in one of the many recalls involving this company, and the CPSC noted that some consumers installed the drop side unin-

tentionally down, upside down. In this situation, the drop side would function upside down, it would function that way, and it would weaken the hardware and in some cases detach from the crib. The Stork Craft drop-side cribs recalled last year had the same problem, had similar problems. So Stork Craft asserts that this drop-side problem is not the company's fault. In a Stork Craft position paper provided to the committee located at tab 8 in the document binder, the company states, and I quote, "It is absolutely unreasonable to expect Stork Craft to reasonably foresee that a consumer would install the drop-side rail upside down." Mr. Dwyer, do you agree with Stork Craft's statement? It is unforeseeable that a consumer might improperly install the drop side upside down when the drop side will still function that way?

Mr. DWYER. I am not intimately familiar enough with the product. Obviously if the product is manufactured in such a way that it could be installed upside down, as was the case with this product, that that would be the case.

Ms. SUTTON. I don't understand your answer.

Mr. DWYER. Your question was, is it foreseeable for that product, for that rail to be installed upside down. Apparently that is the case, that it is—it was not—it is foreseeable if it can be installed upside down.

Ms. SUTTON. So you disagree with Stork Craft's statement that it is unreasonable to expect that to be foreseen?

Mr. DWYER. I would say based upon the information, the limited information I have about the specific product as I read it here, I would say that I would disagree with that statement.

Ms. SUTTON. Thank you.

And Ms. Cowles, I understand that you were a part of a task group assigned to examine the improper drop-side installation after the Simplicity recall. Is that correct?

Ms. COWLES. That is right.

Ms. SUTTON. Okay. And the Consumer Product Safety Commission produced an e-mail to the committee, which is located at tab 1 of the document binder, and it relates to this issue. This is an e-mail chain between you, Jonathan Midget of CPSC and other members of the group tasked with looking at improper assembly of drop sides. Dr. Midget, who is an engineering psychologist, comments as follows: "The best way to prevent misassembly is to limit the consumer's ability to put parts in the wrong place. The least effective strategy is to modify the instructions or create a list of warnings." To his workers at CPSC, Dr. Midget notes in an e-mail that the crib industry has been, and I quote, "freakish in its insistence that instructions of cribs are at fault. This only makes sense if you don't want to change any of the shapes of your crib hardware and would rather blame the consumer." Ms. Cowles, is this observation consistent with your experience negotiating crib safety standards?

Ms. COWLES. I think that this is very consistent both with my experience on the committee. I think I mentioned in my longer testimony that the committee will not even look at incidents that happen in cribs older than 5 years old, even though as we heard from the family, that could have easily been a crib that was just in one place and not reassembled, because they consider it old. They are

very quick to blame when they account things to what the consumer did rather than to their crib, and again, I think as I said today, that if a product is made so you can put it together in a way that causes death, that is a design problem, not a consumer problem.

Ms. SUTTON. Thank you, Ms. Cowles, and I appreciate again, Mr. Chairman, that you are holding this hearing. These e-mails illustrate the risk of relying on voluntary industry safety standards, and I yield back.

Mr. STUPAK. Thanks. If I may, just one question or two. I think Mr. Burgess will be here in a minute. Let me just ask this. Mr. Dwyer, I asked about this ad that you put out saying that you certify products.

Mr. DWYER. Yes, sir.

Mr. STUPAK. And we talked about recalls. Do you ever take out similar ads in the same magazines advertising there has been a recall, like on the cribs?

Mr. DWYER. I am sorry. I didn't understand the question.

Mr. STUPAK. Does your association, the Juvenile Products Manufacturers Association, you put out these ads advertising these products, that they are certified safe. Then when they are recalled, do you ever take out an ad saying these things have been recalled so consumers would know?

Mr. DWYER. No, we don't name specific products and put ads for a recall in any magazine.

Mr. STUPAK. But wouldn't that be a good idea?

Mr. DWYER. I believe that is the role of the agency. We can, you know, communicate. We issued statements and we provided statements based upon when the Stork Craft products were recalled to help parents and concerned consumers understand the implications. We link to recall.gov on our website. We—

Mr. STUPAK. So other than your website, that is all you do to let parents know that—

Mr. DWYER. We do not take out ads in magazines to promote the fact that products are recalled. This is part of a product safety campaign that involves multiple communication—

Mr. STUPAK. Sure. These are all products with your seal on it so if your seal products are being recalled, I would think you want to let people know that, target these audiences.

Mr. DWYER. We do communicate but we don't take out ads in magazines.

Mr. STUPAK. Okay. I would like to thank this panel for their testimony. Thank you, witnesses, and thanks for being here. As Mr. Walden reminds me, we are going to have votes here pretty quick, so let us see if we can't finish up this hearing. I will ask the chairperson to come forward, please, the Hon. Ms. Tenenbaum of the Consumer Product Safety Commission. Let the record reflect that before you have your opening statement, it is the policy of this committee that you have the right under the rules of the House to be advised by counsel during your testimony. Do you wish to be represented by counsel?

Ms. TENENBAUM. No, sir.

Mr. STUPAK. And then Ms. Tenenbaum, I would ask you as the chairperson of the Consumer Product Safety Commission to take the oath, please. Raise your right hand.

[Witness sworn.]

Mr. STUPAK. Thank you. Let the record reflect Ms. Tenenbaum is under oath, and please present your opening statement.

**TESTIMONY OF THE HON. INEZ MOORE TENENBAUM,
CHAIRMAN, CONSUMER PRODUCT SAFETY COMMISSION**

Ms. TENENBAUM. Good morning, Chairman Stupak, Ranking Member Walden and members of the Subcommittee on Oversight and Investigation.

The overall safety of cribs is a critical concern of the CPSC and a personal priority of mine. Getting unsafe cribs off the market and out of the home has always been a key part of the CPSC's mission, but I strongly believe that we must do more and have strong federal safety standards that prevent cribs with design flaws or safety defects from ever making it into the stream of commerce or into nurseries.

Since the inception of the agency in 1973, the CPSC has been deeply involved in issues of crib and infant sleeping environment safety. In November 1973, the Commission promulgated the first mandatory safety standard governing full-size cribs. Since that time, the CPSC has also worked diligently with other standards-developing organizations such as the ASTM International on voluntary cribs standards. These mandatory and voluntary standards combined with substantial outreach efforts have undoubtedly prevented numerous infant and child injuries.

However, one question that has arisen in some media reports is the issue of why the CPSC's mandatory crib standards have not been revised since 1982. The main answer is that the Commission has limited authority to do so under section 9 of the Consumer Product Safety Act. Under that section, which was revised by the CPSIA, the Commission was generally required to rely on voluntary standards that would likely result in the adequate reduction of risk and injury and where there would be substantial compliance with the standard. This reliance on voluntary standards worked well in many areas but it also left some substantial gaps that voluntary-standard-developing organizations were either unwilling or unable to confront. This provision was modified by the CPSIA to give the Commission additional authority to promulgate rules, even when a voluntary standard is in existence.

In addition, the CPSIA also included section 104, the Danny Keysar Child Product Safety Notification Act, which directs the Commission to promulgate new standards for 12 groups of durable infant and toddler products. I strongly support these additional authorities and have directed the CPSC staff to make crib safety a key priority starting with immediate recall of cribs that have been shown to present a substantial risk of danger and injury to children.

One example of the Commission's efforts to remove potentially hazardous cribs from the marketplace has been the two recent recalls of Stork Craft drop-side cribs. In January 2009, Stork Craft agreed to voluntarily recall over half a million impacted cribs due

to a bracket defect. At that time the CPSC was also investigating instances regarding a potential drop-side issue with the cribs. These incidents, however, involved a large population of cribs with different styles of drop-side hardware and a different mode of drop-side failure.

After my arrival at the Commission, I requested weekly Commission briefings from the Office of Compliance on pending consumer product investigations. The subject of the September 24, 2009, briefing was nursery products and included the Commission's investigation into drop-side cribs. During that briefing, I learned about the developing compliance case regarding Stork Craft drop-side cribs as well as the tragic June 2009 death in Louisiana that involved a Stork Craft drop-side crib. Following this briefing, I directed the staff to give immediate priority to the recall of Stork Craft cribs and this drop-side hazard. On November 23, 2009, the Commission and Stork Craft announced the largest crib action recall in CPSC history, and as you know, this involved 2.1 million Stork Craft cribs.

We also recently recalled the Dorel Asia cribs, which I will not go into detail to save time because you are very well aware of that recall.

Now, since these recalls, and since my tenure as chairman, I have decided that we need a new safe sleep initiative, which has six points that I want to talk to you about. In my brief statement this morning, I will just talk about the highlights and then you can ask me questions later.

I think the CPSC has very talented staff that has worked diligently for years on these issues of safe cribs but I also think that we could have for a variety of reasons including funding, inadequate statutory authorities and competing priorities move quicker to have mandatory and stronger voluntary standards and I want you to know and make very clear to this subcommittee that those days are over at the CPSC. This morning I am pleased to announce the details of the Safe Sleep Initiative.

First of all, you have heard from other speakers that the first part of this initiative is to expedite the rulemaking and have mandatory standards under section 104 for cribs, and I might want to add that when I came to the Commission, the schedule for this rule for cribs was scheduled for 2012. When I learned about it, I pulled it in front of other rules and said we have to have this standard now. Second, we are going to expand the Commission's successful early warning system by having an early warning team for bassinets, cribs and other sleep environments for children. Three, we will also increase the monitoring of recall effectiveness and corrective actions on take rates on crib recall cases. We want to know how effective are these recalls. Fifth, we are going to continue with our additional media outreach. For example, when we recalled Stork Craft, we estimated that 200 million people saw the television clips of those recalls. And sixth, we are going to have an internal management review of how we do recalls not only for cribs but for other products. When I came to the Commission, I realized that the Commission needed a new strategic plan. It also needed consultants from the outside to come in and look at the operations and the management of that agency, so we went through the pro-

curement process and I am pleased to announce that just recently we have secured Booz Allen Hamilton to do a top-to-bottom review of the CPSC and help us in this area.

And Mr. Chairman and Ranking Member Walden, I thank you for having this meeting. It is very important that you show everyone involved in crib safety how important it is to you, and I look forward to answering your questions.

[The prepared statement of Ms. Tenenbaum follows:]



**Statement of
Inez Tenenbaum
Chairman
U.S. Consumer Product Safety Commission
Before the Subcommittee on Oversight and
Investigations
“Crib Safety: Assessing the Need for Better
Oversight”
January 21, 2010**

Good morning, Chairman Stupak, Ranking Member Walden, and Members of the Subcommittee on Oversight and Investigations. I am pleased to be here today to discuss the actions we are taking at the U.S. Consumer Product Safety Commission (CPSC) to ensure the safety of cribs and promote a safe sleep environment for all children in the United States.

Let me begin by saying the overall safety of cribs is a critical concern of the CPSC – and a personal priority of mine. Parents across this country expect cribs to be a sanctuary for their children, regardless of that crib’s price or size. I share this belief, and have made crib safety a cornerstone of my work as Chairman of the CPSC.

Since 2007, the Commission has taken action to recall almost 7 million cribs for various defects. Getting unsafe cribs off the market and out of homes has always been a key part of the CPSC’s mission. But I strongly believe that we must do more – and have strong federal safety standards that prevent cribs with design flaws or safety defects from ever making it into our stream of commerce or into nurseries.

In my testimony today, I will provide the Subcommittee with a brief overview of the Commission’s past efforts with regard to crib safety and the recent Stork Craft recall. More importantly, however, I will also outline my overall Safe Sleep Initiative to prevent deaths and injuries from crib design flaws and defects, and promote a safe sleeping environment for all babies.

Overview of CPSC Efforts to Prevent Crib Defects and Injuries

Since the inception of the agency in 1973, the CPSC has been deeply involved in issues of crib and infant sleeping environment safety. In November 1973, the Commission promulgated the first mandatory safety standards governing full-sized cribs. These standards included regulations governing rail height, spacing of crib components (slats, crib rods and corner posts), and the hardware used in the construction of the crib. These standards were updated in 1982 to impose requirements regarding the crib “cut-outs,” or the parts of cribs where the various component parts fit together.

The CPSC has also worked diligently with other standards developing organizations, such as ASTM International, on voluntary crib standards. In 1988, CPSC participated in the ASTM subcommittee that adopted the F1169 standard for full-size cribs. CPSC staff was also actively involved with this subcommittee when it revised the F1169 standard to:

- Include a performance requirement addressing slat detachments in 1999;
- Integrate a requirement governing the design of crib corner posts in 2003;
- Update crib warnings and labeling in 2007; and
- Adopt a restriction of drop-side cribs and new slat strength requirements in November 2009, which was published on December 10, 2009.

Furthermore, the CPSC has worked for decades on education and outreach initiatives. CPSC has partnered over the years with the American Academy of Pediatrics, the National Institute of Child Health and Development, Gerber, the Juvenile Products Manufacturers Association (JPMA), The Danny Foundation, and the Black Entertainment Network (BET) on:

- The landmark Back-to-Sleep campaign aimed at preventing Sudden Infant Death Syndrome (SIDS) related deaths;
- An initiative encouraging parents to create a sleeping environment free of pillows and other soft bedding that could pose a suffocation risk to babies; and
- A special campaign aimed at educating African-American parents about how to keep babies safe in the crib.

These mandatory and voluntary standards, combined with substantial outreach efforts, have undoubtedly prevented numerous infant and child injuries.

However, one question that has arisen in some media reports is the issue of why the CPSC's mandatory crib standards have not been revised since 1982. The main answer is that the Commission had limited authority to do so under Section 9 of the Consumer Product Safety Act. Until that section was revised by the Consumer Product Safety Improvement Act of 2008 (CPSIA), the Commission was generally required to rely on any voluntary standard that was "likely to result in the elimination or adequate reduction of the risk or injury" and where it was "likely that there would be substantial compliance with that standard." This reliance on voluntary standards worked well in many areas, but also left some substantial gaps that voluntary standard developing organizations were either unwilling or unable to confront.

Due to the hard work of the full Committee and many other members in both Houses of Congress, this provision was modified in the CPSIA to give the Commission additional authority to promulgate rules, even when a standard is in existence. In addition, the CPSIA also included Section 104, the Danny Keysar Child Product Safety Notification Act, which directs the Commission to promulgate new standards for twelve groups of durable infant and toddler products – including full-size cribs and nonfull-size cribs. Section 104 gives the Commission regular rulemaking authority not just to adopt existing voluntary standards, but to adopt standards that are more stringent "if the Commission determines that more stringent standards would further reduce the risk of injury associated with such products."

As Chairman, I strongly support these additional authorities and have directed CPSC staff to make crib safety a key priority – starting with the immediate recall of cribs that have been shown to present a substantial risk of injury to children.

The Stork Craft Recall

One example of the Commission's efforts to remove potentially hazardous cribs from the marketplace is two recent recalls of Stork Craft drop-side cribs.

In early 2008, our Early Warning System (EWS) team brought concerns about Stork Craft cribs to the attention of our Office of Hazard Identification and Reduction and Office of Compliance and Field Operations. This led to a request to the company in August 2008 for information about potential problems with both the cribs' drop-sides and mattress support brackets. The investigation established a pattern of defect on the support brackets used on certain cribs. The metal brackets used were of insufficient strength, leading to cracking and posing a potential entrapment hazard. In January 2009, Stork Craft agreed to voluntarily recall over a half-million impacted cribs. CPSC was also investigating incidents regarding a potential drop-side issue with the cribs. These incidents, however, involved a large population of cribs, with different styles of drop-side hardware and different modes of drop-side failure.

After my arrival at the Commission, I requested weekly Commission briefings from the Office of Compliance on pending consumer product investigations. The subject of the September 24, 2009, briefing was nursery products, and included the Commission's investigation into drop-side cribs. During that briefing, I learned about the developing Compliance case regarding Stork Craft drop-side cribs, as well as the tragic June 2009 death in Louisiana that involved a Stork Craft drop-side crib. Following this briefing, I directed the staff to give immediate priority to the recall of Stork Craft cribs for this drop-side hazard. On November 23, 2009, the Commission and Stork Craft announced the largest crib action in CPSC history, involving the recall of approximately 2.1 million Stork Craft drop-side cribs.

Throughout this investigation, Stork Craft has maintained that there is no evidence of a pattern of defect and, in the end, voluntarily recalled the cribs without admitting that the cribs were defective.

My Safe Sleep Initiative

During my brief tenure as Chairman, I have reviewed past actions of the Commission in the crib safety area. The CPSC has a very talented staff that has worked diligently in this issue for many years, and their past efforts to ensure safe cribs and safe sleeping environments are to be commended.

At the same time, however, I also recognize that the Commission may not be as vigilant in this area as it could have been in recent years for a variety of reasons – including funding, inadequate statutory authorities, and competing priorities. I want to make it clear to the Subcommittee this morning that those days are over.

This morning, I am pleased to announce the Safe Sleep Initiative. This six-part action plan takes a holistic, multi-pronged approach to the issue of crib safety and focuses not

just on new crib safety rules, but also new methods of identifying existing hazards in the fastest way possible, increased monitoring of recall effectiveness, increased public outreach, and internal management reform.

1. Expedited Implementation of the Section 104 Crib Rulemaking

Section 104 of the CPSIA requires the Commission to promulgate product safety standards for two categories of infant and durable toddler products every six months “beginning with the product categories that the Commission determines to be of the highest priority.” Among these twelve categories are full-size cribs and nonfull-size cribs.

All of the categories listed in Section 104 are important. In light of recent recalls, however, I believe crib regulations should take on a higher priority. Accordingly, I have directed CPSC staff to accelerate – to the maximum extent possible – the rulemaking for cribs under Section 104.

2. Expansion of the Early Warning System (EWS)

In November 2007, the CPSC implemented what was then a pilot program called the Early Warning System (EWS). This EWS is a multi-disciplinary team of CPSC staff consisting of compliance officers, attorneys and technical staff from CPSC’s Engineering, Epidemiology, Human Factors and Health Sciences organizations that focuses solely on three product categories: cribs, bassinets and play yards.

This team was formed in an effort to catch serious risks of injury or death, patterns of defect, and regulatory violations as early as possible. The EWS team meets on a weekly basis and reviews all incoming bassinet, crib and play yard incidents reported to the agency. Incident reports specific to products evaluated by the EWS pilot team are drawn from the CPSC’s epidemiological databases (EPIR) that reside on the CPSC network and are appended into the specific EWS database. As part of its review process, the EWS team electronically codes the failure mode of each product-related incident. By electronically capturing the technical coding for each incident, the EWS team is able to create a historic record that can support more expeditious identification of potential emerging hazards. During the weekly review, the EWS team also assigns in-depth investigations (IDIs) of incidents, reviews completed IDIs, evaluates collected product samples, and makes recommendations to the Office of Compliance on cases to open for possible recall.

Overall, the EWS team does an excellent job of quickly identifying emerging nursery product hazards. Nevertheless, under current CPSC database and Information Technology (IT) infrastructure, identifying emerging hazards and patterns of defect is labor intensive and requires significant staff involvement to manually go through much of the information that is received. In some cases, staff manually receive reports within 48 hours and are able to initiate an investigation. In other cases, however, there can be a significant lag between the time reports are received and when they are entered into the

database. For example, in the case of incidents reported to CPSC staff via manufacturer reports, Medical Examiners and Coroners Alert Project (MECAP) reports, and news reports, there can be a lag of up to a month or longer before incoming data reports are available in EPIR and extracted for entry into the EWS database. This “data utilization lag” is currently too long. To address this, the Commission is currently taking two steps to improve the data flow.

First, the Commission is engaged in a major upgrade of its IT systems as part of its mandate under Section 212 of the CPSIA to create a product incident database that is easily searchable by the public. In response to that mandate, the agency is developing a single, integrated web-based environment, the Risk Management System (RMS) that will support the database and other associated data collection activities. Specifically, RMS will capture CPSC subject matter experts’ assessments of the failure mode and severity associated with product incidents – and share those coded historic incidents with all other CPSC staff. This feature does not currently exist outside of the EWS program, and will greatly improve our information sharing abilities. In addition, this feature will also support advanced data-mining capacities that will analyze various information flows – including public product incident reports, Injury or Potential Injury Incidents (IPII), and information from the National Electronic Injury Surveillance System (NEISS) – and issue “red flags” for products that may present evidence of a new or emerging hazard.

Second, the Commission is working to enhance staffing in our Office of Compliance to recognize and react to the “red flags” generated by these new sources of information. With the new funding available in the Fiscal Year 2010 CPSC budget, we anticipate being able to hire new staff that will focus on priority areas – such as cribs. This, in turn, will allow us to more quickly initiate recalls and other corrective actions when hazards are identified.

3. Creation of a New Safe Sleep Environment Team

As I reviewed the great strides made to date by the EWS team, I also identified an opportunity to take that approach to the next level of responsiveness in the overall context of children’s sleep environments. To that end, I have created a new “Safe Sleep Environment Team,” which is a pilot project to bring the same EWS team of compliance officers, attorneys, epidemiologists, and other technical staff to work on issues related to the sleep environment. The compliance officers and attorneys involved will be exclusively dedicated to this new team.

As a dedicated, interdisciplinary team, I am confident that this will allow the CPSC to use the information harnessed by EWS and act faster and more efficiently not just with crib defects – but also for all defects related to a child’s sleep environment. In addition, their work will be critically important in pointing out new ways to effectively utilize the increased amount of incident reports that will be generated by the RMS upgrade and the public database required by section 6A of the CPSIA.

4. Increased Monitoring of Recall Effectiveness and Corrective Action
“Take-Rates” in Crib Recall Cases

Recalls are only effective if parents and caregivers avail themselves of the corrective action offered, and either return, replace, or fix the defective product in a manner that will ensure a baby’s safety. Nowhere is this more important than crib recall cases, where a corrective action is critical to ensuring a safe sleeping environment.

The CPSC has already taken one critical action to address the effectiveness of crib recalls using the power Congress provided us in the CPSIA. In addition to the product safety standard requirements for durable infant and toddler products, Section 104 also mandated that registration cards be included with cribs and other durable infant products. On December 29, 2009, the Commission published a final rule requiring manufacturers of such products, which includes cribs, to establish and administer a registration program for their products.

Specifically, the rule requires that each manufacturer: 1) provide a postage-paid registration form with the product; 2) keep records of consumers who register their products; and 3) permanently place the manufacturer’s name and contact information, model name, number, and date of manufacture on each product. The rule covers the twelve specific product categories identified in the CPSIA (full-size cribs and nonfull-size cribs; toddler beds; high chairs, booster chairs, and hook-on chairs; bath seats; gates and other enclosures for confining a child; play yards; stationary activity centers; infant carriers; strollers; walkers; swings; and bassinets and cradles), as well as six additional products the Commission specified in the rule (children’s folding chairs, changing tables, infant bouncers, infant bath tubs, bed rails and infant slings). The rule will take effect for the first twelve products, including cribs, on June 28, 2010, and for the additional six products on December 29, 2010.

I strongly believe that these new registration and marking requirements will improve the effectiveness of future recalls involving cribs and other infant and toddler durable products. At the same time, however, I am also very concerned about recalled cribs that remain in the stream of commerce. In particular, I am concerned about the low response rates associated with numerous recalls of cribs made by Simplicity, which is now bankrupt and out of business. Millions of their cribs were sold over the past decade, and millions of them have a deadly defect. To date, eleven babies have become entrapped and died in the various crib models – and there are still far too many parents who have not responded to the recall announcements. As a result, I ordered another major education effort last November to stop consumers from using Simplicity cribs with drop-sides.

In addition to outreach, we must also ensure that consumers with recalled cribs and other durable nursery products take advantage of corrective actions offered by manufacturers. To this end, I have directed CPSC staff to increase monitoring of corrective action plans. Specifically, I have asked staff look at the take-rates of repair kits offered by

manufacturers in several recent recalls, how fast those kits are being shipped, and the quality of materials in the repair kits.

We are also examining the effectiveness of repair and retrofit kits that are currently offered to most consumers in crib and other durable infant and toddler product recalls. During the April 2009 Roundtable on Cribs and Infant Sleep Environments, several parties – including the Illinois Attorney General’s Office – suggested that we require manufacturers or importers to offer either a refund or store credit when cribs are recalled. It is an idea that is worthy of full Commission consideration. Such a requirement would certainly incentivize many consumers to discard and replace defective cribs – and might have a significant impact on removing defective cribs from homes and secondary markets. At the same time, however, the Commission must also be cognizant of the financial situation of manufacturers involved and the fact that this type of remedy might push them into financial distress or bankruptcy – and foreclose the possibility of any corrective action.

5. Additional Media Outreach and Education to Foster Safe Sleep Environments

In the days after the Stork Craft recall, the Commission engaged in a very aggressive media outreach mission in announcing the Stork Craft recall. The day after the recall was announced, I appeared on all three of the major network morning shows to discuss the recall, and emphasized the need for impacted parents to take action to move their children to another safe sleep environment until they obtained the repair kit to fix their cribs.

In addition, the agency sent out a video news release (VNR) that was shown on numerous local television outlets and has received more than 200 million views to date. Information was also distributed utilizing all the social networking resources of CPSC 2.0 – including Twitter, our blog, and YouTube. CPSC also targeted the minority and traditionally underserved communities through the Neighborhood Safety Network (NSN).

Overall, we believe that the media outreach conducted with this recall was among the most comprehensive ever conducted by this agency. However, I believe we can still do more to ensure that every consumer impacted by a recall is “touched” in some form by the CPSC or the manufacturer of the recalled product.

Therefore, I have directed CPSC staff to look at further efforts to reach the public in cases of crib and durable infant and toddler product recalls. As noted above, the registration card rule is a very positive step forward – but we have to ensure that this information is maximized in the case of a recall. Similarly, I also want the Commission to examine new opportunities with other technologies. Currently, consumers can sign up for e-mail alerts for all new recalls. I would like to expand on these efforts, and work on other notification technologies – such as those to mobile devices – to further expand the Commission’s reach to younger and more mobile consumers.

As part of my Safe Sleep Initiative, we will also implement a targeted program aimed at increasing awareness of hazards associated with cribs, as well as best safe sleep practices for babies. This outreach initiative will use various tools, including multi-media (print, radio, television and social media), grassroots (community-based events), and partnerships with crib advocacy groups (including Keeping Babies Safe, Safe Kids USA, and the National Safety Council).

6. Internal Management Review and Reform

Finally, I would like to touch briefly on the issue of internal management reform. In a time of increasingly tight Federal budget constraints, it is critical for all agencies to maximize their resources and always strive to identify new efficiencies. The CPSC is no exception. Over the past two years, the agency has been rewarded with substantial funding increases to beef up staffing and enforcement efforts. My goal is to ensure that these resources are utilized to their fullest extent.

To that end, the CPSC recently engaged Booz Allen Hamilton to complete a top-to-bottom review of the CPSC, and help us complete a new agency Strategic Plan. They will look at all aspects of the agency's current management practices and organizational structure. In particular, I have requested that they review our current practices in the Office of Compliance and recall area – and recommend areas where we can improve our responsiveness to removing hazardous products from the marketplace and consumers' homes.

Chairman Stupak and Ranking Member Walden, thank you again for giving me the opportunity to update the Subcommittee on the critical issue of crib and sleep environment safety.

I now look forward to answering your questions.

Mr. STUPAK. Thank you, and let me thank you on behalf of the whole committee and our staffs for your work and cooperation in this area and also for being here all morning. You have sat through all the panels and we appreciate that, and we think that helps in what we are trying to achieve here.

You said your Safe Sleep Initiative, that was starting today?

Ms. TENENBAUM. We have already started it. It started really several weeks ago.

Mr. STUPAK. And part of that you said in your testimony, when Stork Craft announced a recall, that 200 million saw that.

Ms. TENENBAUM. We went on every morning show to announce the recall and we are using all of our social media—Twitter, YouTube, CPSC 2.0, but we estimate over 200 million saw those—had access to those television tapes.

Mr. STUPAK. When you do a recall here, especially like with Stork Craft, the 2 million that were recalled here in November, that is a voluntary recall, right?

Ms. TENENBAUM. It is a voluntary recall, and—

Mr. STUPAK. And you have to convince the manufacturer to do it. You don't have authority to say that is it, we are recalling these cribs, correct?

Ms. TENENBAUM. We could if we wanted to go into an administrative action, which would probably result in litigation and take more time, but the compliance officials and the lawyers at the CPSC have said to me, if we can get a voluntary recall, we can get the remedy to the consumer quicker and it takes less time, but you have to negotiate.

Mr. STUPAK. You have to negotiate. And if you look at tab 7 there, I want to talk a little bit about that, because you asked to negotiate with the company that does not believe that their product is defective, right?

Ms. TENENBAUM. That is correct. In fact, Stork Craft maintains to this day that the product is not defective.

Mr. STUPAK. Still maintains that even though we recalled 2 million cribs in 2009. So if I look at tab 7, if I understand this correctly, starting on May 6, 2009, staff sent an e-mail to Stork Craft advising them to stop the sale of drop-side cribs, right?

Ms. TENENBAUM. That is correct.

Mr. STUPAK. And then there is a number of entries in here about what staff was doing, conversations, discussions, and that wasn't really completed until about October 9. Stork Craft submits a press release and then you have negotiations of the press release begins.

Ms. TENENBAUM. That is correct.

Mr. STUPAK. So it takes you about 6 months to convince them to do a recall, correct?

Ms. TENENBAUM. It just depends on the circumstances.

Mr. STUPAK. But in this one it took about 6 months?

Ms. TENENBAUM. It took about 6 months.

Mr. STUPAK. And then why do we begin negotiations of a press release? That is October 9th, and it is my understanding—again, I have another whole page of all the entries that went through in trying to negotiate a press release on a recall which infant children possibly died because of defects in these cribs, and that takes us

to press release issuance of October—excuse me—November 24. So that is another 6 weeks. You negotiate 6 weeks for a press release.

Ms. TENENBAUM. That is correct. We negotiate every word of that press release. We are required to under 6B with the company. Now, 6B under the CPSIA was amended which gives us more flexibility but we negotiate press releases, and—

Mr. STUPAK. Six weeks here. You know, being where I am sit, and maybe I am a little skeptical, but this is sort of like the Christmas season. That is when people are buying things. Do you think part of the negotiations is to drag out the press release, a 1-page press release for 6 weeks, is to get into the Christmas season to sell more cribs that are defective that are being recalled?

Ms. TENENBAUM. Well, I have asked my staff why it takes so long, once you have made the decision for recall, why it takes 6 weeks, and that is the standard procedure, the standard amount of time, and they produced a document for me with everything that has to be done, particularly if you are going to do a recall repair. You have to manufacture the repair, you have to test it, and then inside the company, in Stork Craft Company, you know, those decisions, if you are talking to someone, they have to run it all the way up to the CEO or whomever is at the level to make the decision, but it is the truth. I mean, it takes an inordinate amount of time, and all during this time the consumers don't know that their crib needs a repair kit.

Mr. STUPAK. Correct, and then even after you do the recall, now this is well over 6 months from when we started this process and 6 weeks to get a press release out, but then now on top of that they have another 6 months they can sell the product to the American people, right? Don't they have another 6 months?

Ms. TENENBAUM. No, we stop sale.

Mr. STUPAK. Pardon?

Ms. TENENBAUM. Once the recall is announced, we stop sale. In fact, the retailers have a way to in their computers put the serial number of the product and it stops—

Mr. STUPAK. I thought from Mr. Dwyer, I thought we had another 180 days after that. Maybe I misunderstood.

Ms. TENENBAUM. No, after the—at the recall, it stops sale.

Mr. STUPAK. That is the certification, I guess. Okay. I had it wrong. Why does it take so long? I mean, you had a number of recalls. In fact, you had one Tuesday here, 635,000 more cribs. Why does it take so long? Why does it take 6 months?

Ms. TENENBAUM. Well, it shouldn't take 6 months, and that is why under our Safe Sleep Initiative, we are going forward going to have a safe sleep team where everyone works together, the compliance officers, the attorneys, the epidemiologists, the engineers so that we can all work together to move a case forward quicker. I think 6 months personally is too long. And you can also if the company is not cooperating and keeps insisting, you know, they shouldn't have a recall, we can issue a unilateral press release, which we have threatened to do. I have also told our staff, use every enforcement power you need to move cases forward; don't let a company push back on you if you have the science and the engineering complete and you know this is a product that needs to be recalled. So they know that leadership is behind them in these re-

calls. We also have instituted since I came to the Commission where once a week all five commissioners meet and we have weekly compliance briefings, and then we have monthly compliance briefings so we know the status of cases and can give the staff our thoughts on how urgent we think these recalls are.

Mr. STUPAK. Well, hopefully the next time the press release doesn't take 6 weeks. Six hours should be enough. If not, you can issue a unilateral one.

Mr. Walden for questions, please.

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

Now, Chairman, I thought I heard you say you have the authority at CPSC to unilaterally issue a press release.

Ms. TENENBAUM. That is if the company does not cooperate.

Mr. WALDEN. Okay. So—

Ms. TENENBAUM. And we have threatened that.

Mr. WALDEN [continuing]. What the chairman is talking about, a 6-week delay in getting a press release, was the company not cooperating in that process?

Ms. TENENBAUM. The company was at that point—they were cooperating once we told them we were going to do the recall but when it said 6 weeks, it is not really—I mean, there were other things going on in that period of time.

Mr. WALDEN. And what other things were going on?

Ms. TENENBAUM. Okay. I can give you the recall notification process. I can talk to you—I mean, first of all, you have to determine the scope of the product to be recalled. You have to request—

Mr. WALDEN. And this is CPSC has to do this or the company?

Ms. TENENBAUM. Yes, the Commission has to do this. You have to look—I mean, it is a 2-page-long or 3-page-long document of everything that has to occur before you can recall a case, and you have to make sure the 800 number and the website are operational. You have to test the kit. The company has to manufacture the kit, and—

Mr. WALDEN. These are required by your rules?

Ms. TENENBAUM. These are required to have a successful recall so that—

Mr. WALDEN. In your rules, though, right? These are CPSC rules you are talking about?

Ms. TENENBAUM. I don't know that they are rules, they are just procedures.

Mr. WALDEN. But you control the procedures at CPSC?

Ms. TENENBAUM. The Consumer Product Safety Commission, yes. We control it but we also have to make sure the recall is done appropriately.

Mr. WALDEN. I fully concur with that, but I am just trying to get at this issue of why it took 6 weeks to get a press release out.

Ms. TENENBAUM. Well, this was a staff member's notes, and I don't know if they—

Mr. WALDEN. So you don't think those are accurate maybe?

Ms. TENENBAUM. No, I am not saying that, Mr. Walden. I am saying that it might have reflected that it was going on 6 weeks but we do have to negotiate every word. They might go up to their supervisor or to the CEO, come back to us and say we really dis-

pute this death, so that was a good example. The death in the Dorel Asia case, the company felt like that we should not mention the death. So when you get in whether or not you are going to mention a death, the lawyers on both sides have to get into it. You have to do an investigation. So it can take 6 weeks. If we want to say no, we are going to list, say, four deaths, then you have to say in Stork Craft there were four deaths. You had to go back and make sure your facts were true on every death and—

Mr. WALDEN. And do you think that is an unfair process?

Ms. TENENBAUM. Do I think it is unfair? We have to make sure that it is correct.

Mr. WALDEN. Right. I would concur.

Ms. TENENBAUM. I think what I would like to see on the front end is for us now that we are going forward and we have our team that is going to be working together, I hope we can shorten the part of the point leading up to the recall.

Mr. WALDEN. Do you think that the early warning system has been toothless? Do you think that has worked?

Ms. TENENBAUM. The early warning system was formed after the Simplicity recall, and it puts together a team of people—lawyers, compliance officers—to look at the data that is submitted to us.

Mr. WALDEN. It tries to get everybody in your agency, right, to talk?

Ms. TENENBAUM. Right. Earlier on, you mentioned—you asked me if—or you asked one of the Ciriglianos, you asked them if they had a duty to report, and they did not.

Mr. WALDEN. No, that was the chairman who said that.

Ms. TENENBAUM. Right, and that is one of the issues. We do not get reports sometimes until years after an incident has occurred and the sample is gone. So one of the issues that we were going to say in terms of improving the process which would take probably statutory authority is to require States to report events to us. Medical examiners' reports, we purchase. We work with other—we work voluntarily with hospitals. We have the NICE system. We have a number of ways. We go through press releases, newspapers. We do everything to find out about incidents but there is no duty to report from the State coroners or medical examiners.

Mr. WALDEN. Thank you. That is helpful information to have as we go forward. I have just 45 seconds left here, and we have got votes on, so let me ask you this. Is it the industry trade group's duty to come up with these new standards, or if there is a gap in safety, is it CPSC's duty to put in mandatory standards? You have that authority. Your predecessors have had that authority. You can step in and put a standard in that says we are not going to have drop-side cribs or we are not going to have this type of manufacturing process, right?

Ms. TENENBAUM. I think the ASTM should always have state-of-the-art, robust standards for all the products.

Mr. WALDEN. I agree.

Ms. TENENBAUM. But I also see, when you see patterns of this kind of thing that go on for years, then it is time for the CPSC before it gets this late to have a mandatory standard, and that is why when I came to the Commission we started looking at the cribs. We changed the schedule so that this year we will have the mandatory

standard. We asked the ASTM. I called them personally, got them on the phone, you need to work with us right now to have the best voluntary standard possible. They voluntarily said yes, we would love to work with you. They came and spent yesterday and the day before and worked all day long, and they have come to an agreement that we need to increase the wood quality. Now it is a 50-pound standard. They agreed to an 86-pound standard. We need to test the hardware, given the Canadian racking method. I understand that is 9,000 times the hardware is put under stress to be tested. They outlawed wooden screws, and they also, you know, talked about other issues that would make the voluntary standard robust.

Mr. WALDEN. Good. Thank you. Thank you for your work and thanks for your response to questions.

Mr. STUPAK. Thanks, Mr. Walden.

Ms. Schakowsky for questions, please.

Ms. SCHAKOWSKY. So let me get it clear. We are going to have a mandatory standard for cribs that will prohibit drop sides?

Ms. TENENBAUM. Yes, ma'am, we will.

Ms. SCHAKOWSKY. And when will that be?

Ms. TENENBAUM. It will be 2010. We hope by early summer to have the NPR published in the Federal Register. We have to have 75 days of comment and then we will have the standard by the end of the year. We are also pushing the ASTM to go ahead and adopt voluntary standards with this, and the good thing about having a mandatory standard that you put in the CPSIA is that it will be retroactive. It will cover cribs that are in public places like hotels and childcare facilities so that the drop side will be banned in the public places. But we still worry about cribs in homes that continue to have the drop side.

Ms. SCHAKOWSKY. And in the meantime, how are we going to keep these cribs—are all of them with drop sides recalled?

Ms. TENENBAUM. Well, we have recalled 6 million of them, and all these are voluntary recalls where we have repair kits and we have to keep continuing to educate people in the home who have cribs that there is a repair kit that they need to purchase and so it will still be in the home. And we also want to reach out to the minority communities through the neighborhood safety network, the minority outreach program. Also, we are looking at how we can communicate through every State agency that licenses childcare facilities so that we can send out e-mails to say don't use this brand crib, children have been injured or killed with these drop sides. So it is up to us to continue with our public information campaign.

Ms. SCHAKOWSKY. But there still will be until—so after the 75-day comment period, when are we going to say a ban on drop-side cribs?

Ms. TENENBAUM. Well, prospectively the ASTM has banned them, and I asked the director of DHS—well, I asked—

Ms. SCHAKOWSKY. Ban the manufacture but not all of them have been recalled?

Ms. TENENBAUM. I don't think every crib has been recalled.

Ms. SCHAKOWSKY. Drop-side cribs.

Ms. TENENBAUM. Drop side, but it is banned prospectively. I will have to get back with you on that. I know that—

Ms. SCHAKOWSKY. But under CPSC, after the—what does that take us to? There is a 75-day comment period—

Ms. TENENBAUM. I would hope by December to have our mandatory rule done, and I hope we can do it sooner. And the work that has been done the last 2 days by the ASTM should allow us to have information, plus the agency put out an ANPR in 2008, so we are going to try as fast as possible to have this done.

Ms. SCHAKOWSKY. Okay. I want to get the letters right. The JP—what is it?

Ms. TENENBAUM. JPMA?

Ms. SCHAKOWSKY. Voted against having a mandatory standard, or what was it? I mean, I am trying to understand the relationship with the industry, and for a long time I have been concerned about the issue, for example, of these press releases, and I understand, of course, getting the accuracy but it doesn't take that long to figure out if someone has—if a child has died or four children have died, and the fact that the industry doesn't want that in a press release, who cares? Why do we have to negotiate that? Why should it take so long if this is a threat of life? Do we have to do more? How does our new Act, the Improvement Act, change the rule about these press releases?

Ms. TENENBAUM. Well, I will give you an example. Just this week we recalled Dorel Asia and the Today show and other morning shows are very helpful to us and they say we will announce this so that people can get the word on this, and we had had it in the press release that a child had died. The people representing Dorel Asia were talking to Tom Castello up until right before he went on the air saying do not mention that death, and so that is how we have to deal with this, and he mentioned it because we asked him to.

Ms. SCHAKOWSKY. Well, under the new Act, you said that there has been some improvements in that. What was improved?

Ms. TENENBAUM. Well, the time under 6B. It just shortened the period of time. But still the negotiations about whether or not a death is, you know, because of the hardware or some fault of the consumer, and that goes back and forth and we have to be really hard about pushing forward that we are going to list this death.

Ms. SCHAKOWSKY. I think we really have to do something about that, because don't you think that the impact of a statement where a death has occurred is much more powerful than—

Ms. TENENBAUM. Yes. I mean, if parents know that your child can tragically die by being entrapped, they will go in that room and look at that crib immediately, we hope, or even when a child is injured and we can show parents, this is not something that you can fix yourself, please get the repair kit, and if the crib is in such bad shape, please do not use it.

Ms. SCHAKOWSKY. Well, as far as I am concerned—

Mr. STUPAK. I have got to cut you off.

Mr. Burgess, we have 2 minutes left to vote.

Ms. TENENBAUM. Thank you, though, for bringing this up.

Mr. STUPAK. Mr. Burgess, questions, please.

Mr. BURGESS. Thank you, Mr. Chairman, and thank you, Commissioner, for being here today. I hope we have—I know we have

a request in to your office to have a meeting. I hope we are able to have that soon.

Mr. Chairman, I will also say, having taken a trip out and seen the testing facility at CPSC, I would encourage a field hearing at the testing facility sometime. I think it would be important for us to see how they do a good job with really sometimes some pretty rudimentary tools, and if we behave ourselves that day, they will even let us test some of the toys if we promise not to break them.

Now, I am a little confused on the—that you have banned the manufacture of drop-side cribs. Is that correct?

Ms. TENENBAUM. ASTM has.

Mr. BURGESS. ASTM has?

Ms. TENENBAUM. And we will put that in our mandatory standard.

Mr. BURGESS. Who needs to ban the import? Because a drop-side crib could still be imported by a retailer.

Ms. TENENBAUM. Well, what the ASTM is a voluntary standard and they are saying in the standard, which they voted on in December of 2009, that it will no longer meet standards if it is drop side. But, you know, we will have a rule this year, and I don't want to whine but I want to tell you that we have had 48 Federal Register notices since the passage of the CPSIA. There are so many rules under that we pushed forward that that is why it takes a while to finish these rules, but anyway, I got you off your train of thought. I am sorry.

Mr. BURGESS. Well, some of the things we have been through before with the lead-up to the CPSIA was the problem that we have with stuff that is made overseas, read China, and then brought to this country that doesn't meet our standards. If we decided that it is the design of the drop-side crib that is the problem, then it doesn't matter where it is made, in my opinion. If it is made overseas, then we should not allow its import. Now, what do we have to do with the World Trade Organization and all of our treaties and border stuff, what do we do to keep those cribs from coming in and being sold in retail outlets in this country?

Ms. TENENBAUM. If we ban the drop side, we could stop it at the port.

Mr. BURGESS. Have we banned it?

Ms. TENENBAUM. We will in the rule.

Mr. BURGESS. Which is going to happen when?

Ms. TENENBAUM. In 2010 we are going to finish that. It was originally scheduled for 2012 and we have expedited that to move it up to 2010.

Mr. BURGESS. Yes, the notes I have from the U.S. Consumer Product Safety Commission, Office of General Counsel, required actions pursuant to the Consumer Product Safety Improvement Act of 2008, and this is dated September 2008, that we would do this by August of 2009, so I guess that slipped a little bit?

Ms. TENENBAUM. I guess it did. We did the durable nursery equipment items, there were 12 of them, baby baths and baby walkers.

Mr. BURGESS. Shouldn't cribs have been up at the top of that list of 12?

Ms. TENENBAUM. Cribs, in my opinion, yes. That is why I have expedited it.

Mr. BURGESS. So we on this committee can expect you to issue a mandatory ban on drop-side cribs sometime in 2010?

Ms. TENENBAUM. Yes, sir, and that will be retroactively applied for cribs in public places such as childcare facilities and hotel rooms but it won't apply to bans in homes, so the consumer would still have it under section 104.

Mr. BURGESS. Well, if they had existing ones, but will they still be able to go to a retail outlet and purchase one?

Ms. TENENBAUM. No.

Mr. BURGESS. Would a retailer be able to import one for sale?

Ms. TENENBAUM. No, not after we say that they don't meet the standards.

Mr. BURGESS. So we will be able to stop those at the border?

Ms. TENENBAUM. Yes, sir.

Mr. BURGESS. Let me just ask you, one of the things we struggled with during the run-up to the bill in 2008 was the funding and personnel levels at the CPSC. Where are we with that now?

Ms. TENENBAUM. Well, we are at the level of having 530 FTEs, full-time equivalents, and we now employ as of today 479. So we are—but we have 45 recruitments in the process of being hired, and it is our goal to be at the top of the 530 this year.

Mr. BURGESS. Now, we were given—both Nancy Nord and Mr. Moore felt that the funding levels we were providing CPSC in past years were not satisfactory. Those were increased. What actions are you taking now? We are going to be in a tough budget yet. Guess what? It is going to be real tough. And yet this is one of the more important functions but still very low on the totem pole of things that get funded. So what actions are you taking now to ensure that your funding does not slip?

Ms. TENENBAUM. Well, when we—I go and meet personally with OMB and I go myself, just talk to them about how important it is to be able to implement the CPSIA and other statutes. I ask them to hold our agency harmless. And so I have said, you know, \$10 million to the CPSC is a tremendous amount. Ten million dollars to a mega agency would not have the same effect. And we keep demonstrating to them how we are using it. Also with Booz Allen Hamilton, which is the company that is going to be doing a management, operational and strategic plan for us, they will be looking at what additional resources we need or how we use existing resources to accomplish our goal, which is keeping consumers safe.

Mr. BURGESS. Well, I would just say, don't forget you have friends on this committee if the appropriators aren't treated you squarely.

Thank you, Mr. Chairman. I know we have got to go vote.

Ms. TENENBAUM. And thank you, Mr. Burgess.

Mr. STUPAK. Thank you. That concludes all questioning. First I ask unanimous consent Mr. Waxman's opening statement and the attachment from the Consumers Union be made part of the record.

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

Mr. STUPAK. And that concludes all questioning. I want to thank our witnesses for coming today and for their testimony. The committee rules provide that members have 10 days to submit addi-

tional questions for the record. I know there are questions as to manufacturers have a duty to report deaths and injuries, and after you do a recall, we have seen going in the stores, there is no notification. So there are going to be other questions. We will follow up probably with you, Madam Chairperson.

So I ask unanimous consent that the contents of our document binder be entered into the record provided that the committee staff may redact any concerns about privacy, business proprietary or other law enforcement-sensitive issues. Without objection, documents will be entered in the record.

That concludes our hearing. This meeting of the subcommittee is adjourned. Thank you all for being here.

[Whereupon, at 12:18 p.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

**Opening Statement of the Honorable Joe Barton
Ranking Member
Committee on Energy and Commerce
Subcommittee on Oversight and Investigations
Hearing on
“Crib Safety: Assessing the Need for Better Oversight”
January 21, 2009**

Thank you, Mr. Stupak and Mr. Walden for this hearing.

Approximately 4 million babies are born in the U.S. every year and their parents want the cribs they buy and place their babies in to be safe. The recent recalls of millions of cribs raise fresh questions about the safety of our juvenile products and the effectiveness of the U.S. Consumer Product Safety Commission.

Lately, the threat has come from drop-side cribs, which may pose risks of entrapment and or suffocation. It seems that the risk becomes especially great when parts are not properly assembled, are lost, or they break from age and use. I want to know if the drop-side crib design is inherently unsafe and dangerous. If it isn't a basic design flaw, then I want to know the reason for the increase in the number of incidents and recalls associated with these types of cribs. Some manufacturers have drop-side

cribs in the marketplace that do not show any problems and have not had recalls. I want to know why.

I would like extend a very warm welcome to Susan and Robert Cirigliano from New York who have traveled here to share their story. I look forward to listening to their ideas and suggestions on how we can increase crib safety and improve the recall process and communication between crib-makers, retailers, industry, regulators, and parents.

I also look forward to hearing from our other witnesses including Nancy Cowles from Kids In Danger and Mike Dwyer from the Juvenile Products Manufacturers Association. They will be able to offer different viewpoints on several issues relating to this topic.

Chairman Tenenbaum from CPSC is here to discuss the Commission's role in this matter and I hope she can assure us that the CPSC is handling the recalls and their repercussions in a fair and effective manner. She can also speak to us about the changes to the Commission since Congress passed the Consumer Product Safety Improvement Act of 2008 (CPSIA). That legislation gave the Commission new authorities and resources to effect quicker recalls and requires the Commission to promulgate new mandatory standards for infant products, including cribs and play yards.

Lastly, I want to get Chairman Tenenbaum's commitment to transparency and robust discussions among the five Commissioners and all of CPSC's stakeholders. An effective Commission is one that listens more than it talks, and one that bases its regulatory decisions on hard science and expert consensus.

So I look forward to hearing from our witnesses, and I yield back.

Opening Statement of Rep. Henry A. Waxman
Chairman, Committee on Energy and Commerce
“Crib Safety: Assessing the Need for Better Oversight”
Subcommittee on Oversight and Investigations
January 21, 2010

More than 25 years after safety standards for cribs were first established, neither the crib industry nor the government can guarantee today that drop-side cribs are safe. Problems remain with our products, and our safety oversight, recall, and enforcement systems need improvement.

Parents who put their babies to sleep in a crib should not have to be afraid of what might happen in the night.

Since 2005, the Consumer Product Safety Commission (CPSC) has recalled more than 7 million cribs for a variety of hazards. Most of these recalls have occurred in the last three years, as CPSC experts have identified and responded to a disturbing pattern of child entrapments, injuries, and even deaths associated with drop-side cribs.

The CPSC created an Early Warning System in late 2007 to track emerging product safety hazards. According to the CPSC, the Commission has evaluated more than 2,800 crib-related incidents identified through the Early Warning System. In the last two years, CPSC has identified almost 700 crib-related incidents that merit extensive in-depth investigations. As a result, the Office of Compliance has opened more than a dozen investigative cases pertaining to crib hazards, resulting in the recall of millions of cribs.

This is an unacceptable state of affairs, and today’s hearing examines these issues in full.

The CPSC has not updated its mandatory crib safety standards since 1982, instead deferring to the voluntary safety standards developed by ASTM International, a private organization that develops voluntary standards for a range of industries.

As Nancy Cowles from Kids In Danger will testify today, the ASTM committee that is devoted to setting voluntary standards for cribs has discussed its concerns about the durability of drop-side cribs for years but took little action until last month.

As a testament to the shortcomings of existing standards, the drop-side cribs implicated in each of the major recalls over the last three years — Simplicity, Delta, and Stork Craft branded cribs—carried the Juvenile Products Manufacturers Association (JPMA) safety certification seal. JPMA calls this seal a “symbol of confidence,” which demonstrates that certified cribs meet all mandatory and voluntary ASTM standards, and are made, “with safety in mind.” We will examine today whether existing safety standards are truly strong enough to merit parents’ confidence in these products.

While CPSC’s data on the number of crib incidents investigated and cribs recalled is extremely disturbing, the agency’s actions also demonstrates its renewed commitment to identifying emerging product hazards and responding quickly to remove dangerous products from the marketplace.

The CPSC has new authority under the Consumer Product Safety Improvement Act to develop tougher mandatory safety standards for cribs and other children’s products. I look forward to Chairman Tenenbaum’s plans for this rulemaking.

Today’s hearing will also address the November 2009 recall of two million Stork Craft drop-side cribs as a case study of the CPSC recall process. Chairman Tenenbaum acknowledged in the press that the CPSC has not responded quickly enough to reports of crib safety hazards. I am eager to hear more from the Chairman about the lessons she learned from her first major crib recall as the head of the Commission.

Finally, it is also important, in the context of these issues, that we discuss personal responsibility and corporate responsibility.

Too often, the crib industry is quick to blame parents for an incident involving a broken crib. Following the November 2009 crib recall, Stork Craft told the Canadian press that most drop-side cribs implicated in infant entrapment incidents were used improperly, and I quote, “with broken parts, parts with pieces missing, parts that were damaged or with modified or homemade parts.”

The Juvenile Products Manufacturers Association, as part of its crib safety resource guide, warns against alarming parents and emphasizes the need to educate them about “the importance of the proper use, assembly, and reassembly of cribs and how to provide the safest sleep environment for a child.”

Parents are indeed responsible for doing the best they can to ensure the health and safety of their children. But the crib manufacturers have a responsibility too. They are responsible for manufacturing cribs that are durable and can withstand normal consumer use, such as disassembly and reassembly, without easily

breaking or losing parts. Overall, they are responsible for manufacturing cribs that parents can trust – and must be held accountable for that responsibility.

I want to thank our witnesses for appearing at our hearing today, especially the parents who are here to share the tragic story of their son. Thank you for your testimony and for helping this Committee understand what is at stake.



January 21, 2010

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

Honorable Joe Barton
Ranking Member, House Energy & Commerce Committee
2322A Rayburn House Office Building
Washington, D.C. 20515

Honorable Bart Stupak
Chairman, Subcommittee on Oversight and Investigations
2125 Rayburn House Office Building
Washington, D.C. 20515

Honorable Greg Walden
Ranking Member, Subcommittee on Oversight and Investigations
2322A Rayburn House Office Building
Washington, D.C. 20515

Re: "Crib Safety: Assessing the Need for Better Oversight"

Dear Chairmen Waxman and Stupak and Ranking Members Barton and Walden:

Consumers Union (CU), the non-profit publisher of Consumer Reports® magazine, writes to commend the Subcommittee on Oversight and Investigations of the Energy & Commerce Committee on holding a hearing on crib safety.

Parents and caregivers place a lot of trust in cribs. So much trust, in fact, that they leave children in cribs overnight, unattended. As the seemingly endless series of crib recalls over the past few years have demonstrated, however, there are urgent safety concerns with cribs. In the past few years alone, there have been at least 37 recalls involving more than 7 million full-size cribs, play yards and bassinets. Between 2004 and 2006, the last 3-year period for which there is complete data, there have been 93 deaths associated with cribs. In 2008, there were 11,500 estimated hospital-treated injuries associated with cribs.

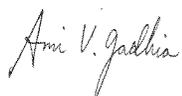
CU has long advocated for mandatory crib safety standards, and we are pleased that the Consumer Product Safety Commission (CPSC) is moving forward on this matter. In addition to concerns about the safety of cribs, we are also concerned about the speed and thoroughness of information given to

consumers after cribs are recalled. When the CPSC issues recall announcements for cribs it consistently recommends that owners stop using them immediately and contact the manufacturer, which often supplies repair kits. However, we have heard complaints from our readers that those fix-it kits sometimes take too long to arrive from the manufacturer. As a result, parents often cannot provide a safe sleeping environment for their babies until the repair kit arrives.

Our goal is to provide consumers with up-to-date safety information, including tips and information on what to do if their crib is recalled. (See our Safety Blog, <http://blogs.consumerreports.org/safety/>). But as you know, recalls attempt to fix a problem after an unsafe product has entered consumers' homes. We share your goal of ensuring that cribs are ultimately safer, and that fewer recalls are necessary.

We recognize that current industry voluntary safety standards are grossly lacking, and we welcome much-needed improvements to crib safety and crib recalls. We thank you again for holding this hearing, and look forward to assisting you as you move forward on crib safety.

Sincerely,



Ami Gadhia
Policy Counsel
Consumers Union
1101 17th Street, NW, Suite 500
Washington, D.C. 20036



Donald L. Mays
Senior Director, Product Safety and Technical Policy
Consumers Union
101 Truman Avenue
Yonkers, NY 10703



U.S. CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

May 14, 2008

Mr. Bill Suvak
Chairman, ASTM Crib Standard Subcommittee
1010 Keller Drive NE
New Salisbury, IN 47161

Re: ASTM F1169 *Standard Specification for Full-size Baby Cribs*

Dear Mr. Suvak:

This letter presents recommendations from the U.S. Consumer Product Safety Commission (CPSC) staff¹ regarding revisions to ASTM F1169 *Standard Specification for Full-size Baby Cribs* to address hazards posed by cribs with sides that can be assembled backwards or upside-down. Some crib designs give the appearance of proper assembly with the drop-side inverted. In this configuration, the drop-side can detach from the crib, possibly creating a dangerous gap that may lead to the entrapment and suffocation of infants. CPSC staff is aware of four deaths where the crib's side was installed upside-down². These deaths included a 6-month-old child, a 7-month old child, a 9-month-old child and a 1-year-old child.

Crib failures can result from a combination of hardware and crib design, which allows consumers to install one or more of a crib's components (a side or mattress support platform) in an incorrect orientation while giving a visual appearance that the crib was assembled correctly and without affecting the crib's first or primary use. In some circumstances, such improper assembly can result in unforeseen stresses on the hardware used to secure that component to the rest of the crib. This may contribute to the component detaching from the crib. When a crib side or the mattress support detaches in one or two corners, it creates a gap that can entrap infants. At the April 1, 2008 ASTM subcommittee meeting on full-size cribs, a requirement for drop sides that are assembled by consumers was proposed by the task group assigned to this matter. The requirement stated that a drop side intended to be installed in a defined orientation must meet one of two conditions:

1. It can only be assembled to the crib in one orientation and function as specified in the instructions, or

¹ The views expressed in this letter are those of the CPSC staff and have not been reviewed or approved by, and may not necessarily represent the views of, the Commission.

² 061129HBB2115, 071114HCC1107, 070726CAA3587, and 050615CWE5015

CPSC008964

Mr. Bill Suvak
May 14, 2008
Page 2

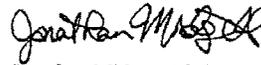
2. If it can be assembled in any other orientation, a label must be provided to clearly indicate the proper orientation.

In order to properly address this hazard, CPSC staff recommends that the requirements proposed by the task group be expanded to include all sides and the mattress support platform and that a third requirement be added as follows:

Crib designs that permit backwards or inverted assembly of the drop sides, stationary sides, mattress support platforms, headboards or footboards, shall pass all applicable performance tests in the misassembled state.

If you have any questions regarding this recommendation, please feel free to contact me. Thank you for your consideration of this important consumer product safety concern.

Sincerely,



Jonathan Midgett, Ph.D.
Directorate for Engineering Sciences

cc: Len Morrissey, ASTM International
Colin Church, CPSC Voluntary Standards Coordinator

CPSC020919

From: Nicholson, Dollie
To: Jim Moore; [REDACTED]@storkcraft.com;
cc: Tarnoff, Howard; Rauchschalbe, Renae;
Woodard, Dean;
Subject: FW: SotrCraft Letter and Poster
Date: Tuesday, November 24, 2009 4:58:06 PM

Jim & Jude,

We have gotten emails from retailers that said they did not receive notice from Stork Craft. This is a bit troubling as we received confirmation from you that all retailers, in particular those that were cited in the press release, had received notification. The retailers that we sent notification letters and posters include:

- Target
- Sears
- Burlington
- Meijer

What actions are you proposing to ensure that *all retailers* have or will be officially notified about the recall and receive posters? CPSC investigators have already gone out to several retail stores today and the results have been negative, meaning no notification and no posters up in stores. I'll send you the names and addresses.

Dollie

Dollie W. Nicholson
Compliance Officer
U.S. Consumer Product Safety Commission
Office of Compliance and Field Operations
4330 East West Highway (4th Floor Mailroom)
Bethesda, MD 20814
[REDACTED]
[REDACTED]

Jim Moore

From: Nicholson, Dollie [REDACTED]
Sent: February-25-09 2:15 PM
To: Jim Moore
Cc: Jude Emnace; Rauchschalbe, Renae
Subject: Recalled Stork Craft Cribs Press Release

Dear Mr. Moore,

Many of the consumers that contact CPSC about the recall tell us that they cannot reach Stork Craft because the lines are constantly busy or the web site is not responding to their requests for replacement brackets. Other consumers state they have not received repair kits even though requests were made when the press release was issued. What is Stork Craft doing to resolve these issues? I am asking Stork Craft to provide a detailed plan of action for what it has done or will be doing to correct these problems.

Two consumers have threatened to tell their stories to the news media. This would be damaging to both CPSC and Stork Craft.

Also, I spoke to Jude two weeks about taking down the Stork Craft Advisory on cribs. The advisory remains on the web site. Please remove the advisory as the wording conflicts with the intent and wording in the press release.

Please email pictures, names and model numbers of fisher-price and storkling logo cribs. And, provide a description of each and the number of cribs distributed from 2000 to present.

Regards,

Dollie Nicholson
Compliance Officer

[REDACTED]
[REDACTED]

*****!! Unless otherwise stated, any views or opinions expressed in this e-mail (and any attachments) are solely those of the author and do not necessarily represent those of the U.S. Consumer Product Safety Commission. Copies of product recall and product safety information can be sent to you automatically via Internet e-mail, as they are released by CPSC. To subscribe or unsubscribe to this service go to the following web page: <https://www.cpsc.gov/cpsclist.aspx> *****!!

CPSC023932

From: Edwards, Patricia
To: Tarnoff, Howard
Subject: RE: Voluntary Crib Standard-- dropsides
Date: Friday, September 25, 2009 11:18:51 AM

In September 2002, Staff (me) wrote a letter to the ASTM subcommittee chair on cribs expressing our concern with the number of hardware related incidents we had seen and asked the subcommittee to step up efforts to address these problems in the standard. Task groups were formed and for 5 years, there was activity in the task groups but it never resulted in any change to the standard. At the March 2007 ASTM meeting, during a discussion of the lack of progress regarding the hardware task groups (raised by me), a manufacturer's representative proposed that abolishing drops sides from cribs should be considered. At that time, there was much opposition to it, mostly due to the unknown – would that create additional hazards.

Six months later, in Sept 2007, I wrote a second letter to ASTM, pointing out that nothing has changed in the standard in the 5 years since I wrote my original letter, and that we continue to see more hardware incidents. I recommended some specific options that could be undertaken, including: ***“eliminate the use of plastic hardware on any moveable component of a crib (drop sides and mattress support systems). An additional consideration, which was posed at the last ASTM crib subcommittee meeting by a participating member, would be to explore ways to amend the standard in order to abolish drop sides from cribs altogether.”***

Since that letter, the task groups were taken over by one individual (Dave Campbell) who put considerable effort into trying to develop a test requirement for drops sides. Many laboratories participated, including CPSC. The conclusion was reached that an adequate, reliable and repeatable test procedure was a long way off. At that point, the focus turned toward writing a requirement that would eliminate the common movable drop side on cribs. In the winter of 2008/2009 Bill Suvak (the subcommittee chairman) developed a draft requirement to eliminate drop sides, along with a wood slat strength requirement, and reviewed it with CPSC staff in a closed meeting. This draft was presented for ballot at the March 2009 ASTM meetings and was approved as written. The ballot received a few negatives (from a manufacturer and an inventor of a new drop side hardware system). A supplemental meeting was held in July

CPSC023933

2009 to review the ballot results. The negatives were found to be non-persuasive which means it must go out to ballot again to uphold finding the negatives non-persuasive. That ballot was sent out Aug 27th and votes are due back Sept 27th. Assuming it is upheld, then the new requirement will go forward to ASTM for inclusion in the standard. This typically takes 1 – 2 months to get through the edit, review and approval stages of ASTM. Thus, by the end of the year, I anticipate that it should be part of the ASTM standard.

Patricia L. Edwards

Directorate for Engineering Sciences

Consumer Product Safety Commission

██████████
██████████

From: Tarnoff, Howard
Sent: Friday, September 25, 2009 10:39 AM
To: Edwards, Patricia
Cc: Tongele, Tongele
Subject: Voluntary Crib Standard-- dropsides

Patty,

Please give me a summary of the effort to modify the voluntary standard for cribs regarding the presence of dropside rails.

Thanks,

Howard

CPSC009162

From: [Midgett, Jonathan](#)
To: [McLaurin, Hugh](#);
cc: [Ochsman, Robert](#); [Kumagal, Mark](#);
[Hackett, Patricia](#);
Subject: FW: Crib Instruction /Assembly Task Group
Date: Thursday, March 13, 2008 10:27:00 AM

Below is a thread of an ASTM task group that is (supposedly) addressing the fatalities that we saw last year with the Simplicity cribs. The crib drop sides were installed upside down. The task group was not going to form at all, except that Nancy Cowles of Kids in Danger loudly protested and got the subcommittee to form it. The task group is headed by Jerry Drobinski of Revmark and Ken Waldman of Simplicity.

Their approach has been freakish in its insistence that the instructions of cribs are at fault. This only makes sense if you know that you don't want to change any of the shapes of your crib hardware and would rather blame the consumer. I tried to gently suggest the best course of action in my email below. The response from Drobinski is evasive and just outright wrong. Since then, the committee has been gathering instructions, but has not scheduled a conference call or done ****anything else****, which in my opinion is blatant malingering.

I am drafting a letter to ASTM to explain exactly what needs to be done to prevent this hazard from occurring again. It is totally easy to do and will not cost much. If they don't adopt our recommendation, I believe we have a case for rulemaking.

Thank you all for your kind support,
 jonathan

From: JJDSKI [REDACTED]
Sent: Mon 11/19/2007 1:42 PM
To: Midgett, Jonathan; [REDACTED] kidsindanger.org; [REDACTED] babyappleseed.com; [REDACTED] babysdream.com; [REDACTED] bassettfurniture.com; [REDACTED] jardco.com; belliniwest [REDACTED] childcraftindustries.com; [REDACTED] deltaenterprise.com; [REDACTED] dddllc.com; [REDACTED] evenflo.com; [REDACTED] innovativecribdesigns.com; [REDACTED] lajobi.com; etoiledesigns [REDACTED] nettocollection.com; [REDACTED] nurseryworks.net; [REDACTED] domusindo.com; [REDACTED] storkcraft.com; [REDACTED] westwoodbaby.com; [REDACTED] stanleyfurniture.com; [REDACTED]
Cc: [REDACTED] deltany.com; Hackett, Patricia; [REDACTED] aim.com; [REDACTED] memo.ikea.com; [REDACTED]
 Dreamonme [REDACTED] consumer.org; [REDACTED] lockerlaw.com;

CPSC009163

[REDACTED]@intertek.com; [REDACTED]@reinerinc.com;
 [REDACTED]@simplicityforchildren.com
Subject: Re: Crib Instruction /Assembly Task Group

Jonathan,

I and co-chair Ken Waldman agree with what you and Nancy are saying. But we think we need to start with the instruction sheet and build from there. To be sure, some of the things you are suggesting are already being done and/or can easily be incorporated. Once we can agree to a format for the instruction sheet and make it uniform, we can recommend addition of some identifiers to the crib that would help assembly. One of the MOST important parts is to make sure we do not make these too wordy and confuse the customer. Also, adding warning is NOT the answer, in fact, we should narrow down the warnings, so that the customer will read them.

Jerry

In a message dated 11/19/2007 10:12:08 A.M. US Mountain Standard Tim,
 JMidgett [REDACTED]:

Nancy makes an erudite point.

Human factors psychologists would say that the best way to prevent misassembly is to limit the consumer's ability to put parts in the wrong place. For instance, changing the shape of part-to-part interconnections so that they can only fit in a single orientation, like a key, is extremely effective. This would be the first choice solution.

Second choice would be to place unpleasantly textured or colored surfacing on the bottom rail so that consumers intuitively recognize that side should face the floor, out of view. An ugly orange stripe with tire treads along the bottom of the rail would help.

The third choice would be to put a label that says, "This side down!" on the bottom of the rail.

The least effective strategy is to modify the instructions or to create a list of warnings.

jonathan

From: Nancy A. Cowles [REDACTED]
Sent: Mon 11/19/2007 10:37 AM
To: JJDSKI [REDACTED]; [REDACTED]@babyappleseed.com;
 [REDACTED]@babysdream.com; [REDACTED]@bassettfurniture.com; [REDACTED]
 [REDACTED]@jardco.com; belliniwest [REDACTED]; [REDACTED]@childcraftindustries.com;
 [REDACTED]@deltaenterprise.com; [REDACTED] [REDACTED]

CPSC009164

[redacted] evenflo.com; [redacted]
[redacted] innovativecribdesigns.com; [redacted] lajobi.com;
etoiledesigns [redacted] [redacted] nettocollection.
com; [redacted] nurseryworks.net; [redacted] domusindo.com; [redacted] storkcraft.
com; [redacted] westwoodbaby.com; [redacted] stanleyfurniture.com;

Cc: Midgett, Jonathan; [redacted] deltanyc.com;
Hackett, Patricia; [redacted] memo.ikea.com;
[redacted] Dreamonme [redacted]
[redacted] consumer.org; [redacted] lockerlaw.com; [redacted]
[redacted] intertek.com; [redacted] reinerinc.com;
[redacted] simplicityforchildren.com

Subject: RE: Crib Instruction /Assembly Task Group

I don't mean the assembly instructions, I mean how the crib parts are manufactured and labeled to avoid putting it together wrong – for instance, so that the side rails cannot be attached if they are upside down through design and hardware, not just instructions.

Nancy A. Cowles
Executive Director
Kids In Danger
116 W. Illinois, Suite 5E
Chicago, IL 60610
www.KidsInDanger.org

[redacted]
[redacted]
Kids In Danger is a nonprofit organization dedicated to protecting children by improving children's product safety. Learn more at www.KidsInDanger.org.

Raise money for Kids In Danger by searching the Internet or shopping online with GoodSearch - www.goodsearch.com - powered by Yahoo!

From: JJDSK [redacted]
Sent: Monday, November 19, 2007 9:36 AM
To: [redacted] kidsindanger.org; [redacted] babyappleseed.com; [redacted] babysdream.com; [redacted] bassettfurniture.com; [redacted] jardco.com; belliniwest [redacted] childcraftindustries.com; [redacted] deltaenterprise.com; [redacted]
[redacted] evenflo.com; [redacted]
[redacted] innovativecribdesigns.com; [redacted] lajobi.com;
etoiledesigns [redacted] [redacted]
[redacted] nurseryworks.net; [redacted] domusindo.com; [redacted] storkcraft.

CPSC009165

[redacted]westwoodbaby.com; [redacted]stanleyfurniture.com;
 [redacted]
Cc: jmidgett [redacted] [redacted]deltanyc.com;
 [redacted]cpsc.gov; [redacted]memo.ikea.com;
 [redacted]Dreamonme [redacted]
 [redacted]consumer.org; [redacted]lockerlaw.com; [redacted]
 [redacted]intertek.com; [redacted]reinerinc.com;
 [redacted]simplicityforchildren.com

Subject: Re: Crib Instruction /Assembly Task Group
 Nancy,

Generally instruction sheets include assembly instructions.

Jerry

In a message dated 11/19/2007 8:16:47 A.M. US Mountain Standard Time, [redacted] writes:

Jerry,

Again, I thought that the task of the group was broader – to also consider assembly of the product - -maybe looking at ways to prevent incorrect assembly. This might involve performance standards or labeling in addition to the instructions.

Nancy

Nancy A. Cowles
 Executive Director
 Kids In Danger
 116 W. Illinois, Suite 5E
 Chicago, IL 60610
www.KidsInDanger.org

[redacted]
 [redacted]

Kids In Danger is a nonprofit organization dedicated to protecting children by improving children's product safety. Learn more at www.KidsInDanger.org.

Raise money for Kids In Danger by searching the Internet or shopping online with GoodSearch - www.goodsearch.com - powered by Yahoo!

From: JJDSKI [redacted]
Sent: Monday, November 19, 2007 12:05 AM
To: [redacted]babyappleseed.com;
 [redacted]babysdream.com; [redacted]bassettfurniture.com; [redacted]
 [redacted]jardco.com; belliniwest [redacted]
 [redacted]childcraftindustries.com; [redacted]deltaenterprise.com;

CPSC009166

[REDACTED] evenflo.com; [REDACTED]
 [REDACTED] innovativecribdesigns.
 com; [REDACTED] lajobi.com; etoiledesigns [REDACTED]
 [REDACTED] nettocollection.com; .
 [REDACTED] nurseryworks.net; [REDACTED] domusindo.com;
 [REDACTED] storkcraft.com; [REDACTED] westwoodbaby.com;
 [REDACTED] stanleyfurniture.com; [REDACTED]
Cc: jmidgett [REDACTED] kidsindanger.org;
 [REDACTED] eltanyc.com; [REDACTED] cpsc.
 gov; [REDACTED] memo.ikea.com;
 [REDACTED] Dreamonme [REDACTED]
 [REDACTED] consumer.org; [REDACTED] lockerlaw.com; [REDACTED]
 [REDACTED] intertek.com; [REDACTED] reinerinc.com;
 [REDACTED] simplicityforchildren.com

Subject: Crib Instruction /Assembly Task Group

All,

At the last ASTM Meeting Session for Cribs, it was decided that a task group would be formed to make recommendations for standards modifications which would lead to improved instructions. This task was undertaken since, due to the analysis of IDI data provided by CPSC, it was determined that a significant number of incidents involved cribs which were incorrectly assembled by consumers.

You are receiving this correspondence because you are identified as the contact person for the JPMA program

In order to have a bank of information for comparison, we are requesting that all of the manufacturers involved in the JPMA Certification Program forward to us one or more examples of the instructions they are currently using. It would be preferred that the instructions could be forwarded in PDF format to make distribution to the task group more efficient. In addition to your instruction/assembly information, if you have any suggestions or comments in the area of assembly, we would be grateful for that input as well.

Thank you in advance for your cooperation.

Jerry Drabinski

CPSC009167

Jerry Drobinski
Co-chair of Task Group
Phone: [REDACTED]
Fax: [REDACTED]
Phone - [REDACTED]
[REDACTED]



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www.jpma.org

JPMA Certification Program and ASTM Standards

FREQUENTLY ASKED QUESTIONS

How many juvenile products are currently certified through the JPMA Certification Program?

Approximately 2,000

How long does a certification last?

Until the company chooses to leave the program or if they no longer pass the testing.

Do companies have to renew each year?

Yes, companies must renew each year to continue participation in the program.

How often are products re-tested?

There are quarterly testing requirements for the program. Each product model has to be tested at least once a year through the quarterly testing. Also, the program includes random retail testing where the test lab will purchase the product at the retail level and test the product. This is in addition to the quarterly testing.

Why would a company not want to certify their product?

Sometimes they can't get certified because there is not a program for that type of product/category.

What product categories are available for JPMA Certification?

Currently there are 20 product categories in the JPMA Certification Program: bassinets/cribles, bath seats, booster seats, carriages and strollers, changing tables, children's folding chairs, frame infant carriers, full-size cribs, gates and enclosures, hand-held infant carriers, high chairs, infant bouncers, infant swings, play yards/non-full size cribs, portable bed rails, portable hook-on chairs, soft infant carriers, stationary activity centers, toddler beds, and walkers. JPMA is currently working on adding commercial cribs and infant bath tubs to the program.

Why doesn't JPMA offer more categories?

The development of a certification program for a product is based upon several factors. JPMA adds new categories to the certification program as new standards are developed by ASTM. The development of standards is typically driven by incident data provided by the CPSC. If there is data which demonstrates performance or safety issues with a product, ASTM will facilitate the establishment of a standard.

Is the certification international or domestic only?

The products are tested to U.S. standards.

Is the whole line of strollers etc. certified or just those that were tested?

If a manufacturer wants to participate in the carriage/stroller certification program, then all of their carriage/stroller models must be tested and pass the ASTM standard prior to certification being granted.

Why are car seats not part of the certification program?

All car seats manufactured today must be designed to meet stringent safety standards set by the Federal government. In fact, child restraints sold in the United States are required to satisfy the rigorous performance standards established by the National Highway Traffic Safety Administration (NHTSA), and are certified by their manufacturers as compliant before they can be offered for sale.

What does "ASTM standard" mean?

The testing is done to voluntary standards that are developed and published by ASTM International (formerly The American Society for Testing and Materials). Participants in the development of standards for juvenile products within ASTM include representatives from the federal government, including the Consumer Product Safety Commission, along with manufacturers, retailers, test labs, consumer advocate groups, and individual consumers.

How are the ASTM standards developed?

The ASTM standards are developed for juvenile products based on hazard data, which provides each of the subcommittees insight into how the products are used by consumers and, in some cases, misused. Some products even have comprehensive federal mandatory standards that all manufacturers of those specific products must meet in order for the products to be sold in the U.S. Each standard's requirements are specific to the individual product. The testing

requirements reflect “real world” injuries and are intended to address typical use as well as reasonably foreseeable abuse of the product(s).

For example, the following are some requirements incorporated into ASTM standards for cribs that go beyond mandatory federal requirements of full-size baby cribs (16 C.F.R. 1508), and non-full-size baby cribs (16 C.F.R. 1509):

- Cribs
 - Corner post vertical extensions
 - Dynamic impact testing for crib structural integrity
 - Crib interior dimensions and component spacing
 - Impact testing of crib side rails

In addition, each of the standards contain specific requirements for labeling and marking of both the product and packaging. These warnings/markings are intended to alert parents/caregivers to specific issues involving each product.

What is the process for developing or revising an ASTM Standard?

ASTM subcommittees are responsible for the development and/or revision of an ASTM standard. The subcommittees via meetings and appointment of task groups work on the requirements included in the standard. Proposals are sent out to ballot to ASTM members to vote on and then those comments are considered by the subcommittee and either included in the standard or it is determined that additional work needs to be done. ASTM subcommittees include representatives from the federal government, including the Consumer Product Safety Commission, along with manufacturers, retailers, test labs, consumer advocate groups, and individual consumers and must have a balance of official voting members.

Has there been any indication that voluntary standards work?

Yes, in fact, in a 2007 Senate hearing on the reauthorization of the U.S. Consumer Product Safety Commission (CPSC), authorities cited an 84% and 89% reduction in fatalities and injuries due to the establishment and effectiveness of ASTM Standards for baby walkers and cribs, respectively.

If the standards work, then how can a JPMA Certified product be recalled?

When products are tested, they are assembled and used in accordance with the manufacturers stated intent as embodied in the assembly and use instructions. If the instructions are not followed, risks associated with use of any product may be exacerbated. Not all recalls occur because of a violation of a regulation or product standard. In addition, recalls do not account for certain factors typically not measurable in a lab, such as wear and tear over time.

To alleviate confusion that is in the media regarding the recently announced recall of certain drop-side cribs, the Juvenile Products Manufacturers Association (JPMA), the not for profit trade association that promotes infant safety and the development of recognized ASTM International product safety standards, reassures the public regarding the safety of properly used, drop side cribs.

All new cribs on the market today must meet minimum government requirements. In addition, there are consensus performance standards, which are established by ASTM with involvement of the government and recognized experts, to which JPMA certifies cribs and other durable infant products. JPMA also reminds parents and care givers, that when you assemble a crib to the manufacturer's instructions and use it properly, a crib provides the safest sleeping environment for baby.

Recent media reports notwithstanding, cribs are intended to last for years (or multiple births) when properly cared for. Crib instructions which are attached to cribs include information on assembly, maintenance, cleaning, storage and use.

"JPMA believes that instead of alarming parents, we should work together to educate them about the importance of the proper use, assembly and reassembly of cribs and how to provide the safest sleep environment for a child," said Mike Dwyer, JPMA Executive Director. "The safest place for a child is in a fully functional, properly assembled crib. Parents are urged to closely inspect the hardware and stability of their cribs to ensure all parts are in place and secure when assembling and re-assembling cribs."

Each year hundreds of deaths occur when children are placed in a sleep environment that is not specifically designed for children. Parents should continue using properly assembled cribs in good condition as it provides the safest sleep environment for children.

JPMA suggests the following safety tips to sustain the proper lifespan of your crib:

- Parents should not use any crib with missing, broken or loose hardware parts. Crib slats or spindles should be spaced no more than 2 3/8 inches apart, and none should be loose or missing. Also NEVER use a crib with corner posts over 1/16 of an inch above the end panels (unless they're over 16 inches high for a canopy).
- NEVER place infants to sleep on pillows, sofa cushions, adult beds, waterbeds, beanbags, or any other surface not specifically designed for infant sleep. NEVER place the crib near windows, draperies, blinds, or wall mounted decorative accessories with long cords.
- When using a drop side crib parents and care givers should check to make sure the drop side or any other moving parts operate properly. Parents should be sure that hardware is installed properly. When assembling and disassembling drop side cribs, parents should always confirm that the parts are reassembled following the manufacturers guidelines as listed in the instructions.

Additional safety tips to sustain the proper lifespan of your crib:

- Always check all sides and corners of the crib to assure proper assembly with no openings that may entrap a child. The crib mattress should fit snugly with no more than two fingers width, one-inch, between the edge of the mattress and the crib side. Otherwise, the baby can get trapped between the mattress and the side of the crib.
- Do not try to repair any side of the crib without manufacturer approved hardware.
- Putting a broken side up against the wall does not solve the problem and can often make it worse.

JPMA is pleased to note that the Consumer Product Safety Commission (CPSC) recognizes the importance of urging parents and caregivers to closely inspect the hardware and stability of their cribs to ensure all parts are in place and secure when assembling and re-assembling cribs.

Recent recalls of juvenile products highlights the importance of proper assembly and use of cribs. Many older cribs do not meet all current safety standards. Even if you are on a tight budget, you should not purchase an old crib at a garage sale or accept a hand-me-down crib that may not meet current Federal and ASTM standards.

For additional tips on how to keep baby safe, including a list of JPMA Certified cribs, please visit www.jpma.org.

“We are all committed to making sure that baby’s sleep environment is as safe as possible,” said Amy Chezem, JPMA Communications Director and mother of two. “We have consistently promoted safe sleeping practices and the importance of ensuring proper assembly and use of products that have long provided the safest place to sleep for babies.”

The Juvenile Products Manufacturers Association is a national trade organization of more than 250 companies in the United States, Canada, and Mexico. JPMA exists to advance the interests, growth, and well-being of North American prenatal to preschool product manufacturers, importers, and distributors marketing under their own brands to consumers. It does so through advocacy, public relations, information sharing, product performance certification, and business development assistance conducted with appreciation for the needs of parents, children, and retailers.

For more information, please visit www.jpma.org.

To alleviate confusion that is in the media regarding the recently announced recall of certain drop side cribs, the Juvenile Products Manufacturers Association (JPMA), the not for profit trade association that promotes infant safety and the development of recognized ASTM International product safety standards, provides answers to some frequently asked questions by parents and caregivers.

Question 1 of 3:

As a parent or care giver, should I discontinue use of my drop side crib?

Answer:

As long as they are properly assembled, full functional and not subject to a recall, drop side cribs can be safely used.

If you own a Stork Craft crib that is part of the recall announced on November 24, 2009, we strongly recommend that parents follow corrective action of the company (Stork Craft) and the CPSC relative to this recall. For additional information, contact Stork Craft toll-free at (877) 274-0277 or log on to www.storkcraft.com.

Parents can be confident that **properly assembled fully functional cribs, that are not part of a recall**, that are in good condition are safe for use and provide the safest sleep environment for children. This recall highlights the importance of periodically checking the hardware on your crib for any loose or broken parts and to make sure all fasteners and screws are tight. Parents are also urged to closely inspect the hardware and stability of their cribs to ensure all parts are in place and secure when assembling and re-assembling cribs.

Question 2 of 3:

What should I inspect on my drop side crib?

Answer:

When using a drop side crib parents and care givers should check to make sure the drop side or any other parts are not missing or damaged and that they operate properly. Parents should be sure that hardware is installed properly. When assembling and disassembling drop side cribs, parents should always confirm that the crib is reassembled following the manufacturer's instructions. Instructions are attached to all cribs when sold; if they are missing, contact the manufacturer for a replacement copy.

Question 3 of 3:

Should I stop using a properly working drop side crib?

Answer:

No. The safest place for a child is in a fully functional, properly assembled crib that is not part of a recall that is in good condition as it provides the safest sleep environment for children. This is true for ALL cribs. Each year hundreds of deaths occur when children are placed to sleep in an environment that is not specifically designed for them. Many times more infants die each year when they are placed in unsafe sleep environments.

NEVER place infants to sleep on pillows, sofa cushions, adult beds, waterbeds, beanbags, or any other surface not specifically designed for infant sleep. NEVER place the crib near windows, draperies, blinds, or wall mounted decorative accessories with long cords.

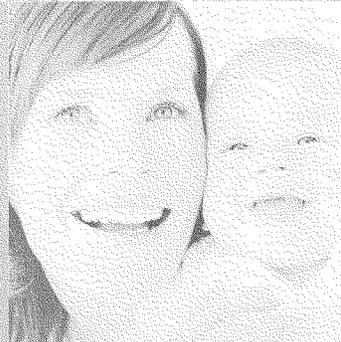
JPMA reminds parents and care givers, that when you assemble a crib to the manufacturer's instructions and use it properly, a crib provides the safest sleeping environment for baby.

About JPMA

The Juvenile Products Manufacturers Association is a national trade organization of more than 250 companies in the United States, Canada, and Mexico. JPMA exists to advance the interests, growth, and well-being of North American prenatal to preschool product manufacturers, importers, and distributors marketing under their own brands to consumers. It does so through advocacy, public relations, information sharing, product performance certification, and business development assistance conducted with appreciation for the needs of parents, children, and retailers. Each year, JPMA sponsors Baby Safety Month in September. JPMA initiated Baby Safety Month to educate parents and caregivers on the importance of the safe use and selection of juvenile products.

For more information, please visit www.jpma.org. For additional information regarding product recalls, please visit www.cpsc.gov.

You Promised Her the Best



The Best are JPMA Certified

The Toy and Product Manufacturers Association (JPMA) is proud to provide a certification program that demonstrates the best in safety and functionality. Buying a JPMA certified product in any of the below categories ensures that the product has gone through an extra level of safety testing.

- | | | |
|----------------------|----------------------|-----------------------------|
| Business Tables | Covered Seating | High Chairs |
| Ball Games | Diaper Bags/Carriers | Tranquilizers |
| Books/Stories | JPMA Certified | Pushchairs/Buggies |
| Children's Furniture | Food Products | Strollers/Carriages |
| Children's Apparel | Personal Care | Sublingual/Inhalant Devices |
| Children's Bedding | Play Mats/Playsets | Teething Toys |
| Child Carriers | Strollers | Tricycles |

For a full list of certified products, visit www.jpma.org.

For additional information on the Certification Program and what it means to you, visit www.jpma.org

Sponsored by the Toy and Product Manufacturers Association (JPMA)

Look for this seal on product packaging and know that you are buying JPMA certified!



Stork Craft Manufacturing, Inc.'s Position Paper

Re: CPSC File No. CA 090072; Stork Craft Cribs that Contain Plastic Drop-Side Hardware

I. No Defect Exists with Stork Craft's Cribs which Contain Plastic Drop-Side Hardware

A defect is a fault, flaw, or irregularity that causes weakness, failure, or inadequacy in form or function. 16 CFR § 1115.4. Defects may be the result of a manufacturing or production error, or they may arise from misuse or incorrect operation of the product. *Id.* The CPSC has recognized that not all products that present a risk of injury are defective. *Id.* In determining whether a risk of injury associated with a product could make the product "defective", the Commission has set forth a number of factors which it considers including the case law in the area of products liability and other information that sheds light on the product and patterns of consumer use.

Case law does not require that a product be accident-proof or incapable of doing harm. *Jamieson v. Woodward & Lothrop*, 247 F.2d 23, 101 U.S. App. D.C. 32 (1957). It would be unreasonable to require that a manufacturer warn or protect against every injury which may result from the use of its product. *Id.* In fact, no state imposes a duty on the manufacturer to make its product accident proof or foolproof. *Campo v. Scofield*, 301 N.Y. 468, 95 N.E.2d 802, 804 (1950).

With regard to products liability, courts have concluded that a seller is required to manufacture a product that is not unreasonably dangerous when used for a purpose and in a manner that is reasonably foreseeable and that if the product is not unreasonably dangerous when used for a purpose and in a manner that is reasonably foreseeable, it is not defective, and the seller will not be liable. *Ellsworth v. Sherne Lingerie, Inc.*, 303 Md. 581, 596-98, 495 A.2d 348 (1985). When applying a "foreseeability" test, courts must be extremely careful because, with the benefit of hindsight, any accident could be foreseeable. *Id.* One court concluded that without care, the imposition of strict products liability could result in a manufacturer's becoming an insurer for every injury that may result from its product. *See, e.g., Phipps v. General Motors Corp.*, 275 Md. 337, 363 A.2d 955 (1976).

In the present case, Stork Craft has been made aware of fifteen incidents by the CPSC. Of those fifteen incidents, seven resulted in no injury, four resulted in bruising and minor injuries not requiring hospitalization, and four resulted in death. Thus, the majority of complaints resulted in no injury or minor injuries that were treated at home. Furthermore, in two of the four incidents resulting in death, it is unclear whether the hardware failed or was loose before or after the incident. Furthermore, in one of the other incidents resulting in death, the consumer installed the drop side rail upside down, with a broken claw and a missing screw.

Furthermore, with respect to one specific instance where a plastic claw was retained by the consumer and tested by Stork Craft, it was determined that the deformation on one side of the claw caused by stress was the result of isolated human error in manufacturing. *See* Expert Report of Dr. Marek Gnatowski. Dr. Gnatowski opined that injection molded parts are taken hot from the mold to reduce manufacturing time and increase productivity and can be easily

damaged or deformed during removal from the mold. *Id.* Dr. Gnatowski found that the deformation of this particular claw was consistent with this type of manufacturing deficiency. *Id.* This type of human error during the injection molding process of the plastic claw is impossible to eliminate 100% in manufacturing. *Id.*

II. No Substantial Hazard Exists with Stork Craft's Cribs which Contain Plastic Drop-Side Hardware

The Commission defines a "substantial product hazard" as either (1) a failure to comply with an applicable consumer product safety rule under the Act or a similar rule, regulation, standard, or ban under any other Act enforced by the Commission which creates a substantial risk of injury to the public, or (2) a product defect which (because of the pattern of defect, the number of defective products distributed in commerce, the severity of the risk, or otherwise) creates a substantial risk of injury to the public. 15 U.S.C. § 2064(a).

Section 15(a)(2) of the CPSA lists the following factors to be considered in determining whether a defect creates a substantial risk of injury:

- (i) "Pattern of defect: The Commission and the staff will consider whether the defect arises from the design, composition, contents, construction, finish, packaging, warnings, or instructions of the product or from some other cause and will consider the conditions under which the defect manifests itself.
- (ii) Number of defective products distributed in commerce. Even one defective product can present a substantial risk of injury and provide a basis for substantial product hazard determination under section 15 of the CPSA if the injury which might occur is serious and/or if the injury is likely to occur. However, a few defective products with no potential for causing serious injury and little likelihood of injuring even in a minor way will not ordinarily provide a proper basis for a substantial product hazard determination.
- (iii) Severity of the risk. A risk is severe if the injury which might occur is serious and/or if the injury is likely to occur. In considering the likelihood of any injury the Commission and the staff will consider the number of injuries reported to have occurred, the intended or reasonably foreseeable use or misuse of the product, and the population group exposed to the product (e.g., children, elderly, handicapped).
- (iv) Other considerations. The Commissions and the staff will consider all other relevant factors."

16 C.F.R. § 1115.12(g).

In the present case, the fifteen incidents cited by the Commission allegedly arise from the sale of cribs with plastic drop side hardware manufactured by Stork Craft from 1993 to the present. During that time, approximately 2,187,526 Stork Craft cribs with plastic drop side hardware were sold. Thus, looking at the total number of cribs with plastic drop side hardware

sold and the number of investigative incident reports prepared by the Commission, the percentage of Stork Craft cribs allegedly involved in an incident is .00000686%. Stork Craft's US sales can only be determined from 2003 to the present. During that time, Stork Craft sold 810,179 cribs with plastic drop side hardware in the US. Even if we assume that all fifteen incidents investigated by the Commission were manufactured between 2003 and the present (when there is evidence that suggests at least two of the cribs were manufactured before 2003), the percentage of cribs allegedly involved in an incident is .00001851%.

With regard to the severity of the risk, while the Commission investigated four incidents that resulted in death, the majority of the alleged incidents involved no injury at all. Furthermore, the Commission specifically states that it takes into account **the intended or reasonably foreseeable use or misuse of the product**. In two of the four incidents resulting in death, it was unable to be determined whether the hardware had failed or was loose before or after the incident. Furthermore, in one of the other incidents resulting in death, the consumer had installed the drop side rail upside down, with a broken claw and a missing screw. Clearly, these consumers misused the product – by not tightening the screws and hardware and by installing the hardware upside down with broken and missing pieces.

It is absolutely unreasonable to expect Stork Craft to reasonably foresee that a consumer would install the drop side rail upside down, or to expect that a consumer would use broken pieces or allow use of the crib with missing pieces or without properly tightening all of the pieces. Furthermore, as discussed above, the pattern of defect and other considerations such as case law in the area of products liability demonstrate that Stork Craft's cribs do not pose a substantial hazard. Thus, based on an analysis of the factors that the Commission considers, Stork Craft cribs do not pose a substantial hazard.

III. No Imminent Hazard Exists with Stork Craft's Cribs which Contain Plastic Drop-Side Hardware

The CPSC has defined an imminently hazardous product as one "which presents imminent and unreasonable risk of death, serious illness, or severe personal injury." 15 U.S.C. § 2061(a). By way of example, in May 1985, the CPSC published an Advance Notice of Proposed Rule Making concerning three and four wheeled ATVs due to a number of deaths and injuries involving that product. *See* 50 Fed. Reg. 23,1139 (May 31, 1985). In addition, the Commission sought to have ATVs declared an "imminent hazard". *Id.* at 23,142-43. The Commission cited 161 deaths associated with ATVs during a three-year period and 66,956 ATV-related injuries treated in hospital emergency rooms in one year alone. *Id.* at 23,139-40. Subsequent to the Commission filing an imminent hazard lawsuit or a mandatory recall, Honda Motor Company and the Commission reached a Final Consent Decree, which focused on additional warnings to be given to the consumer.

For all of the reasons stated above, Stork Craft cribs containing plastic drop side hardware are not imminently hazardous. Looking at the total number of cribs with plastic drop side hardware sold and the number of investigative incident reports prepared by the Commission, the percentage of Stork Craft cribs allegedly involved in an incident is .00000686%. In addition, the majority of the complaints investigated by the Commission resulted in no injury. The complaint against Honda Motor Company, however, was due to an alleged 161 deaths during a

three-year period associated with the use of its ATVs and nearly 67,000 injuries requiring treatment at a hospital in one year alone. By comparison, Stork Craft cribs cannot and do not pose an imminent hazard.

CPSC005631

Timeline for Stork Craft, CPSC File #CA090072

- 1/09 Stork Craft Mattress Support Bracket Recall - In January 2009, staff was concentrating on the mattress support bracket pattern of defect associated with Stork Craft cribs. Specifically, CPSC and Stork Craft announced the recall of 532,000 units in January 2009. The company offered replacement mattress support brackets approved by technical support staff. This release was re-issued in April 2009 to include 92,000 Fisher-Price cribs.
- 04/24/09 Emailed to Stork Craft IDI Report 090304HCC2424 ("non-injury" incident that occurred in 2/09) that demonstrated broken lower track and drop-side detachment. Stork Craft had collected the broken claws from the consumer for evaluation.
- 05/06/09 EWS meeting in which technical staff expressed concern that hardware may be similar to Simplicity hardware.
- 05/06/09 Staff sent an email to Stork Craft advising them to stop sale of drop-side cribs. Stork Craft's response was that crib hardware was not similar to Simplicity. Staff responded back to Stork Craft to say it would send Stork Craft all IDI reports on drop-side detachments.
- 05/20/09 Telephone discussion with Stork Craft regarding staff's request to stop sale of Stork Craft cribs. Stork Craft asked staff to retract request to stop sale of drop-side cribs because CPSC technical staff had not evaluated hardware. Request on hold. Stork Craft agreed to send staff Stork Craft's technical reports on drop-side hardware.
- 06/23/09 New Iberia, LA incident involving the death of a 7-month-old Caucasian male on 5/26/09 that became entrapped in the space between the crib and drop-side. The Stork Craft crib was installed upside-down and the claw was broken.
- 06/25/09 Staff emailed death report to Stork Craft.
- 06/25/09 Compliance staff met with OGC staff to review IDIs involving prior deaths with Stork Craft cribs.

City/State	Age	Death Dates	Ethnicity	Crib Type
Bronx, NY	9 month old male	4/10/01	African- American	Fisher-Price
Summerville, WV	6 month old male	1/16/07	Caucasian	Stork Craft
Gouverneur, NY	7 month old female	5/01/07	Caucasian	Stork Craft

CPSC005832

- 06/25/09 Staff issued assignment to field to complete IDI on New Iberia, LA incident.
- 07/01/09 Staff telephoned Stork Craft requesting broken claws (from IDI 090304HCC2424) be sent for CPSC technical evaluation.
- 07/10/09 Receipt of consumer claws and brackets from Stork Craft (regarding IDI 090304HCC2424).
- 07/28/09 PSA request submitted to evaluate claws and brackets and compare Stork Craft plastic drop-side hardware to Simplicity plastic drop-side hardware.
- 08/10/09 ESME PSA 0866.09 completed. ES staff determined that the predominate failure mode was drop-side disengagement where the drop-side separated from the rest of the crib at one or more corners. The probable causes of the drop-side disengagements include broken plastic parts, drop-sides installed upside-down, stripped/missing screws, deformed plastic parts, missing metal springs, deformed mattress support brackets and undetermined causes.
- In addition, ES staff compared Stork Craft hardware with the Simplicity hardware and determined that the designs are fundamentally the same in shape and function. They have the same mechanical elements (stopper, tab, metal spring insert), the manner of operating the drop-sides to lower and upper positions is identical, and they have some of the same failure modes as seen in the IDIs.
- 08/20/09 CA090072 Stork Craft case opened in Section 15 data base on plastic drop-side hardware.
- 09/02/09 Stork Craft case opening letter dated, faxed, and certified mailed.
- 09/03/09 Assigned Limited Inspection (LI) at Stork Craft Manufacturing USA, Inc. in Bellingham, WA (See 090903CRC1583).
- 09/24/09 Stork Craft agreed to meet with the CPSC staff on 10/05/09.
- 09/25/09 Strategy meeting with Chairman staff and Cherly Falvey, Howard Tarnoff, Gib Mullan, Marc Shoem, Dean Woodard, and Dollie Nicholson
- 09/25/09 CA090087 opened with Fisher-Price.
- 09/25/09 PSA 1076.09 assigned to Human Factors. Focus of the PSA was to evaluate the old and new crib instructions to determine if the instructions did or did not adequately warn consumers about and to prevent the improper installation of drop-sides upside down.

CPSC005833

- 09/28/09 Fisher-Price case opening letter faxed and certified mailed.
- 09/28/09 PSA 1076.09 completed.
- 09/29/09 Stork Craft submitted its Full-Report.
- 09/30/09 Incident data spreadsheet prepared which integrated all reported USA incidents with reported Canadian incidents.
- 10/02/09 Pre-meeting - CPSC staff met to prepare for Stork Craft meeting on 10/05/09. Pre- preliminary determination discussions.
- 10/05/09 CPSC and Department of Justice staffs met with Stork Craft (Jim Moore, President, Jude Emnace, COO; and, outside attorney [REDACTED] and paralegal, [REDACTED]). Stork Craft agreed to voluntarily recall all drop-side cribs manufactured with plastic trigger and one-hand hardware systems. The recall will also include cribs manufactured with the Fisher-Price logo. The recalled cribs would have dates of manufacture and distribution between 1993 and October 2009.
- Stork Craft presented for staff review a prototype deigned to immobilize the drop-sides on cribs with one-hand hardware. The prototype design was not applicable to trigger hardware cribs; therefore, Stork Craft understood that it had to come up with a fix for those cribs as well.
- 10/06/09 Evaluation of prototype 1 – This was not a good fix.
- 10/07/09 Telephone Conference Meeting – Stork Craft and the staff. Stork Craft agreed to immediately stop sell of 35,000 crib units in stock. Notification to online buyers of a “0” inventory was completed by Jim Moore. Stork Craft will do the VNR and will brief Health Canada about the recall and stop sale. Discussions of prototype evaluation – This was not a good fix. ES and HF went over possible solutions to drop-sides. Stork Craft concurred. Stork Craft will be sending in a second prototype for evaluation.
- 10/09/09 Staff approved the 2nd version “fix” for one-hand hardware system drop-side cribs.
- 10/09/09 Stork Craft submits draft press release. Negotiation of the press release begins.
- 10/09/09 Stork Craft briefed Health Canada on the voluntary recall of its drop-side cribs. Health Canada received diagrams of the proposed retrofit kit for evaluation by its engineers.

CPSC005834

- 10/13/09 Fisher-Price submitted its Full-Report.
- 10/14/09 Received limited inspection report from field staff.
- 10/21/09 Received 1st draft of retrofit instructions from Stork Craft.
- 10/30/09 Approval given from the staff to Stork Craft for the one-hand system fix.
- 11/05/09 Staff approved instructions for one-hand hardware system.
- 11/05/09 Draft press release emailed to Fisher-Price.
- 11/05/09 CPSC staff provided feedback to Stork Craft on 1st draft of instructions for retrofit.
- 11/12/09 Fisher-Price comments received.
- 11/13/09 OIPA includes Fisher-Price comments. Revised press release emailed to Health Canada, Stork Craft & Fisher-Price. Issuance of release date changed to 11/24/09. Stork Craft, Fisher-Price and Health Canada agree on date.
- 11/16/09 Received updated instructions that addressed all of the staff's comments.
- 11/17/09 Staff drafts poster and retailer letter.
- 11/18/09 Staff approved the "fix" for trigger hardware system drop-side cribs.
- 11/18/09 **Final Clearance** - Stork Craft, Fisher-Price & the staff agree on the joint press release and clearance proceedings start.
- 11/18/09 Draft poster and retailer letter emailed to Stork Craft & Fisher-Price.
- 11/19/09 Stork Craft & Fisher-Price comments incorporated into poster and letter.
- 11/20/09 Staff accepts poster and letter for distribution to retailers.
- 11/23/09 Public Affairs purchased satellite feed time for VNR.
- 11/23/09 Stork Craft issued notification letters and posters to retailers.
- 11/23/09 Press release issuance date changed from 11/24/09 to 11/23/09 due to unforeseen circumstances. Health Canada & Fisher-Price notified via emails. Stork Craft was notified via telephone by managers within the Office of Compliance & Field Operations.

CPSC005835

11/25/09 Accept CAP letter faxed to Stork Craft.

12/02/09 Fisher-Price web site notification posted.

CPSC001560

TO: File

FROM: Dollie Nicholson 
Compliance Officer

DATE: October 22, 2008

SUBJECT: Closed Meeting with Stork Craft

Jude Emnace, Chief Operating Officer, met with CPSC staff today. Mr. Emnace presented an overview of Stork Craft's business structure. He discussed the company's commitment to making safe and reliable cribs to its customers and purchasers. The company takes exception to allegations that the brackets currently installed on Stork Craft cribs are defective.

Metal mattress support brackets were originally manufactured in Canada and installed on Stork Craft cribs from 1994 through 1999. In 1999, Stork Craft stopped producing brackets in Canada. In early 2007, Stork Craft closed the Canada plant and sold its machinery.

According to Emnace, the factory in China started manufacturing the brackets subject to CA080066 in 1999 to present; while the installation of brackets on Stork Craft cribs started in 2000.

Stork Craft has one primary supplier in China that builds parts, test and inspects the cribs and boxes them up. Since March 2000, approximately 1 million crib units were sold with the currently installed hardware system. The prototype crib was tested 44 lbs @ 150 cycles and passed all crib test requirements.

Emnace reported that Stork Craft received a total of four incidents regarding the brackets. Three of the four incidents involved 1 of 4 brackets breaking into 2 pieces. In one of these incidents a 22-month-old male became entrapped in the gap created between the mattress corner and drop side. All three incidents involved the Heather Stages crib (Model 04588-478 and 321) with manufacture dates 7/06, 1/31/07 and 4/07. The Aspen crib was involved in the other crib model (date of manufacture unknown).

To correct the problem of brackets breaking, Stork Craft decided to take the following approach:

1. Reduce flexibility of the bracket's base by increasing the thickness of the brackets, thereby reducing stress points on the brackets. Jude submitted four redesigned units for staff assessment (see sample #09-302-0424);
2. Develop a crib assembly poster and insert in inside crib packages. The poster could be hung on walls as a reference point for consumers;

CPSC001561

3. Stork Craft has started the elimination of drop-side cribs to be replaced with stationary side cribs. Emnace did not give a date for when the elimination process started nor when all drop-side cribs would be totally phased out. According to Emnace, Stork Craft has convinced Wal-Mart to sell Stork Craft stationary side cribs.

Patty Hackett, Engineer strongly recommended that Stork Craft recall its drop-side cribs due to mattress support bracket failure and provide replacement brackets as a remedy to consumers. Staff stressed to Emnace the importance of Stork Craft being proactive by offering the new brackets to consumers primarily because of staff's failing test results on the brackets and IDI/incident reports. Staff was certain to see additional consumer complaints of bracket failures. Emnace stated that it was impossible for a child to become wedged in the gap as demonstrated in IDI 080201HCC3397. He also said that because there have been no injuries, the brackets were not defective. Emnace said that at this time, Stork Craft had no intention to replace consumer brackets with the redesigned brackets.

ESME will examine the bracket samples provided by Stork Craft. Staff will submit its findings to Stork Craft.

Emnace said Stork Craft would do the following:

1. Trace from 2066 to present any and all requests for brackets; and,
2. Have a risk assessment performed on the brackets.

Patty Hackett gave Stork Craft a test methodology. Stork Craft should get the crib component (brackets) to fail and trace back to define what was good and bad. Stork Craft should show us how the crib failed and how much force it took to get the crib to fail. Stork Craft agreed to do this.

Stork Craft has purchased three Canadian companies, Regatzi, Status Furniture, and Kenwood.

CPSC Attendees:
 Patty Hackett
 Renae Rauchschalbe
 Marc Schoem
 Gib Mullan
 Dollie Nicholson

Stork Craft Attendee:
 Jude Emnace



March 5, 2010

Congressman Henry Waxman
Chairman, House Committee on Energy & Commerce
Congressman Bart Stupak
Chairman, Subcommittee on Oversight
2125 Rayburn House Office Building
Washington, DC 20515-6115

Dear Chairman Waxman:

As requested, enclosed please find responses to Congressman Markey's questions of February 19, 2010.

The undersigned hereby certifies that he has made and/or has directed to be made by JPMA staff, a diligent effort to collect data responsive to your requests. JPMA expressly reserves the right to supplement, clarify, revise or correct any or all of the responses herein at any time.

Sincerely,

A handwritten signature in black ink, appearing to read "MR Dwyer", is written over a horizontal line.

Michael Dwyer, CAE
Executive Director

Attachment

Cc: Rick Locker, JPMA Counsel; Robert Waller, JPMA President



I'm concerned about the effectiveness of recalls – there have been reports that parents aren't getting the information or repair kits they need. In fact, a quick search on *eBay* on January 20 found more than 30 MacLaren umbrella strollers, all of which were recalled in November because of risk that children's fingers would be amputated by the hinge mechanism, and a search on the DC area *Craig's List* found a number of recalled drop-side cribs for sale.

1. Crib manufacturers often pay to advertise their products in parenting magazines. Can you think of an instance in which your organization or a crib manufacturer whose crib were recalled paid to advertise the recall in these same publications? If so, when?

Recalls are individually negotiated between the manufacturer involved and the CPSC. Each recall has specific remedies that are developed to address the hazard that has been identified. JPMA has never been a party to the negotiations, but does provide links from our Web site for consumers to www.recalls.gov. Some manufacturers have placed trade advertisements promoting their recalls but television advertising is generally not prevalent in the industry.

2. In your testimony you cite several examples of work your organization does to help promote infant safety. What specifically does your organization do to publicize and promote awareness about specific product recalls?

We produce statements that are posted on the JPMA Web site (www.jpma.org), samples of which we provided to the Committee prior to the hearing. We also provide a link to www.recalls.gov on our Web site. We are currently working to implement the establishment on our Web site of direct HTML links to recall announcements on the CPSC Web site and have also linked to the CPSC RSS Feed and Recall Subscription List Widget.

JPMA has also participated in "Recall Round-ups" with CPSC and with several not for profit Consumer Organizations and has urged retailers and sellers of second hand products to assure that product sold are not subject to recall (or not repaired in accordance with terms of a particular recall) and meet current applicable mandatory and ASTM standards.

3. Your organization publishes a directory of "certified products" that have been independently tested and found to meet safety standards. How many of the 7 million or so cribs that have been recalled in recent years were in that directory?

The JPMA Certification Seal on a product tells consumers this product has been verified as conforming to the requirements established by ASTM existing at the time they are originally sold, through independent laboratory testing and follow-up on-site inspection of the manufacturer's production line. The manufacturers that participate in the JPMA Certification Program are held to the highest



standards and are obligated to meet those principles with every certified product.

Of those cribs recalled, the following were JPMA Certified as having met the requirements of the ASTM F-1169 standard for full size cribs:

Simplicity – 1 million (drop side)
 Graco – 104,000 (drop side)
 Delta – 600,000 (drop side)
 Delta – 985,000 (drop side)
 Stork Craft – 2.1 million (drop side)
 Stork Craft – 500,000 (mattress support)
 LaJobi – 4,900 (crib slat breakage, drop side)
 Jardine – 472,000 (slat breakage – only applies to those cribs manufactured in 2005 or later)

Total (estimated) Certified: 5,765,900

Of those cribs recalled, the following were not JPMA Certified:

Generation 2 – 500,000 (drop side)
 Dorel Asia – 635,000 (drop side)
 Caramia – 1,000 (slat breakage)

Total (estimated) Non-Certified: 1,136,000

A review indicates that the underlying reasons for these recalls vary, but it is significant to note that recalls occur for a variety of reasons. On its face, based upon a review of CPSC announcements, these recalls cribs did not occur due to a violation of mandatory or ASTM crib standards to which JPMA Certification independently verifies sample conformance.

4. Does that directory get immediately updated whenever a recall of one of those products is announced? If not, when would such information appear in the directory? For example, would a consumer that is in the market for a second-hand crib who wishes to utilize your directory to ensure they are buying something that is safe and be able to ascertain, based on an examination of an old JPMA Directory, that a particular model was recalled? If not – don't you think you immediately take steps to alter these products?

As noted not all recalls are a result of a product not complying with ASTM International or mandatory standards. The Web version of the Directory is updated on a regular basis to provide the most current information on manufacturers who participate in which categories. It does not contain any recall



information. As cited above, we have links from our Web site to CPSC's Web site that contains the most current recall information.

JPMA does not recommend that parents/caregivers purchase second hand products of any type. We appreciate that it is very difficult for consumers to know whether a second hand product they are purchasing has been recalled (or if it has been damaged), and in most cases, the product does not meet the most current version of the ASTM standards.

To your last question posed here, we believe that providing recalled product information on the JPMA Web site is a good step in communicating to the consumer when these products are recalled. JPMA also often has instituted campaigns in collaboration with CPSC and other consumer organizations directed at ensuring consumers purchase and use only product that conforms to current safety standards.

5. Knowing that consumers have come to rely on the JPMA certification mark as an indication of safety, what checks and balances are in place to ensure that certified cribs remain in compliance with standards? Is there market surveillance or independent, third party certification of compliance?

In order for a manufacturer to be JPMA Certified, they must submit an application and contract to the Juvenile Products Manufacturers Association (JPMA) to participate in the certification program. They can be either a member or non-member of the association. They must have all of their current models in a product category tested by the official laboratory, which is an independent, 3rd party CPSC-accredited lab. The testing is done to voluntary standards that are developed and published by ASTM International. Committees within ASTM are comprised of a balance of manufacturers, consumer groups, representation from the U.S. Consumer Product Safety Commission (CPSC) and other interested parties, and they develop and revise the standards as necessary. Approval of a standard is consensual.

Once a manufacturer has become JPMA Certified, its testing responsibility does not end. Manufacturers must test 25% of their models each quarter with the goal that all models are tested at least once a year. Manufacturers can either perform the quarterly testing in their certified lab and send the reports to the official lab, or have a CPSC accredited lab do the testing for them. If the manufacturer is performing the quarterly testing in its own lab then the official lab will do a site visit once a year to verify the manufacturers' capability of performing the tests.

Random Retail Testing is also performed on a quarterly basis by independent 3rd party (currently CPSC-accredited) laboratories. In this part of the program, the official lab purchases participants' products from retail stores and performs testing to all or part of the appropriate ASTM standard. JPMA provides the manufacturer a certification seal to use on their products and packaging, and in

advertisements. The manufacturer must adhere to all the guidelines of the program in order to remain a JPMA Certification Program participant.



JPMA's certification seal also specifically notes that it is evidence that a sample has been verified by an independent accredited test laboratory as complying with mandatory and ASTM standards. Also we note that since January of 2009, under Section 102 of the Consumer Product Safety Improvement Act of 2008 (CPSIA), that all cribs must be certified by manufacturers as meeting mandatory CPSC requirements. We have repeatedly noted in our CPSC filings that the ASTM standards are significantly more comprehensive than existing mandatory CPSC standards. This is why we promote adherence to such standards. Section 104 of the CPSIA requires CPSC to consult with stakeholders and by rule update their standards commensurate with the more expansive requirements of the ASTM standards.

6. What does the JPMA do when they find a crib with a JPMA label to be out of compliance with standards?

Once JPMA becomes aware that a certified product is not in compliance with the ASTM and/or mandatory standards, we issue a Corrective Action Request (JCAR) that requires a manufacturer to respond within 14 days as to what they will do to correct the issue. For additional details on this process we reference the JPMA Procedural Guide (included with our original submission). If the manufacturer does not assure substantive compliance with applicable safety based standards, they are subject to de-listing.



U.S. CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

March 5, 2010

The Honorable Henry A. Waxman
Chairman
Committee on Energy and Commerce
United States House of Representatives
2125 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Waxman:

Attached please find responses to the written questions for the record submitted by certain Members of the Committee in connection with the January 21, 2010, hearing of the Subcommittee on Oversight and Investigations entitled: "Crib Safety: Assessing the Need for Better Oversight." An electronic version of these responses will also be provided to Early Green, Chief Clerk of the Committee.

Thank you again for the opportunity to testify before the Subcommittee. Should you have any questions or require additional information, please do not hesitate to contact me or Christopher Day, Director of Congressional Relations, at (301) 504-7660 or by e-mail at cday@cpsc.gov.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Inez Tenenbaum".

Inez M. Tenenbaum

Attachment

**“Crib Safety: Assessing the Need for Better Oversight.”
Committee on Energy and Commerce
Subcommittee on Oversight and Investigations
January 21, 2010**

Responses of Chairman Inez M. Tenenbaum to Questions for the Record

Questions from the Honorable Bart Stupak

Manufacturers, importers, distributors, and retailers are required to report to CPSC within 24 hours of obtaining information if a product does not comply with a safety rule issued under the CPSA, or contains a defect which could create a substantial risk of injury to the public or presents an unreasonable risk of serious injury or death. However, as we learned from our investigation, Stork Craft still believes to this day that mechanical problems by their cribs did not cause “substantial risk of injury to the public or present an unreasonable risk of serious injury or death.”

1. Does CPSC have the authority to assess a penalty on companies that do not meet the reporting requirements?

Response: Under section 20 of the Consumer Product Safety Act (“CPSA”), the Consumer Product Safety Commission (“CPSC”) has authority to seek a maximum civil penalty of \$15,000,000 for a party who knowingly fails to report defect information, required under section 15(b) of the CPSA, or otherwise fails to report or to provide information required under the CPSA. The CPSC lacks authority to “assess” such a penalty through its own administrative process, however, and must pursue a party in court if the party does not agree to the penalty.

2. Does CPSC believe that the current reporting requirements are set too high? How would you change the reporting requirements if you could?

Response: No. The CPSA requires in section 15(b) that any manufacturer, distributor, or retailer of a consumer product “who obtains information which reasonably supports the conclusion that such a product,” fails to comply with an applicable standard, contains a defect which could create a substantial product hazard, or creates an unreasonable risk of serious injury or death, must immediately report such information to the CPSC. This is a broad obligation and necessary for the CPSC to receive complete and timely information about possibly unsafe products. Reporting is required when a company receives information about a possible defect and the CPSC may conclude that no defect exists or require appropriate corrective action. Therefore, the reporting obligation does not appear to be too high. Indeed, one court has applauded “Congress’s decision to impose penalties for reporting violations without requiring proof of a product defect,” because it

encourages companies to provide all necessary information to the CPSC regardless of whether a defect exists. See *United States v. Mirama Enterprises, Inc.*, 387 F.3d 983, 988-89 (9th Cir. 2004).

3. Does CPSC believe manufacturers under-report? If so, why do you believe manufacturers are under-reporting?

Response: As noted above, the CPSA requires in section 15(b) that any manufacturer, distributor, or retailer of a consumer product “who obtains information which reasonably supports the conclusion that such a product,” fails to comply with an applicable standard, contains a defect which could create a substantial product hazard, or creates an unreasonable risk of serious injury or death, must immediately report such information to the CPSC. We believe some parties underreport based on a narrow interpretation of what information they view “reasonably supports” a conclusion that a product presents a hazard or risk.

As also noted above, however, the CPSC has authority to seek civil penalties when a party knowingly fails to make required reports, and the CPSC staff regularly collects such penalties from firms to enforce reporting obligations. In FY2009, we collected the largest amount of civil penalties in the CPSC’s history, and from the largest number of firms.

Consumers are not required to report safety information if they know a product is endangering an infant.

4. How does the CPSC encourage parents to report safety incidences to the CPSC?

Response: CPSC uses all means at its disposal to connect with parents and provide easy pathways for these parents to communicate to the CPSC issues, concerns, or problems with products in their home. To reach parents, our communications include not just traditional methods such as speeches, interviews, presentations, and a website, but we are also active in social media arenas like Twitter and YouTube. We also offer both a telephone hotline as well as a website reporting feature to receive information from parents. A link to report unsafe products is also part of our Neighborhood Safety Network Tool Kit, an innovative program designed to help underserved communities promote safety and health. We are always seeking to improve the accessibility and ease-of-use of each of these information channels.

In addition, the Consumer Product Safety Improvement Act of 2008 (“CPSIA”) requires CPSC to create a public portal and a publically accessible, searchable database of consumer product incident reports. Through the public portal, consumers will be able to report potential product safety hazards to CPSC in ways that improve the quality, value, and accuracy of the data collected. This database is under development, and is scheduled to launch in March of 2011 with broad public outreach and education.

Questions from the Honorable Edward J. Markey

It seems to me as though recalls of cribs whose drop-sides were trapping and suffocating children have been occurring for years now. More recently, Graco strollers were recalled because they use a hinge that has been shown to amputate children's fingers – but that follows an almost identical situation in which MacLaren strollers were recalled for the very same reason.

1. Why can't the CPSC move to recall ALL cribs that use the same sort of drop-side mechanisms, or ALL strollers the same sort of hinges?

Response: The CPSC does achieve recalls for similar product designs. For example, in FY2009, the CPSC recalled essentially all Roman shades and roll-up blinds in the United States based on a common strangulation hazard.

Such recalls, however, can be challenging. While CPSC does watch closely for any common problematic features across product classes, unique manufacturing or design characteristics often make a generalized defect analysis difficult. For example, a hinge made of high quality materials could be safe while the same part of lesser quality materials could break in a hazardous way. Further, because the particular manufacturer, distributor, or retailer is responsible for the remedy of their specific products, recalls remain particular to the responsible party. That is to say, a recall of all strollers for the same sort of hinge, as you describe, would still need to be considered with regard to each particular manufacturer, distributor, or retailer to ensure an adequate remedy.

2. Why do we have to wait until each brand or model is demonstrated to kill or maim someone?

Response: CPSC always strives to take action before any injuries occur and very often obtains voluntary recalls before any such injuries occur. Indeed, based on four incidents – none of which involved any injuries – the CPSC achieved the recall of 500,000 Stork Craft cribs in January 2009 due to a risk of entrapment or suffocation from mattress support bracket failures.

CPSC is constantly on the lookout for hazards and our Early Warning System, described in greater detail below, helps identify emerging hazards in certain children's products. Nevertheless, it is often very difficult to identify and address problems in a consumer product before patterns of defect emerge.

3. What is the CPSC doing to proactively identify and recall or otherwise regulate classes of products that all share known hazards?

Response: The CPSC Office of Hazard Identification and Reduction, particularly the Division of Hazard Analysis within our Directorate for Epidemiology, is tasked with monitoring information that could identify a common problematic feature across a product class. Given particular sensitivities related to children's products, in November

2007, the CPSC implemented what was then a pilot program called the Early Warning System (“EWS”). This EWS is a multi-disciplinary team of CPSC staff consisting of Compliance Officers, attorneys and technical staff from CPSC’s Engineering, Epidemiology, Human Factors and Health Sciences divisions that focuses solely on cribs, bassinets, and play yards.

This team was formed in an effort to catch serious risks of injury or death, patterns of defect, and regulatory violations as early as possible. The EWS team meets on a weekly basis and reviews all incoming bassinet, crib and play yard incidents reported to the agency. Incident reports specific to products evaluated by the EWS pilot team are drawn from the CPSC’s epidemiological databases. During the weekly review, the EWS team also assigns in-depth investigations (“IDIs”) of incidents, reviews completed IDIs, evaluates collected product samples, and makes recommendations to the Compliance Division on cases to open for possible recall.

Building on the success of the EWS team, I have recently created a new “Safe Sleep Environment Team,” which is a pilot project to bring the same EWS team of compliance officers, technical staff, attorneys, and epidemiologists to work on the particular issues related to the sleep environment for children.

Finally, with regard to regulatory matters, I will continue the sort of proactive efforts we took with regard to cribs to involve stakeholders and the American Society for Testing and Materials (“ASTM”). The results of our direct outreach in that case demonstrate the effectiveness of proactive involvement of voluntary standards organizations and interested parties to consider regulatory approaches as safety issues emerge across a class of products.

4. In addition to voluntary or mandatory recalls, what authority does CPSC have to inform the public about risks to particular products or classes of products? For example, could it issue a press release that included a recommendation that consumers not purchase drop-side cribs and indicate that the Commission was planning to take regulatory action involving all of these products? If so, how often has the Commission taken such action?

Response: The CPSC has authority to inform the public about risks to particular products and classes of products and regularly uses it to alert the public to both specific and general issues.

Under new authority in the CPSIA, CPSC can make certain public health and safety findings and disseminate information to the public in an expedited manner about a risks posed by a particular product. Such public health and safety findings have been undertaken twice since implementation of the CPSIA.

With regard to classes of products, the CPSC can make public general warnings. For example, in October of 2008, the Commission issued a press release announcing that defects identified by the EWS system demonstrated the need for stronger mandatory

standards for drop-side cribs, and urging parents and caregivers to inspect closely the hardware and stability of their cribs to ensure that all parts were securely in place given the entrapment risks associated with those cribs. A similar general message regarding the safety of children's products and recalls was the focus of a September 2009 video released by CPSC on YouTube and through our blog, "OnSafety." The CPSC also undertakes regular outreach efforts each year to make seasonal alerts and provide information to the public about risks presented by fireworks, carbon monoxide poisoning, and pools, for example.

* * *

