Rockland Industries, Inc.

Testimony of Mark R. Berman for Rockland Industries, Inc.
before the Subcommittee on Trade and the Subcommittee on Oversight
of the Committee on Ways and Means, U.S. House of Representatives

October 4, 2007

HEALTH RISK AND REGULATION OF IMPORTED TEXTILES RE-FIGHTING THE "FORMALDEHYDE WARS"

Thank you, Chairman Levin and Chairman Lewis and members of the Subcommittees on Trade and Oversight, for the opportunity to testify before you today on the urgent topic of the safety of imported textiles and textile products. My name is Mark Berman and I am the Chairman and CEO of Rockland Industries. I am testifying today on behalf of Rockland but also as a concerned citizen with knowledge of an under-publicized risk to the health of my family as well as other residents of the United States. That risk comes from the hazardous chemical formaldehyde being found in high levels in textiles imported from China and other countries. Formaldehyde is known to cause cancer, serious respiratory disease and other health problems.

I doubt that any of you have previously heard of Rockland. It is a family owned business that traces it roots back to 1832. It is a U.S. based textile manufacturer that is still conducting manufacturing operations in the U.S. We are headquartered in Baltimore, with factories in Baltimore and South Carolina. We provide approximately 360 jobs, most of which are semi-skilled.

Although you may not be familiar with Rockland, all of you have probably come into contact with some of our products. We manufacture the blackout window covering fabrics that are found in almost every hotel and motel room in the U.S. In fact, we export these products to 90 countries, including China, and have received the President's E and E Star Awards for Exports from the U.S. Department of Commerce.

All the news in recent months about unsafe products being imported into the United States and sold to unsuspecting consumers has missed a whole category of contaminated products and their associated health risks. Many common textile products manufactured in and sourced from Asia contain unsafe levels of formaldehyde. Among the products affected are bed pillows, blankets and draperies. In fact, the formaldehyde levels in some of these products are so high that under OSHA regulations they are required to have a prominent written cancer risk warning label. None of them do.

Rockland manufactures textiles in the United States in two of these product lines. It is the world's leading manufacturer of blackout window covering fabrics. It was also a significant supplier of ticking fabrics to U.S. bed pillow manufacturers. Rockland became aware of U.S. pillow manufacturers importing Chinese tickings about 8 years ago. This business has now gone almost entirely off-shore.

Rockland first started running into Asian-produced blackout fabrics in its foreign markets - from Pakistani producers about 12 years ago and from Chinese mills several years later. The quality of the foreign fabrics was and for the most part remains very poor. However, the price was significantly below the prevailing prices in the U.S. and Rockland's foreign markets, and in some cases below Rockland's cost of production. As a result, in spite of the quality differences, Rockland lost some of its international market share. We had not seen any significant amount of Asian blackout fabrics in the U.S. market until about six months ago.

Formaldehyde is a health danger

Formaldehyde is a colorless gas with a pungent, suffocating odor. It is highly irritating to the eyes and respiratory tract and presents many serious health risks.

Formaldehyde is used in many building materials, including plywood, particleboard and foam insulation and in a wide variety of molded or extruded plastic items, as well as in many household products such as latex paints, wallpaper, fingernail hardener, and nail polish. Formaldehyde is the subject of concern in the trailers provided by FEMA to some Katrina victims. In textiles, formaldehyde is found in permanent press fabrics, carpets, upholstery and, of particular interest to Rockland, coated blackout drapery fabrics. The emissions of formaldehyde from most of these common household products, Rockland's product excepted, can be very high.

Formaldehyde primarily affects the mucous membranes of the upper respiratory airways and eyes. It has been proven to cause nasal and nasopharyngeal cancer. Exposure at the levels that are contained in some of the imported blackout fabrics Rockland has tested, irritates the eyes, nose, and throat, and can cause skin and lung allergies. Formaldehyde can cause an asthma-like allergy. Repeated exposures can cause asthma attacks with shortness of breath, bronchitis, wheezing, cough, and/or chest tightness. Skin contact can produce dermatitis. Human studies suggest that children are more sensitive than adults to formaldehyde toxicity.

The health risks of formaldehyde are significant enough that many scientific organizations and governmental agencies have pronounced on it:

Formaldehyde gas is classified as a substance which may reasonably be anticipated to be a carcinogen, according to the Report on Carcinogens, Eleventh Edition; U.S. Department of Health and Human Services, Public Health Service, National Toxicology Program. (January 31, 2005)

Within the last three years, the International Agency for Research on Cancer (IARC) raised its determination of formaldehyde to be carcinogenic to humans (Group 1) from its previous evaluation as a probable human carcinogen (Group 2(A)) (IARC Monographs, Vol. 88, 2-9 June 2004).

The Occupational Safety and Health Administration (OSHA) of the U.S. Department of Labor has determined formaldehyde to be a potential human carcinogen.

The U.S. Environmental Protection Agency (EPA) has designated formaldehyde as a hazardous air pollutant, water pollutant and waste constituent. EPA regulates formaldehyde under the Clean Air Act; Clean Water Act; Comprehensive Environmental Response, Compensation, and Liability Act (Superfund); Food, Drug, and Cosmetic Act; Resource Conservation and Recovery Act;

Superfund Amendments and Reauthorization Act; and Toxic Substances Control Act. It is classified as a carcinogen in the Environmental Protection Agency's Toxic Release Inventory (TRI).

Federal Regulation of Use and Exposure to Formaldehyde Containing Products in the U.S.

No U.S. law or regulation limits the amount of formaldehyde that may be in a textile or textile product. In the U.S., formaldehyde exposure to workers and consumers is respectively regulated by OSHA and the Consumer Products Safety Commission (CPSC). General environmental exposure is regulated by the EPA and doesn't concern us here.

OSHA regulates exposure in the workplace. With respect to products that ultimately find their way into the home, OSHA's regulations can have only an indirect spill-over effect that may reduce or limit exposure. The CPSC directly regulates the exposure of consumers.

OSHA's regulations work two ways. Formaldehyde is one of only 42 specifically identified toxic and hazardous substances that merits its own standard (29 CFR 1910.1048). First, regulations set specific limits as to how much air-borne formaldehyde gas a person may be exposed to in a work environment. In the case of blackout fabrics, work environments would include sewing rooms, hotel rooms and retail stores.

Second, products containing more than 0.1 percent formaldehyde and "materials capable of releasing formaldehyde into the air, under reasonably forseeable conditions of use, at concentrations reaching or exceeding 0.1ppm" are subject to specific training requirements, the distribution of Material Safety Data Sheets (MSDS) and labeling including the words "Potential Cancer Hazard" as well as informing of the other health risks, and possible medical surveillance of exposed personnel. There are additional requirement for certain workplaces with very high exposure levels, that are not likely in the context of fabrics.

0.1 percent formaldehyde is 1,000 parts per million. As Rockland's tests show, blackout fabrics coming into the U.S. can have many times that amount of formaldehyde. In addition, the concept of "free" formaldehyde, discussed below, shows that the levels of formaldehyde that can be released by these products into the air under normal conditions, can be high.

The Federal Hazardous Substances Act (15 U.S.C. 1261-74)(FHSA) prohibits "(a) The introduction or delivery for introduction into interstate commerce of any misbranded hazardous substance or banned hazardous substance." The CPSC implements and enforces the FHSA (14 CFR 1500).

Under the Act, the CPSC regulates substances that are toxic, irritants or strong sensitizers, if the substances could "cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use."

Specifically, the CPSC has identified formaldehyde as a "strong sensitizer". The regulations require warning labels on household products containing 1% or more of formaldehyde. 1% is 10,000 parts per million, and as such would not cover any imported blackout fabrics that Rockland has so far encountered or any fabric of which Rockland is aware.

However, we believe that the levels of formaldehyde that are in fact found in imported blackout fabrics of 1,000 to almost 3,000 ppm would bring them within the FHSA definitions of

"toxic" and "irritant". In addition, and without getting into the finer points of the regulations and medical literature, we believe the health risks in light of continuing medical research since the regulation was adopted and accepted international norms indicate that the CPSC should revisit the 10,000 ppm threshold as a "strong sensitizer" and reduce it to no more than 1,000 ppm. The high 10,000 ppm requirement provides a "safe harbor" to imported textiles containing dangerously high levels of formaldehyde. The CPSC should also reconsider the position it took in a 1973 letter from the then Chairman of the CPSC to Senator Sam Ervin, to the effect that formaldehyde in textiles was not a strong sensitizer and therefore was not covered by the Federal Hazardous Substances Act. In the intervening 34 years, medical research has show that the CPSC was wrong in downplaying the risks of formaldehyde as a "strong sensitizer."

The FHSA regulations state that "[a] substance is toxic if it is or contains a known or probable human carcinogen". This clearly would apply to the imported blackout fabrics tested by Rockland.

The regulations provide for objective testing to determine if a substance is an "irritant". To date, Rockland has not had any imported blackout fabrics tested under the standard. However, the statutory definition of "irritant" as a non-corrosive substance "which on immediate, prolonged, or repeated contact with normal living tissue will induce a local inflammatory reaction" and the list of medical symptoms previously described as being produced by formaldehyde suggests that imported blackout fabric may well be an "irritant."

The protections of the FHSA are implemented through warning labels required on the products. Failure to provide the mandated warnings to consumers is enforceable by the FTC as "misbranding."

Foreign Regulation of Formaldehyde in Textiles

Many foreign jurisdictions have reached the same conclusions about the health risks of exposure to formaldehyde. At least eight countries limit the amount of formaldehyde that may be contained in textiles. A summary of some of those regulations is attached.

Ironically, China, which is one of the worst offenders recently tightened its internal regulations. Effective January 1, 2005, China adopted GB18401-2003 National General Safety Technical Regulations for Textile Products. Under Chinese law all products sold in China must comply with this national obligatory standard. In addition to establishing the concept of 'basic safety', which requires that products do no harm to human health, the regulations set specific formaldehyde content limits for various types of textiles. To meet the regulations pillow tickings (as a fabric that comes into direct contact with the skin) may contain no more than 75 ppm of formaldehyde and decorative fabrics no more than 300 ppm. These are among the strictest limits adopted anywhere. So far as we can tell this regulation is not being enforced in China. We believe that its purpose is to be used, if necessary, as a non-tariff barrier to entry against textiles being imported into China. Rockland's products meet the Chinese standard.

Further, effective May 1, 2006, the General Administration of Quality Supervision and the Inspection and Quarantine Administration of China implemented a new industry standard, SN/T1649-2005 Safety Inspection Regulations for Imported and Exported. According to this Regulation, all textile products coming into China must be tested against GB18401-2003 and textile products for export are also required to be tested for compliance with the laws and standards of

the importing countries. Rockland is not aware of any active compliance or enforcement of these regulations in China.

Recently blankets in New Zealand and Australia were the subject of safety related recalls. These blankets made by "gluing" short fibers to an underlying textile substrate. The "glue" used was a substance containing high levels of formaldehyde. The cases are instructive because New Zealand and Australia like the U.S. do not set a limit on the formaldehyde content of textile products. Instead, the basis of the recalls was a general concern about the safety of the products.

Blackout Fabrics Containing Dangerous Amounts of Formaldehyde Are Being Imported Into the US

Formaldehyde in textile products has been off the "radar screen" for quite some time in the US. In 1988, when OSHA first adopted standards setting limits to occupational exposure to formaldehyde, it created an enormous stir in the textile finishing industry. You used to go into a textile finishing plant and your eyes would burn. You would smell a distinct fish-like odor, in the air in the plant as well as on the finished fabrics. The same was true in retail fabric stores and certain clothing and drapery departments of department stores and textile sewing workrooms. What you were smelling and what made your eyes sting and your nose burn was formaldehyde gas given off by the fabrics.

However, as a result of the OSHA rule, a great deal of research and product development occurred in a very short time. Manufacturers of textile finishing chemicals developed low and ultra-low versions of their products, albeit at higher costs. Textile finishers were forced to use these products and bear the expense of doing so, in order to come within the permissible exposure limits in their factories.

A beneficial side effect was that the finished textile product contained a fraction of the amount of formaldehyde contained before the new regulations. This meant that downstream workers, in cut and sew operations, retail outlets and hotels, for example, as well as home consumers of textile products, were exposed to very low levels, if any, of formaldehyde.

Formaldehyde in textiles has not been an issue in the US for over 19 years, since the adoption of the OSHA standard. It has been all but forgotten. The generation of merchants that grew up knowing about and concerned with formaldehyde levels in textiles is mostly gone.

Rockland has tested every sample of foreign blackout fabric it could get its hands on. Goods from four countries were tested for many properties. The results are from an independent laboratory using the internationally accepted American Association of Textile Chemists and Colorists test method. The attached table shows the results for "free" formaldehyde content. Free formaldehyde is formaldehyde which can separate from the textile under everyday conditions and thereby constitute a source of exposure. The formaldehyde content of a comparable Rockland product is given for comparison. The competitive products' formaldehyde concentrations ranged from almost four times to over 10 times that of Rockland's product.

Use of Formaldehyde in Fabric Processing Gives Foreign Textile Manufacturers an Unfair Competitive Advantage

Although not a focus of this hearing, use of high formaldehyde textile chemicals affects the competitive conditions of the U.S. textile industry, thereby coming within another part of the jurisdiction of the Subcommittee on Trade. The economics of the use of formaldehyde grow out of its chemical uses. A short, simplified explanation follows:

Formaldehyde is very useful in many manufacturing processes and it is very, very cheap. It has been produced commercially since the early 1900s. It is in the top 25 of the 50 highest volume chemicals made in the US. For example, in 1998 US production was 11.3 billion pounds.

Resins used to treat textiles for permanent press or to form blackout coatings contain formaldehyde. The formaldehyde aids the chemical reaction that allows the long molecular chains of those resins to cross-link. This gives the treatments or coatings their toughness and durability and other characteristics that are the essence of the product.

When you take the formaldehyde out of the resins, you need to engineer more sophisticated chemical means for the molecular chains to cross-link. More sophisticated means more expensive, and in the case of the polymers used in blackout coatings, significantly more expensive. The use of formaldehyde allows the use of less resin or resins with poorer properties or both. And this equates to a significantly lower cost of production.

An educated estimate of the economic advantage of using formaldehyde containing coatings compared to acrylics that produce blackout drapery fabrics that comply with OSHA standards is more than 20%. Depending on the product, that can translate into a minimum cost advantage of $.15 per yard, and can go to several times that number. Add to that the effect of a manipulated exchange rates for the Chinese yuan, and the playing field is far from level. This negatively impacts Rockland's sales of blackout fabrics both domestically and in the international market.

Improvements to the existing mechanisms and authorities

We believe the existing regulatory framework is inadequate to protect Americans from the health risks associated with formaldehyde. In spite of awareness within the regulatory community, the practical ability to enforce is the problem.

OHSA regulation of formaldehyde requires importers of formaldehyde-containing products to provide their customers with the required labeling and MSDSs necessary to determine whether there is a health risk. So far as Rockland is aware, this is not being done.

A number of suggestions were made above with respect to the Hazardous Substances Act. Since formaldehyde is a proven carcinogen, we believe that formaldehyde at the levels in imported blackout fabrics are clearly within the definition of "toxic." However, we have never seen a warning label.

Rockland has worked closely with the U.S. Department of Commerce, Office of Textiles and Apparel (OTEXA) for many years. We kept them informed about our findings with respect to formaldehyde in foreign goods. On April 18, 2006 OTEXA sponsored a meeting on this issue, attended by representatives of U.S. Customs and Border Control, CPSC, OSHA, the Department of Labor, the Department of Commerce, various textile industry groups and Rockland.

At the April 2006 meeting, although sympathetic, OSHA and CPSC, made it clear that they were not in the position to discover violations of their statutes and regulations and take enforcement action in the absence of specific complaints. Thus, under the existing regulatory scheme, individuals or consumer groups or competitors would have to take on the role of watch dog and whistle blower for thousands of imported products. This is unlikely to happen.

At the April 2006 meeting, although sympathetic, Customs and Border Protection made it clear that it does not have the staff, training or budget to police imports for regulatory compliance. Even in the best of circumstances they could see only a small fraction of the goods imported. Acquisitions of samples from closed shipping containers would itself present a potential health hazard to Customs inspectors. Testing is time consuming and expensive and would delay commerce.

Even were OSHA, CPSC and Customs and Border Protection inclined to take on investigative and enforcement duties, the present regulatory scheme is pretty much limited to warning labels. We do not believe this is an adequate protection.

We believe that the time has come for the CPSC to set limits on the formaldehyde content of textiles, whether produced in the U.S. or imported. If the objective is to protect consumers, then this is the direct way to achieve that protection. The structure for regulating and enforcement is already in place in the Hazardous Substances Act. Content limits could be set through appropriate rule-making. The foreign regulations offer a model and starting point for discussion.

We also suggest adopting legislation requiring standard reciprocity. Under such legislation, if a country has a domestic standard, any goods imported into the U.S. must meet the higher of the U.S. standard or the exporter's domestic standard. The blackout fabrics being produced in China and sold in the U.S. do not meet the Chinese safety standard for internal consumption. We believe that if a product produced in China is not safe enough under Chinese law to be sold in China, then it is not safe enough to be sold in the U.S. That said, it is hard to demonize the Chinese for making unsafe textiles when the U.S. has failed to set its own standard and U.S. importers are not carrying out their legal obligations with respect to existing health and safety labeling requirements.

Finally, I do not believe that industry self-regulation would effectively protect the public. I know first hand the pressures that the big retailers put on their suppliers for ever lower prices. Considering the major cost advantage of using high levels of formaldehyde, I wouldn't want my family's safety to be at the discretion of some unknown distributor being squeezed by a retailer. It would be like having a very hungry fox guarding the hen house.

The conditions that led to the development of low formaldehyde resins in the late 1980's as a result of the adoption of the OSHA formaldehyde standard are no longer the case. The growth of imports from countries that have no regulations, do not enforce their own regulations or are taking advantage of the fact that there are no U.S. regulations, have reintroduced the risk that was adequately addressed in the 1980's when domestic production of textiles dominated but which have arisen again as that once vital U.S. industry declined through globalization.

SELECTED INTERNATIONAL REGULATION OF FORMALDEHYDE IN TEXTILES

Country	Regulations / Requirements	Objection Limit / Limit
Germany	Gefahrstoffverordnung (Hazardous Substances Ordinance) Annex III, No. 9, 26.10.1993	Textiles that normally come into contact with the skin and release more than 1500 mg/kg formaldehyde must bear the label "Contains formaldehyde. Washing this garment is recommended prior to first time use in order to avoid irritation of the skin."
France	Official Gazette of the French Republic, Notification 97/0141/F	The regulations apply to products that are intended to come into contact with human skin, including textiles, leather, shoes, etc. Textiles for babies: 20 mg/kg Textiles in direct skin contact: 100 mg/kg Textiles not in direct skin contact: 400 mg/kg
Netherlands	The Dutch (Commodities Act) Regulations on Formaldehyde in Textiles (July 2000)	Textiles in direct skin contact must be labeled "Wash before first use" if they contain more than 120 mg/kg formaldehyde and the product must not contain more than 120 mg/kg formaldehyde after wash.
Austria	Formaldehydverordnung, BGBL Nr. 194/1990	Textiles that contains 1500 mg/kg or above must be labeled.
Finland	Decree on Maximum Amounts of Formaldehyde in Certain Textiles Products (Decree 210/1988)	Textiles for babies under 2-year-old: 30 mg/kg Textiles in direct skin contact: 100 mg/kg Textiles not in direct skin contact: 300 mg/kg
Norway	Regulations Governing the Use of a Number of Chemicals in Textiles (April 1999)	Textiles for babies under 2-year-old: 30 mg/kg Textiles in direct skin contact: 100 mg/kg Textiles not in direct skin contact: 300 mg/kg
China	Limits of Formaldehyde Content in Textiles GB18401-2001	Textiles for infants and babies: ≤20 mg/kg Textiles in direct skin contact: ≤75 mg/kg Textiles not in direct skin contact: ≤300 mg/kg
Japan	Japanese Law 112	Textiles for Infants: not detectable Textiles in direct skin contact: 75 ppm

From Hong Kong Standards and Testing Centre.

Coated Goods Formaldehyde Test Results

Selected for Rockland goods and goods exceeding OSHA standard requiring warning label

Date of Test Results	Sample Identity	Sample Obtained By Rockland From	Product Distributed in U.S. By	Country of Manufacture	Free Formal-dehyde ppm
Multiple	Rockland Budget Blackout Flame Retardant and Non-Flame Retardant	Rockland regular production		USA	260
9/10/2003	1 pass white			Pakistan	1110
9/10/2003	1 pass ecru			Pakistan	1150
2005	3 pass Non-Flame Retardant			Turkey	1280
10/20/2005	3 pass Non-Flame Retardant	TIP Trade Show, Brussels, Belgium, Sep 05		China	1165
11/3/2005	110" 3 pass	Rockland customer		China	1050
11/3/2005	Woven Wood blind w/light filtering coating	Rockland customer		Pakistan	1134
12/1/2005	Brown Suede Sample 1 pass			China	2245
12/1/2005		Rockland customer		Poland	2825
3/9/2006	3 pass blackout fabric	Rockland customer	U.S. competitor	China	1623
3/9/2006	3 pass Non-Flame Retardant	Barkat Textile Mills		Pakistan	1145
4/4/2006	3 pass blackout Non-Flame Retardant			China	1005
3/28/2007	Burgandy velvet blackout coated ready-made drapery	Major U.S. Retailer #1		China	3005
4/14/2007	Bed Pillow with coated ticking, labeled "hypoallergenic" and "Made in USA"	Major U.S. Retailer #2	Imported by major U.S. textile company	China	2395
4/14/2007	Drapery valance #1	Major U.S. Retailer #3		China	2320
4/14/2007	Drapery valance # 2	Major U.S. Retailer #3		China	1175
4/14/2007	Drapery valance # 3	Major U.S. Retailer #4		China	1440
4/14/2007	Drapery valance # 4	Major U.S. Retailer #4		China	2120
4/14/2007	Drapery Jabot Set	Major U.S. Retailer #4		China	2770
4/14/2007	Drapery valance # 5	Major U.S. Retailer #5		China	2280
4/14/2007	Drapery valance # 6	Major U.S. Retailer #5		China	1940
4/30/2007	Black velour blackout coated ready-made drapery	Major U.S. Retailer #6		China	2100
5/2/2007	Red coated fabric	U.S. ready-made drapery manufacturer/ fabric distributor		China	1810
5/2/2007	Blue coated fabric	U.S. ready-made drapery manufacturer/ fabric distributor		China	1110
5/2/2007	Brown coated fabric	U.S. ready-made drapery manufacturer/ fabric distributor		China	1070
5/2/2007	Gold coated fabric	U.S. ready-made drapery manufacturer/ fabric distributor		China	1010

Formaldehyde is tested according to AATCC Test Method #112, the Sealed Jar test. (1 gram sample over 100 ml of water, 20 hour extraction at 49C/120F.)

"Non-Flame Retardant" indicates product is intended for residential use rather than contract/commercial use.