*** Consumers Union * Consumer Federation of America ***
*** Kids in Danger * National Research Center for Women & Families ***
*** Public Citizen * U.S. Public Interest Research Group (U.S. PIRG) ***

July 23, 2010

Docket No. CPSC-2010-0041
Office of the Secretary
Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814
Via http://www.regulations.gov

Comments of Consumers Union, Consumer Federation of America, Kids in Danger, National Research Center for Women & Families, Public Citizen, and U.S. PIRG
Regarding the Publicly Available Consumer Product Safety Information Database, Notice of Proposed Rulemaking, 75 FR 29156 *et seq*. May 24, 2010

Introduction

Our groups, Consumers Union, Consumer Federation of America, Kids in Danger, National Research Center for Women & Families, Public Citizen, and U.S. PIRG respectfully submit these comments on the Consumer Product Safety Commission's proposed rule regarding the establishment and maintenance of a publicly available consumer product safety information database. Section 212 of the Consumer Product Safety Improvement Act of 2008 (CPSIA),[1] created a new section 6A of the Consumer Product Safety Act (CPSA)[2] to establish a searchable and accessible database through the Consumer Product Safety Commission (CPSC) Web site. As we have commented previously, the database, if implemented properly, will enhance consumer protection against potential and actual product hazards and will expedite the release of potentially life-saving product safety information to the public.

In September 2009, the CPSC submitted a database plan to Congress[3] to satisfy requirements under the CPSIA.[4] Subsequently, the agency held a hearing[5] and a two-day workshop[6] to receive public comments. Our organizations testified at the hearing, participated in the workshop, and submitted comments. We appreciate the Commission's efforts to provide forums to discuss the database implementation. Currently, we are generally supportive with the Commission's approach to establishing the database, but would like to further comment on some of the agency's proposals, as follows:

Comments on Proposed Rules

[1] Pub. Law 110-314.
[2] 15 U.S.C. §§ 2051–2089, at § 2055a.
[3] Report to Congress Pursuant to Section 212 of the Consumer Product Safety Improvement Act of 2008 Implementation of a Searchable Consumer Product Safety Incident Database (SaferProducts.gov), September 10, 2009.
[4] 15 U.S.C. § 2055a(a)(2).
[5] 74 Fed. Reg. 54,552 (Oct. 22, 2009).
[6] 74 Fed. Reg. 68,055 (Dec. 22, 2009).

Proposed 1102.10(f) (8)
Definition of public interest – The Commission has reserved the discretion to publish or not to publish certain information (such as photographs or other information) onto the database based on a determination of whether the information is in the public interest.

> "The Commission's determination shall consider whether the information is related to a product safety purpose served by the Database including whether or not the information helps database users to: (i) Identify a consumer product; (ii) Identify a manufacturer or private labeler of a consumer product; (iii) Understand a harm or risk of harm related to the use of a consumer product; or (iv) Understand the relationship between a submitter of a report of harm and the victim."

The "public interest" definition is sufficiently broad to ensure that a wide variety of information will be allowed and published onto the database.

Proposed 1102.10
Incomplete reports of harm – We agree that the Commission should refrain from publishing incomplete reports onto the database. We do not object if the Commission maintains incomplete reports for its own use. However, submitters should be granted an opportunity to return easily to the database to complete, previously incomplete reports of harm for publication onto the database. We suggest that users who submit an incomplete report be sent an email with a link to the Web site where they may complete and submit the full report.

Detecting multiple reports from the same IP address – The Commission received suggestions to run system checks to determine whether multiple reports are received from the same person, so as to identify spam, frivolous reports, or other unwelcome submissions. The Commission announced that it would examine options to detect if multiple reports are submitted from the same IP address. The Commission should also be aware that it is possible in certain situations that valid reports would come from the same person, or IP address, such as those from persons in government, health facilities, and consumer organizations. The Commission should structure the database to accept comments from such submitters.

Proposed 1102.12
Manufacturer verification (c) (3) – We are pleased that the Commission proposes to require submitters of manufacturer comments to verify the truth and accuracy of their submissions (similar to the requirement for submitters of reports of harm). This rule as applied to all stakeholders will help ensure the accuracy and integrity of the information in the database.

Manufacturer comments and other changes to a published report of harm – The CPSIA allows for various changes to reports of harm published onto the database, whether to correct or remove materially inaccurate information or to add manufacturer comments. It may be in the best interest of the public for the Commission to provide notification on its Web site that reports of harm may be updated, revised or corrected, but in a manner that will not chill submissions by consumers. The Commission should also provide submitters of reports of harm with the opportunity to receive updated information regarding their submitted report. We suggest that this notification be sent automatically to submitters via email.

Proposed 1102.14
Recall notices – We strongly agree with this rule that all information from voluntary or mandatory recall notices should be made available and searchable in the database. We also agree that relevant recall notices should be made available to submitters of reports of harm where the submitted report is related to a recalled product.

Proposed 1102.16
Additional information –The Commission has received numerous suggestions from public comments on the types of additional information that would be appropriate for the database. Other than recall notices, the proposed rulemaking has declined to commit to adding any other content for inclusion in the database. The agency has said it is studying whether to add "CPSC technical research, reports on emerging hazards, and other staff-generated research into the public database." These reports and staff research are important items appropriate for public review and the database. We urge the Commission to act expeditiously and add these and other relevant information to the database.

Proposed 1102.20 (b)
Limitation on use of submitter's contact information – The CPSIA specifically limits the use of submitters' contact information after it is voluntarily released to manufacturers and private labelers.[7] The proposed rulemaking states that a manufacturer or labeler who receives the name and contact information for the submitter of a report of harm must not use the information for any other purpose other than verification of the report. The Commission states that the "verification" does not include "activities such as sales, promotion, marketing, warranty, or any other commercial purpose." The Commission should also specifically discourage any harassment or intimidation of the submitter of the report of harm by manufacturers, retailers, distributors, and their representatives.

Misuse – We previously have urged the Commission to protect consumers' private contact information by including in its rulemaking an affirmative statement that it will enforce the provision to discourage the misuse of submitters' contact information in the possession of manufacturers and private labelers. The Commission stated in the proposed rulemaking that it "may, at its discretion, determine means by which it will enforce this provision."[8] It is a well-known fact that manufacturers use consumer information without explicit permission for their various business purposes. Reacting to the misuse of consumers' private information after it has already occurred will not alleviate the harm resulting from the misuse. The Commission has the opportunity now to set an expectation of serious consequences if this type of activity should occur. It should do so.

Proposed 1102.24 (d)
Designation of confidential information – We agree with the Commission that requests for designation of confidential information must be received in a timely manner. We suggest that timeliness of confidentiality designations can only be carried out to the day that the report of harm is published onto the database. Once the information is published onto the database, it should no longer qualify as "confidential." We also caution the Commission to be wary of attempts by

[7] 15 U.S.C. § 2055a(b)(6).
[8] Publicly Available Consumer Product Safety Information Database, Notice of Proposed Rulemaking, 75 FR 29156 *et seq* at 29170.

manufacturers, private labelers and others to mark an overly broad amount of information as "confidential" in order to avoid public sharing of safety hazards.

Proposed 1102.26 (a) (1)
Definition of "materially inaccurate information in a report of harm" – The Commission defines materially inaccurate information as "information that is false or misleading in a significant and relevant way that creates or has the potential to create a substantially erroneous or substantially mistaken belief in a Database user about information in a report of harm relating to: (i) The identification of a consumer product; (ii) The identification of a manufacturer or private labeler; or (iii) The harm or risk of harm related to use of the consumer product."[9] We have no objection to the definition, which appears to cover material information, and not superficial, non-substantive errors. We also urge the Commission to audit claims of "material inaccuracy" to ensure that manufacturers, distributors, and others are making material inaccuracy claims in good faith instead of frivolous claims to block public disclosure of critical safety hazard information.

Proposed 1102.26 (b)
Request for designation of materially inaccurate information – The Commission has set forth requirements for requesting the designation of materially inaccurate information. Specifically, (b)(4) requires that the party seeking the designation to "provide evidence" to support removal or correction of the reported information. We agree that the party claiming that information is "materially inaccurate" bears the burden of adequately demonstrating to the Commission that the information is indeed materially inaccurate – not the Commission.

We applaud the Commission for, whenever possible, favoring correction and addition of information to address reports of harm with "materially inaccurate information," instead of the complete exclusion or removal of the reports from the database.

Respectfully submitted,

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[9] 75 FR 29179.

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