

*** Consumers Union * Consumer Federation of America ***
*** Kids in Danger * Public Citizen ***

January 29, 2010

Office of the Secretary
Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814
Via cpsc-os@cpsc.gov

Re: Public Workshop on Consumer Product Incident Database

Comments of Consumers Union, Consumer Federation of America, Kids in Danger, and Public Citizen Regarding the Establishment of a Public Consumer Product Safety Incident Database Under Section 212 of the Consumer Product Safety Improvement Act of 2008

To whom it may concern:

Our groups, Consumers Union, Consumer Federation of America, Kids in Danger, and Public Citizen, welcome the opportunity to comment on 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. The database, if implemented properly, will enhance consumer protection against potential product hazards. It will lift a veil of ignorance and secrecy that often surround the release of critical product safety information. The database has the potential to ensure that such information is shared in a timely manner with the public to avert injuries associated with hazardous products.

In September 2009, the CPSC submitted a database plan to Congress³ to satisfy requirements under the CPSIA.⁴ Subsequently, the agency held a hearing⁵ and a two-day workshop⁶

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.

to receive public comments covering five general areas: data analysis and reporting; reports of harm; manufacturer notification and response; materially inaccurate information; and additional database content. Our organizations testified at the hearing and participated in the workshop. The comments herein are in addition to those that we previously submitted and stated. Below are our additional observations and concerns related to the five subjects.

DATA ANALYSIS AND REPORTING

- The public should be able to access all the information submitted to the database, except for consumers' private contact information. That is, all reports of harm and potential harm, the information derived by the Commission from voluntary and mandatory recall notices, and manufacturer or private labeler comments and responses to incident reports must be publicly available and accessible.
- For ease of use, the data should be made available in an easily searchable and downloadable format for members of the public who prefer to review and analyze the information all together, as well as in a format suitable for narrow, specific searches.
- The database should be searchable by general word entry, similar to mainstream Internet search engines, including advanced searches for data using search terms connected by both the words "AND" and "OR."
- The data should be searchable and sortable by type or category of product, such as crib, stroller, toaster, bath fixtures, and kitchen appliances. The data should also be searchable and sortable by brand name, model name, and model number, as well as type of injury and other harm, approximate date of purchase, and product manufacture information. All search results should be sortable by alphabet, date, and relevance.

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).

- Third-party analysis of data can be helpful for a number of reasons, including identifying previously unknown patterns or eliciting additional research questions related to potentially hazardous products. Data derived from incident reports, responses, and recall notices should be made available on the database so that third parties can assist the Commission in fulfilling its mission of protecting the public.
- The CPSC should evaluate current commercial software programs such as those developed by Intertek and Safety Research and Strategies that facilitate large database searches and result analysis. Intertek’s software, a web-based software package that enables users to easily analyze product injury data is currently a part of the CPSC the National Electronic Injury Surveillance System (NEISS). The CPSC database should incorporate and be compatible with software that allows users to identify product-related injuries, to understand how they occur, to assess trends in ways that are critical to determining where changes are needed to save lives and prevent injuries, and to assess the impact of such changes. Such software should allow keyword searching, year-to-year comparisons, and trend analysis across all variables that NEISS tracks (injury type, body part, environment in which injury occurred, age, outcome). The software should allow all stakeholders to make smarter decisions about how to protect consumers and the public health.
- The CPSC should conduct detailed analyses of the data obtained through the database to help target the types of product-related changes needed for the greatest impact, such as consumer education, product design changes, and product quality improvements.
- The database should be able to provide a historical representation of injury data so that any user can easily determine the effectiveness of safety standards and regulations.

REPORTS OF HARM

Transparency and usability

- We urge the Commission to provide easy access to information about the database, including its purpose, its potential uses, and a guide on how to access information on the database.
- The Commission should include its contact information, such as an e-mail address and phone number, in plain sight for users who need assistance with the database. Help menus and pop-up screens will be valuable.
- The incident form should distinguish information that is required to be submitted under the statute (such as submitter name, product description and harm), from other helpful but optional information (such as a product's serial number).

Timeliness of report publication to database

- “[T]o the extent practicable,” the Commission must submit each report to the manufacturer/private labeler not later than five business days after receiving it. The Commission must publish each report to the database not later than the 10th business day after transmitting the report to the manufacturer or private labeler.⁷ We urge the Commission to adhere to these deadlines. Delays will defeat the purpose of the database.
- The statute grants the Commission some flexibility in submitting the report to the manufacturer or private labeler. However, we urge the Commission to use its best effort to submit reports to the relevant company within five business days.
- The deadlines can and should be adhered to regardless of the means and form – web, telephone, paper – in which the report is received. The statute assigns the same deadlines regardless of reporting methods.
- The Commission should not apply a statute of limitations for consumer reports of incidents.

Redundancies and repeat submitters

⁷ 15 U.S.C. § 2055a(c)(1) and (c)(3)(A).

- At the workshop, participants discussed the possibility of multiple submissions of a single incident. The statute permits manufacturers and private labelers to review incident reports before they are posted to the database. In the rare event that a user repeatedly submits postings on the same incident, manufacturers and private labelers can alert the CPSC. In addition, the CPSC should remove duplicate entries before they are posted to the database.

- If additional postings of an incident contain supplemental information, the new information should be integrated into the original posting. Consumers may be unaware of how to update their postings, and may complete a new form to add information on a previously reported incident.

Submitters' contact information

- The incident report form should request that the submitter share his or her name, phone number and e-mail address (if available) to assist the CPSC in following up on the report or conducting an investigation.

- We urge the protection of consumers' private contact information. The CPSIA permits the Commission to provide consumers' contact information to the manufacturer or private labeler of the product only with the express written consent of the person who submitted the report of harm.⁸ The Act bars manufacturers or private labelers from using or disseminating consumers' information to any other party for any purpose other than verifying a report of harm. In addition to individual privacy concerns, the prohibition is meant to prevent the harassment or intimidation of consumers or other reporters by regulated companies. The Commission should emphasize that misuse of consumers' private information will not be tolerated. The Commission should reiterate the restrictions and appropriate uses for consumer contact information in all forms sent to manufacturers. We urge CPSC to take any necessary action to punish violators. In addition, the

⁸ 15 U.S.C. § 2055a(b)(6).

option to provide manufacturers with submitters' contact information should be presented to submitters without bias, allowing them to make their own choices.

Reporting forms

- All forms of reporting – via online database, telephone, and paper – should be permitted and encouraged. Reporting should be as simple and easy for those lacking access to computers and Internet service as it is for others with those tools.

Incident form design

- The incident report form should have large, easy-to-read font and language on each page of the database. Lengthy, complicated, jargon-filled forms will only serve to discourage or intimidate users attempting to complete the incident report.
- The incident report form should include a box to allow for unlimited text so that the submitter may describe the incident and his or her experience with the product in full narrative form.
- The form should include other drop-down menus, word completion technology or some other means of facilitating the reporting and producing of information that is easy for the Commission and the public to process and use. The drop-down menus can include additional information for the user to submit on the incident, including: the product name, brand name, manufacturer name, model name or number, retailer information, and broad product categories; the nature of the individual's injury, if any; the age of the injured individual; and the final disposition of the injury (hospitalization or other medical treatment).
- The CPSIA requires that persons submitting the information must also include a "verification that the information submitted is true and accurate to the best of the person's knowledge and that such information be included in the database."⁹ The verification should be included on the incident form in a clear and straightforward manner, such as a check in a box near to the online submit button.

⁹ 15 U.S.C. § 2055a(b)(2)(B)(v).

This format should suffice as a ‘signature’ that allows the information to be posted after the verification process is completed.

- Users who submit incident reports via telephone should be able to verify the truth and accuracy of their statements through the telephone conversation with Commission staff. While we suspect that incident reports in paper form will be significantly fewer in quantity than web or telephone submissions, we suggest that if a paper submitter also shares his or her phone number or e-mail address in the letter, Commission staff should be allowed to contact the submitter through a call and/or e-mail to obtain verification of his or her statements.
- The form should include a short, simple statement that informs users of the limited nature in which their contact information may be shared with and used by manufacturers and private labelers.¹⁰

Product identity

- Submitters should correctly identify the product with the best information available to them. Incident reports will be useless if the product cannot be identified. The Commission should allow and encourage the user to submit details such as model number or other product information. However, the Commission should not refuse incident reports that lack detailed information, as long as the product is accurately identified. Again, CPSC should integrate prompts and help menus to assist consumers.
- We agree with suggestions to add a software component on the incident form that permit submitters to upload photos of the products related to their incidents. These photos may allow for easier identification of the product at issue.

Web site links

- The incident form should contain links to outside web sites only if doing so will enhance the report’s accuracy. Otherwise, we are concerned that these links may unnecessarily complicate the

¹⁰ 15 U.S.C. § 2055a(b)(6).

reporting process. We also urge the Commission to be particularly discriminating when linking to web sites other than federal, state, or local government web addresses.

Incomplete forms

- The CPSC should accept forms with incomplete information and seek to fill in the gaps through further research. As stated above, if the information is useful to the public in that it identifies a product or class of products and a potential harm, then the report should be posted and made available to the public.

MANUFACTURER NOTIFICATION AND RESPONSE

- We urge the Commission to use electronic mail to notify manufacturers and private labelers because it is the most efficient, reliable mode of communication.
- We agree that a registry of contacts for manufacturers would be beneficial in efficiently carrying out the database's purpose.
- The CPSIA affords manufacturers and private labelers opportunity to respond to incident reports.¹¹ We recommend that the CPSC require that any response to an incident report also contain a verification of truth and accuracy by the representative who is submitting the response on the company's behalf (similar to the submitter's truth and accuracy statement).
- The CPSIA does not impose deadlines on manufacturer/private labeler responses and it appears that responses to reports on the database may be submitted at any time. The statute requires the agency to post the incident report 10 days after giving the manufacturer or private labeler notice of the report.¹² We urge the CPSC to adhere to this deadline, and refuse any request to delay the posting of valid incident reports onto the database while manufacturers and private labelers draft responses, conduct investigations, or other activities not specifically mandated under the database provisions. Delays will diminish the database's usefulness.

¹¹ 15 U.S.C. § 2055a(c)(2).

¹² 15 U.S.C. § 2055a(c)(3)(A).

- The CPSIA states that the provisions of CPSA 6(b) secrecy provisions are inapplicable to the database. The Commission should reject any assertion that 6(b) applies.
- We remain concerned with the potential practice relating to the provision allowing for the removal of confidential business information.¹³ We have stated previously that confidential matter is unlikely to be an issue for database submissions because information submitted by the public is by definition, not confidential. At the public workshop, an industry representative admitted that it would be rare for confidential business information to be submitted for the database. We agree. The only possible source of confidential business information would be the manufacturer or private labeler responses on the database. (Of course, once they are made, the statements no longer qualify as confidential). If somehow confidential business information is submitted for posting, manufacturers and private labelers must demonstrate confidentiality and submit supporting information to show that the information is entitled to confidential treatment.

MATERIALLY INACCURATE INFORMATION

The database should contain accurate information. The integrity and utility of the database depend upon it. We urge the Commission to take the following steps when publishing information onto the database concerning “materially inaccurate” information:

- Ensure that the desire to verify the accuracy of all parts of a report does not result in delay in publication of the report.
- Ensure that the inaccuracies are, in fact, material before delaying the posting of a report. That is, the information should be important and would make a substantial impact if published on the database. The Commission should not delay the publication of incident reports on the basis of minor, superficial errors, particularly those that are not substantive.

¹³ 15 U.S.C. § 2055a(c)(2)(C).

- Ensure that the removal of certain material inaccurate information on the database does not result, if possible, in the removal of the entire report. The removal must be limited to the materially inaccurate information alone.

- If before a report’s posting on the database, the Commission receives notice of materially inaccurate information in the report, the Commission should follow the statutory rules on how to treat the information, but it should not restart the 10-day statutory time period for posting the other information relative to the report on the database. In other words, if the 10-day time period will not be met with respect to the materially inaccurate information, the Commission should, to the extent possible, post all other information related to the report onto the database within the 10 days.

Compliance with the statutory deadlines is imperative for building and maintaining a robust and useful public database.

- The party contending that a material inaccuracy exists in an incident report must adequately demonstrate to the Commission that the information is indeed materially inaccurate.

- The Commission should reject efforts to delay or deny the posting of information on the database based upon claims by manufacturers that a submitter’s description of harm or causation is “materially inaccurate.” Such assertions are based on the person’s experience with the product and should be included.

ADDITIONAL DATABASE CONTENT

- We recommend that the database also link to other relevant CPSC content, including staff research.

- If the product that is subject to the entry has been recalled, the Commission should note it on the database, and link to the recall notice. Consumers should have access to the incident report and the recall information simultaneously.

- We agree with suggestions that search results should include recalls, closed investigations, and consumer complaints in a single search.

Respectfully submitted,

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