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BEFORE THE U.S. CONSUMER PRODUCT SAFETY COMMISSION

**ESTABLISHMENT OF A PUBLIC CONSUMER PRODUCT SAFETY
INCIDENT DATABASE**

NOVEMBER 10, 2009

Thank you to the Chairman and the Commissioners for allowing me to speak today on behalf of Public Citizen to offer our views on the establishment of a public consumer product safety incident database. My name is Christine Hines and I am Consumer and Civil Justice Counsel in Public Citizen's Congress Watch division. Public Citizen is a national nonprofit consumer advocacy organization.

In January 2008, a Public Citizen report revealed that the Consumer Product Safety Commission took an average of 209 days (a little less than eight months) to warn the public about hazardous products in the 46 cases from 2002 to 2008 in which the Commission levied fines against the manufacturers. It was clear that while information regarding dangerous products was known by the manufacturers and the agency, it was withheld for unreasonable amounts of time from parents, children and other users of these products. Consumers remained at risk while the dangerous products stayed on the market. We found that the delay in reporting dangerous products or issuing recalls was partially caused by the agency's stunning lack of urgency and lack of resources. The agency disputed our findings but did not provide any materials in support of its claims. Through a Freedom of Information Act request, we sought additional information, including the dates on which manufacturers and the CPSC became aware of hazards and the dates on which the CPSC informed the public about them. The agency refused to release its data, citing confidentiality.

In summer 2008, Congress passed the Consumer Product Safety Improvement Act (CPSIA). The CPSIA created new requirements for the CPSC, granted it new authority, created a new kind of urgency at the agency, and gave it additional resources. The provision requiring the creation of a public consumer product database is critical to protecting consumers from potential

hazards, helping to close the time gap between the manufacturer learning of a hazard and the information actually reaching consumers.

The database empowers both the agency and the public. It will allow members of the public to assist themselves in researching a product's safety record and to quickly report potential hazards. The database will also allow the agency to notify manufacturers and allow those manufacturers to respond in a timely manner. Additionally, the information on the database will be current. But most important, it will reduce the time it takes to identify and inform the public of hazardous products by including the public in the conversation on recognizing potentially dangerous products – a conversation that historically has been limited to industry and the agency.

Industry representatives have criticized the creation of a database. They are concerned about the accuracy of incident reports as well as the possibility that confidential business data will be released on the database. But the database will help responsible manufacturers by giving them feedback on potential product hazards. And the database cannot possibly include confidential business information because its contents will be generated by consumers; by definition, information in the hands of consumers cannot be considered confidential business information. Further, manufacturers' opportunity to give feedback could help ensure that the database is a credible resource, particularly when contrasted with the alternative of private entities building and maintaining their own online databases without industry feedback.

This database, if implemented properly, has the potential to address our primary concern – ensuring that critical safety information for products is shared in a timely manner among all interested parties: the Commission, other federal agencies, health professionals, consumer interest groups and most importantly, consumers.

We suggest the following safeguards or actions to assist in building a useful database.

- 1) First, we urge full compliance with the CPSIA's requirements, particularly the provisions regarding time limits. The database provision allows time for the Commission to receive and review incident reports and forward them to manufacturers. It also allows manufacturers sufficient time to report on inaccuracies or other objections before reports are posted. The agency must comply with the time requirements to ensure that the database fulfills its purpose. Delays in posting incident reports will only increase the chances that a hazardous product will harm unaware consumers. We propose that the database be engineered to automatically publish incident reports to the public within the required 10 business days of receipt. An automatic posting, as opposed to a manual posting, may help to curtail the staff's work load in addition to ensuring timeliness.
- 2) Second, the CPSIA specifically identifies certain members of the public whose reports will be included in the database: consumers, government agencies, health care professionals, child service producers, and public safety entities. We recommend that the database provide a means for reporting parties to identify, if they choose, the group they belong to when submitting reports. This will help the agency to attach certain weight to reports based on the reporter.
- 3) We urge the Commission to allow users to submit as much detail as possible regarding a product and ensure that the information is posted on the online database, so that consumers or third-party groups can adequately research and obtain useful data on product histories.
- 4) The Commission's report to Congress on the implementation of the database devoted several pages to a description of its public affairs campaign. While we agree that public

outreach is important for educating consumers, the report could have included more detailed information on the agency's plan for the database itself. The plan included three screen mock-ups, but we would have liked to review data that would typically appear in search results or in report submissions. In addition certain details were left unexplained, such as what information would be provided to individuals who follow the "click for more details" link shown on the search results mock-up page.

- 5) Finally, the industry portal is potentially troublesome. The portal may allow for ease of communication between the agency and industry regarding incident reports as well as protection of trade secrets and other legally protected data. But the portal must not become a harbor for information that ultimately should be made available to the public. We urge the Commission to use extreme caution when determining which information to "segregate" and which information to release to consumers.

Public Citizen supports the Commission's efforts in implementing a vigorous consumer product database, and we are committed to educating consumers about the database and ensuring that they will be able to use this important tool to the fullest extent possible. Thank you for holding this hearing.