



U.S. CONSUMER PRODUCT SAFETY COMMISSION
BETHESDA, MARYLAND

Public Hearing
Establishment of a Public Consumer Product
Safety Incident Database

Tuesday, November 10, 2009
9:00 a.m. -12:00 noon

Opening Remarks

CPSC Staff

Oral Presentations

Questions from the Commission and CPSC staff after each Panel

Panel 1

Association of Home Appliance Manufacturers (AHAM) – Wayne Morris
U.S. Chamber of Commerce Institute for Legal Reform – Cary Silverman
Learning Resources – Rick Woldenberg

Panel 2

Consumer Federation of America – Rachel Weintraub
Consumers Union – Ami V. Gadhia
Public Citizen – Christine Hines

Panel 3

Door and Access Systems Manufacturers Association (DASMA) – Leland Badger
Werner Co. – Counsel to Werner (McDermott Will & Emery) - Eileen O'Connor
Exponent Failure Analysis Associates – Robert Lange
Safety Research & Strategies, Inc. – Sean Kane

Closing Remarks

Adjournment

Wayne Morris
Association of Home
Appliance Manufacturers

Stevenson, Todd

From: Morris, Wayne [WMorris@AHAM.org]
Sent: Tuesday, November 03, 2009 4:53 PM
To: CPSC-OS; Stevenson, Todd
Cc: Messner, Kevin; Samuels, Chuck; Ellis, Jennifer; Morris, Wayne
Subject: Establishment of a Public Consumer Product Safety Incident Database
Attachments: AHAM Testimony 111009 Database.pdf

Importance: High

Todd,

Enclosed are the comments of the Association of Home Appliance Manufacturers (AHAM) with regard to the November 10, 2009 Public Hearing on Establishment of a Public Consumer Product Safety Incident Database.

Please contact me if you have questions.

As per my previous request, I plan to speak to these comments and questions at the Hearing on November 10, 2009.

Thank you.

Wayne Morris
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Establishment of a Public Consumer Product Safety Incident Database

Oral Comments of Wayne Morris on behalf of the Association of Home Appliance Manufacturers (AHAM)

Hearing Date: November 10, 2009

I. Introduction

- A. The Association of Home Appliance Manufacturers (AHAM) represents manufacturers of major, portable and floor care home appliances, and suppliers to the industry. AHAM's more than 150 members employ tens of thousands of people in the U.S. and produce more than 95% of the household appliances shipped for sale within the U.S. The factory shipment value of these products is more than \$30 billion annually. The home appliance industry, through its products and innovation, is essential to U.S. consumer lifestyle, health, safety and convenience. Through its technology, employees and productivity, the industry contributes significantly to U.S. jobs and economic security.
- B. Within the law's provisions, AHAM wants to work with the CPSC to develop a useful mechanism which, to the extent feasible, ferrets out wrong, misleading, and harmful information and allows brand owners and sellers timely and effective input on the reports and information the CPSC receives for inclusion on the database. We want to see a system that works well for all parties.

II. Contacting Manufacturers

- A. The CPSIA gives manufacturers only 10 days after the CPSC transmits a report to the manufacturer to respond to the report. Manufacturers will have a difficult time investigating the report within that period of time. Accordingly, it is critical that the correct person receive the report.
- B. The CPSC has stated that it will develop a system for companies to register contact information with the CPSC so that reports are timely delivered to the proper person within the company. **AHAM has several questions about its implementation.**

- C. How will this registration process work? Will reports be delivered by email or other electronic means? Will manufacturers be able to specify the desired method of communication? How will the CPSC account for the fact that there may be different contacts for different product categories or different brand names within one company? How will the system be kept up to date?
- D. Many companies manufacture more than one brand. And many brands are manufactured by multiple manufacturers at any given time. Accordingly, reports will likely identify a product by brand name, and that name may not always correspond easily with a manufacturer name and contact. It will be extremely complex for the CPSC to identify which manufacturer should receive a report, especially in instances where a single brand has multiple manufacturers. How will the CPSC address this?

III. Database Content

- A. AHAM understands that reports the Commission receives directly from consumers, government agencies, health care professionals, child service providers, and public safety entities potentially will be included in the database beginning on the date the database becomes active.

IV. Receiving, Reviewing, and Posting Reports and Manufacturer Comments

- A. *Consumer reports*: How will the Commission ensure that reports are valid, not slanderous, clear and descriptive enough to provide value to other consumers, to the Commission, and to the manufacturer identified in the report? How will the Commission evaluate reports in a timely fashion? The Commission must have a clear review process and/or criteria for which reports will be posted and which will not. How will the CPSC factor into its evaluation of consumer reports the unavailability of the product in question and/or the failure of the consumer to return product for inspection?
- B. The CPSIA requires the Commission to give the manufacturer an opportunity to submit comments in response to reports. Manufacturers can request such comments be posted in the database. The CPSIA requires that the report and the comments be posted at the same time or that the comments be posted as soon as practicable after the report. How will the Commission evaluate the comments it receives in response to a report and still post the comments in a timely manner? How will the Commission post comments to ensure that they are tied to the reports (e.g., that the report is always displayed with the comments)?
- C. How will the CPSC decide whether to remove a report, correct it, or add information to the report? What are the criteria for adjudication? How will it do so in the time allotted by the CPSIA?

- D. *Inaccurate Reports*: What will manufacturers need to show to demonstrate that a report is false or inaccurate? If manufacturers comment on a report after the initial 10 day period, will those comments be considered for purposes of correcting or removing an inaccurate or false report? How will the Commission ensure that reports are valid and not trade disparagement or based on rumor?
- E. The Commission must give effect to every section of the statute—thus, if it cannot act on manufacturer comments, we believe it should not include the report in the database until it can complete that review.
- F. Consumer contact information and verification must be included in the report for the Commission, in order to be considered for inclusion in the database (even if the consumer does not consent to his or her name to be disclosed to the manufacturer). How will the Commission verify that those making the reports are who they say they are, and that the reports are not made by competitors, interest groups, or others motivated to “salt” the database? When a manufacturer does not have access to the consumer's contact information, how (if at all) will the Commission help investigate the veracity of the report?

V. Confidentiality

- A. How will determinations of confidentiality be made once a manufacturer requests confidential treatment of information in a report? How will redactions be made?

VI. CPSC Disclaimers

- A. CPSIA requires that the CPSC provide clear and conspicuous notice to database users that the Commission does not guarantee the accuracy, completeness, or adequacy of the contents of the database.
- B. This notice should appear on every “page” of the report and in every printable format of the report. How will the CPSC ensure that the notice always appears on printed reports?

Thank you for the opportunity to present this information, comments and questions.
Sincerely,



Wayne E. Morris
Vice President, Division Services
Submitted November 3, 2009

Stevenson, Todd

Gary Silverman
Shook, Hardy & Bacon LLP

From: Silverman, Cary (SHB) [CSILVERMAN@shb.com]
Sent: Tuesday, November 03, 2009 3:43 PM
To: CPSC-OS
Subject: "Establishment of a Public Consumer Product Safety Incident Database"
Attachments: DC-170117-v1-CPSC_Online_Database_Testimony.pdf

Todd A. Stevenson,
Office of the Secretary, Consumer
Product Safety Commission, 4330 East
West Highway, Bethesda, Maryland 20814

Dear Mr. Stevenson:

Attached please find the text of my oral presentation on "Establishment of a Public Consumer Product Safety Incident Database," which I will present on behalf of the Institute of Legal Reform of the U.S. Chamber of Commerce at the Commission's November 10 hearing. I have completed the online registration form and look forward to participating.

If you need any additional information, please let me know.

Thank you,
Cary Silverman
Of Counsel
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<<DC-170117-v1-CPSC_Online_Database_Testimony.pdf>>

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**TESTIMONY OF CARY SILVERMAN, ESQ.
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BEFORE THE U.S. CONSUMER PRODUCT SAFETY COMMISSION

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

**ON BEHALF OF THE U.S. CHAMBER OF COMMERCE
INSTITUTE FOR LEGAL REFORM**

NOVEMBER 10, 2009

Thank you for allowing me to testify on behalf of the U.S. Chamber of Commerce's Institute of Legal Reform (“ILR”) in regard to implementation of the new online public database mandated by Congress in the Consumer Product Safety Improvement Act of 2008 (“CPSIA”). I offer these comments today for the purpose of ensuring that the new database serves its intended purpose: to provide accurate information on product hazards so that consumers can protect themselves and make informed decisions. In designing and implementing this system, safeguards are needed to verify the accuracy of online reports, to protect the public from misinformation, and to guard against misuse that can unduly and permanently tarnish the reputation of a business or a product.

BACKGROUND

By way of background, I am Of Counsel in the Washington, D.C. office of Shook, Hardy & Bacon L.L.P. I am a member of the firm's Public Policy Group, chaired by my colleague, Victor E. Schwartz, who would be with me today but for a prior commitment. I graduated from George Washington University with a law degree and Master of Public Administration (MPA) degree in 2000, where I graduated with honors. I received a Bachelor's degree in Management Science from the State University of New York College at Geneseo in 1997. I co-authored an article, “Consumer Product Safety Reform Could Mean a Boon for Safety or a Boondoggle for Plaintiffs' Lawyers: It's Up to the CPSC, State AGs, the Court, and You,” 36:43 Prod. Safety & Liab. Rep. (BNA) 1106 (Nov. 3, 2008), which was recognized with a Burton Award for excellence in legal writing.

DATABASE BASICS

Section 212 of CPSIA requires the U.S. Consumer Product Safety Commission (CPSC) to implement a publicly accessible, searchable database of consumer product incident reports. The database will permit consumers, government agencies, health care professionals, child service providers, and public entities to submit reports of harm relating to the use of products regulated by the CPSC. The CPSIA requires that a report include, at minimum: (1) a description of the product; (2) identification of the manufacturer or private labelers; (3) a description of the harm; (4) contact information for the person submitting the report; and (5) a verification by the person submitting the information that the information "is true and accurate to the best of the person's knowledge."¹ Contact information of individuals submitting information to the database is confidential and will only be shared with the manufacturer if the individual submitting the report provides his or her express written consent.

Within five days of receiving a report, the CPSC must, to the extent practicable, transmit it to the manufacturer. The manufacturer then has an opportunity to submit comments to the Commission that state the company's position and request that its comments appear in the database alongside the report. The manufacturer also has the opportunity to identify any confidential information that appears in the report and request that the Commission redact such material before it appears online. The CPSIA provides, however, that the CPSC must post the report online within ten days of providing it to the manufacturer. This provides a very short window for the manufacturer to investigate and comment on the report.² If a manufacturer submits a comment after the CPSC has

¹ The CPSIA does not include a sanction for providing inaccurate information.

² The ILR commends the CPSC for its plan to implement mechanisms that will provide near instantaneous notice to manufacturers and retailers that have registered their contact of reports involving their products. Such alerts will provide manufacturers with an opportunity to quickly review and investigate the report, take any action necessary to protect the public, and comment on the report. It is particularly imperative that manufacturers and retailers receive such reports at the earliest opportunity given the extremely short ten-day period provided for product sellers to submit a comment stating its position before the report appears online.

published the report online, then the CPSIA states that the comment is to appear “as soon as practicable thereafter.”

The database, tentatively to be located at “SaferProducts.gov,” is to go live no later than March 11, 2011 in accordance with the 18-month deadline set in the CPSIA.

DANGER OF INACCURATE INFORMATION

In the age of the internet and 24-hour news, information can spread in a moment’s time around the world. There is a danger that inaccurate information regarding a consumer product can irreversibly damage the reputation of a company and the sales of its product. In addition, inaccurate reports provide a disservice to consumers, who may become concerned about a product they have purchased that actually poses no danger or who are misled in their purchasing decisions by such inaccurate reports. While the CPSIA provides that the website must have a “clear and conspicuous” notice that the CPSC “does not guarantee the accuracy, completeness, or adequacy of the contents of the database,” the information will, nevertheless, appear on the website of a federal agency in an official “product safety incident database” and, regardless of any fine-print disclaimer,³ is likely to be considered and relied upon by many in the public as absolutely valid. As the mock up of the website reads, the database is, after all, a “service of the Consumer Product Safety Commission.”

There are various reasons why inaccurate reports may be posted on the CPSC’s new database.⁴ First, the ease and informality of submitting an online report may result in careless submissions. For instance, such reports might misidentify the manufacturer or the product model. Second, it is possible that an individual affiliated with a competing

³ The CPSC should place this language in bold eye-catching letters so as to warn consumers that reports do not represent the views of the agency, but represent unverified information. Although the mockup of the website in the September 10, 2009 CPSC report to Congress states that is only designated to highlight possible features, it does *not* display any “clear and conspicuous” notice that the CPSC, “does not guarantee the accuracy, completeness or adequacy of the contents of the database.”

⁴ There may also be situations in which users of the online database submit reports regarding products that are outside of the scope of CPSC’s jurisdiction and should be removed for that reason. This includes, for example, reports regarding food or medicine.

product could submit a false report to gain an advantage over a competitor. Finally, there is potential for the database to be misused to tarnish the reputation of a company for the purposes of pressuring it into an unfair settlement in product-related litigation⁵ or in furtherance of other ulterior motives.

Whatever its source, as the CPSC develops its online public database, it is particularly important that it implement safeguards and procedures for promptly identifying and limiting the posting of inaccurate information and for promptly removing inaccurate information should it be released to the public.

RECOMMENDATIONS

The CPSC's September 10, 2009 report to Congress on the Implementation of a Searchable Consumer Product Safety Incident Database properly recognizes, "Manufacturers have a strong interest in verifying the accuracy of consumer complaints, protecting proprietary information and other trade secrets, and in rapidly responding to product incident reports." (page 7). It is imperative that the CPSC act proactively to prevent inaccurate information from reaching the public and, if posted, to promptly remove such material from the database. As the Commission develops the database, we recommend including two important features. The first would address inaccurate information before it is posted. The second would address inaccurate information that has already been released to the public.

1. A Means of Identifying Inaccurate Information Before it is Released to the Public

It is a well known worn and valid expression in the law of defamation that no matter how one tries, "the truth rarely catches up with a lie." *Gertz v. Robert Welch, Inc.*, 418 U.S.

⁵ A database without adequate safeguards could create a government-sanctioned forum for plaintiffs' lawyers or their surrogates to defame manufacturers. Unsubstantiated database reports may also permit plaintiffs' lawyers to launch "fishing expeditions" against manufacturers in discovery and give rise to consumer protection or product liability lawsuits based on rumor and designed solely to extort settlement funds. These superfluous costs, in addition to unjustly harming the product manufacturer, may inflate product prices for consumers.

323, 344 n.9 (1974). For this reason, it is essential that the Commission address how it will identify and correct inaccurate information *before* it is posted online.

Section 212(c)(4) provides that if the Commission determines information in a report (or comment) is inaccurate, it can decline to add the information to the database, correct the materially inaccurate information, or add information to correct the inaccurate information.

If a report submitted to the Commission includes confidential material, such as trade secrets, then Section 213(c)(3) explicitly provides a means for a manufacturer to designate information as such. Such a designation triggers the need for a Commission determination as to whether the information qualifies as confidential before posting the report online. If the report contains confidential material, then the Commission may not include the report in the public database until it has redacted the confidential information.

The Commission should develop a similar process for addressing potentially inaccurate information. While Section 212(c)(3) provides a mechanism for manufacturers to designate information as confidential or generally comment on a report, it does not specifically provide a means for a manufacturer to request that the CPSC not post the report because it contains inaccurate material. The Commission has authority to provide such a mechanism based on its obligation to not post inaccurate information in the database and through the manufacturer's ability to comment on reports.

When developing the "industry portal," the Commission should provide a means for a manufacturer to flag information in a report as inaccurate, similar to the way that a manufacturer will be able to designate information as confidential. The system might provide a tool for the manufacturer to highlight statements in the report as either containing proprietary information or inaccurate information. For instance, information the manufacturer believes is inaccurate might be highlighted with a yellow flag, while proprietary information might be highlighted with a red flag.

In either case, a flagged report should immediately be referred to CPSC staff and require a determination, and a lifting of the flag, prior to public posting. If information in a report is challenged as inaccurate before it is posted online, then the Commission should not post the report until it completes an investigation and finds the information is, indeed, accurate, or makes the necessary corrections.

2. A Means of Promptly Removing Inaccurate Information After it Has Been Posted

Section 212(c)(4) also provides that if the Commission determines, after investigation, that information *previously posted online* is materially inaccurate, then the Commission is required to remove or correct the information within seven business days. Given the short time frame for manufacturers to comment on reports prior to publication, and the confidentiality of the source of the information, it is likely that information uploaded to the public database may only be revealed as inaccurate long after its publication. For this reason, it is also important that the Commission develop a means to *promptly* remove or correct inaccurate information *after* it has posted the report online.

Through the industry portal, manufacturers should have the ability to flag past reports as containing inaccurate information. Information of questionable accuracy should be temporarily removed from the website pending a Commission determination of its accuracy.

Section 212(c)(4) provides that the Commission must remove or correct inaccurate reports within seven days *after it determines* the information is inaccurate. The CPSIA, however, does not provide a specific time period for the Commission to *initiate and complete an investigation* of whether or not challenged information is indeed inaccurate and to reach such a determination. Unless the information is temporarily moved pending investigation, it is possible that inaccurate information will remain online indefinitely. If material challenged as inaccurate remains online, then it is imperative that the Commission adopt a reasonable, but limited, time period for completing its investigation.

The database concept is intended to protect the public and be a positive instrument for product safety. But like any other instrument, it should be tailored to do public good and not unfair and irreparable harm.

* * *

Thank you for the opportunity to participate in this public hearing and for considering the views of the ILR.

Stevenson, Todd

Richard Woldenberg
Learning Resources, Inc.

From: Rick Woldenberg [rwoldenberg@learningresources.com]
Sent: Tuesday, November 03, 2009 12:10 AM
To: CPSC-OS
Subject: Implementation of a Public Consumer Product Safety Incident Database

Dear Sir,

I have registered to present at the November 10th CPSC hearing on the Public Consumer Product Safety Incident Database. Below is a summary of my remarks:

"The Public Database can be an excellent tool to build consumer confidence in consumer products and to facilitate reasonable access to data on product incidents. The database, however, presents significant risks to the business community if overly broad or if insufficiently vetted. We urge the agency to use caution ("crawl, walk, run") to avoid creating a litigation breeding ground. If incidents are uploaded into a publicly available database before being properly vetted, we anticipate a range of problems: (a) unjustified loss of confidence in products, (b) weakened brands, (c) class action lawsuits, (d) competitive or other "mischief", (e) trial by accusation, (f) trial by media and so on. The database might better serve the public interest if the publicly available data were restricted to incident reports relating to recalls (this would be let the CPSC be the arbiter of the seriousness of the reports, and likewise would only publish data if it were sufficient for the agency and the manufacturer to take action). The risk of destroying companies or markets with early data release is quite significant, which is why using recalls as a threshold might protect everyone's interests (even in the case of a death incident). It is notable that the planned product incident database in Canada is expected to be private for the exclusive use of Health Canada.

A database available to the CPSC and to manufacturers (but not the general public) may serve the interests of the regulators and business community by making data readily available for study.

The agency will need to define when an incident should be reported. The determination of reportable incidents will necessarily reflect judgment, especially on the part of businesses. These lines are "fuzzy". We recommend that decisions made in good faith be respected, even if the CPSC later disagrees with the judgment. This is akin to the Business Judgment Rule.

In a litigious society like the United States, the database presents significant liability worries. It is clear that the ability to "state a case" is different than having a "winning case" under American law. Thus, weak accusations have a great potential to do harm if given more credibility in a government-sponsored database. It seems likely that a database with unfettered access to accusations, regardless of merit, would lead inevitably to significant market damage or liability from litigation. This could be particularly devastating for small businesses without the depth of capital or skill sets to withstand high stakes legal disputes. We are concerned that every submission in the database will be discoverable, even if not publicly available, thus creating a plaintiff lawyer's dream at the federal government's expense. This is no idle risk - for example, Mattel paid fines to three sets of regulators and settled a class action lawsuit for tens of millions of dollars - for lead-in-paint toy recalls that generated no reported injuries. What small business could survive that kind of legal assault? Given the likelihood of rising liability among manufacturers or retailers of consumer products, it is also likely that product liability insurance will rise in cost substantially or become more difficult to obtain. The high consequential costs spawned by the creation of this database must be weighed carefully against its purported benefits.

The database may place significant and high pressure demands on businesses to promptly respond to each incident reported to the database. This will be very disruptive to business operations. Given the typical legal sophistication of many small businesses, this could put small businesses at a significant disadvantage to their larger and more sophisticated business rivals."

Please let me know if you require more detail. I do not intend to use a Powerpoint presentation or the like.

Thank you.

Sincerely,

Richard Woldenberg
Chairman
Learning Resources, Inc.

Stevenson, Todd

From: Rachel Weintraub [rweintraub@consumerfed.org]
Sent: Tuesday, November 03, 2009 3:39 PM
To: CPSC-OS
Subject: Establishment of a Public Consumer Product Safety Incident Database
Attachments: Database testimony 11 09 final.pdf

Please accept the attached as my testimony for the hearing entitled, "Establishment of a Public Consumer Product Safety Incident Database" scheduled for November 10, 2009.

The attached testimony will be presented by Rachel Weintraub with Consumer Federation of America on behalf of Consumer Federation of America, Consumers Union, Kids in Danger, Public Citizen, the Scientific Integrity Program of the Union of Concerned Scientists and U.S. Public Interest Research Group.

Thanks,
-Rachel

Rachel Weintraub
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Consumer Federation of America

Statement of

Rachel Weintraub

Director of Product Safety and Senior Counsel

Consumer Federation of America

Before the

U.S. Consumer Product Safety Commission

Establishment of a Public Consumer Product Safety Incident Database

November 10, 2009

I. Introduction

Chairman Tenenbaum and Commissioners Adler, Moore, Nord and Northup. Thank you for holding this public hearing and for providing me with an opportunity to speak before you today. My name is Rachel Weintraub. I am the Director of Product Safety and Senior Counsel with Consumer Federation of America (CFA). Consumer Federation of America is a non-profit association of more than 280 pro-consumer groups, with a combined membership of 50 million people that was founded in 1968 to advance the consumer interest through advocacy and education. I am offering this testimony on behalf of Consumer Federation of America, Consumers Union, Kids in Danger, Public Citizen, the Scientific Integrity Program of the Union of Concerned Scientists and U.S. Public Interest Research Group.

The U.S. Consumer Product Safety Commission, before passage of the CPSIA, did not provide consumers with adequate information about important safety-related problems regarding products they may own or may be considering purchasing. While CPSC's web site provides recall information, it does not include consumer complaints or other information about specific products that is geared to the public.

Current law requires manufacturers to report product safety problems to CPSC and the Commission has a hotline to which consumers can report information about products, but such information rarely gets disclosed to the public, and if it is disclosed, is not disclosed promptly. Further, once CPSC has information about a safety problem – including problems identified from consumer complaints – the Commission is required by law to inform manufacturers if it intends to disclose such information to the public. Unfortunately, because the process between CPSC and manufacturers can sometimes take years, the information may languish with CPSC before it

is finally disclosed. If the product is not recalled, consumer complaints about it may never be disclosed, and important safety information may be withheld from the public.

One reason why consumers do not have access to key information about consumer products is because of a provision in the Consumer Product Safety Act - Section 6(b) - that has the result of almost always withholding product safety information from consumers. In addition, lawsuit records and settlements are often sealed and manufacturers have been documented as telling customers they are the first to complain of a problem – even if they have knowledge of other similar complaints.

As the recalls and injuries in 2007 led Congress to consider product safety reform in-depth, consumer advocates often pointed to the chilling effect of Section 6(b) of the Consumer Product Safety Act. This provision, unprecedented among safety agencies, requires CPSC to obtain prior approval from manufacturers before they release any information about their products to the public. While technically CPSC can overrule the company's veto of the release of data, in reality, the threat of a lawsuit against the agency has always been enough to stop CPSC from releasing information. That, coupled with CPSC's need to work incredibly hard to convince companies to undertake some recalls, leads to long delays between when CPSC knows a product may be deadly and when they alert consumers to that danger, if ever.

Consumers therefore operate under a veil of ignorance -- missing vital safety information that manufacturers and CPSC may have. While 6(b) still remains as part of the Consumer Product Safety Act, there remains an imbalance of who knows what product safety information when. Consumers who purchase and use the product too often are the last to know about critical product safety information, unless they are the unlucky ones who first discover the product's

flaw. The public database, created by section 212 of the CPSIA, will serve to lift that veil and allow consumers to make informed decisions – providing them with access to information on safety as well as a mechanism to share information that they discover.

The public database will go a long way towards increasing transparency at CPSC and ensuring that consumers will have prompt access to important information on known product hazards. Such information should not be kept secret from the public.

Implementation of an effective database also will help dispel a culture of secrecy that for too long has harmed the larger work of the agency, discouraging the free exchange of information among CPSC scientists and technical staff, and the release of CPSC research to the public.

The CPSC's Injury Information Clearinghouse aggregates data (e.g. injuries and deaths) about product hazards and incidents received from numerous sources. The Clearinghouse is also charged with disseminating such statistics and information to the public. However, if a consumer wants to learn valuable information from the database about the safety record of a particular crib or stroller before purchasing it for a baby, she or he would not be able to obtain it, or any other product-specific information (e.g., the product's brand name).

The history of the Stand 'n Seal, a spray-on waterproofing sealant for tile grout, illustrates the need for a consumer database. According to an October 8, 2007 article in the *New York Times*, after a new ingredient was added to Stand 'n Seal in the spring of 2005, "calls from customers, emergency rooms and doctors started to pour into poison control centers and, initially in smaller numbers, to the Consumer Product Safety Commission's own hot line."¹ One child,

¹ Lipton, Eric, "Dangerous Sealer Stayed on Shelves After Recall," *New York Times*, October 8, 2007.

stopping to talk to his father who was using the sealer, suffered damage to 80 percent of the surface area of his lungs.² With complaints mounting, the manufacturer's chief executive told staff answering the company's consumer hotline not to tell customers that others had reported similar complaints because doing so "may cause unnecessary public concern."³ "Nearly three months passed between the time [the manufacturer] first received a report of an illness and the official recall by the Consumer Product Safety Commission, a period during which dozens were sickened."⁴ The CPSC officially recalled the product on August 31, 2005. In the press release, CPSC acknowledged, "88 reports from consumers who have had adverse reactions after using the aerosol product, including 28 confirmed reports of overexposure resulting in respiratory symptoms for which medical attention was sought for coughing, irritation, difficulty breathing, dizziness and disorientation. Thirteen individuals required medical treatment, including overnight hospitalization."⁵ Due to restrictions under 6(b), the Commission did not immediately disclose critical safety information to the public at that time and 6(b) delayed public notification of these severe health effects. Also due to 6(b), consumers usually operate in the dark, lacking vital safety information that manufacturers and CPSC may have. The public database will enable consumers to make informed decisions – with adequate information on safety.

During the drafting and debate over the CPSIA last year, when it became clear that industry would block any attempt to remove the gag order that is section 6(b) of the Consumer Product Safety Act, the idea to include instead a consumer database – collecting in one place all the hazard and safety reports that come to the Commission from sources other than a report from

² Ibid.

³ Ibid.

⁴ Ibid.

⁵ CPSC Press Release, "CPSC, Tile Perfect Inc. Announce Recall of Stand 'n Seal Grout Sealer Due to Respiratory Problems," August 10, 2005, available online at <http://www.cpsc.gov/CPSCPUB/PREREL/prhtml05/05253.html>.

a manufacturer or private labeler – began to take shape. This public database would provide government, consumers, advocates, business and the media with information on product hazards.

II. Section 212 of the CPSIA

The CPSIA is clear about what is required in the “Publicly Available Consumer Product Safety Information Database.” Section 212 of the CPSIA amends section 6 of the CPSA. The provision states that subject to appropriations, the Commission shall “establish and maintain a database on the safety of consumer products, and other products or substances” regulated by the Commission. The provision further clarifies that the database must be publicly available, searchable, and accessible through the CPSC website. This requires CPSC to develop a user friendly format that will encourage submissions and inquiries.

Section 212 states that the contents of the database will include, “reports of harm relating to the use of consumer products . . . that are received by the Commission from consumers; local, state, or federal government agencies; health care professionals; child service providers; and public safety entities” as well as reports under Section 15(c) of the CPSA and comments received from manufacturers or private labelers in response to the reports. Section 15(c) includes actions CPSC takes based on product hazards reported to them by companies.

Section 212 also specifies what type of information should be collected for inclusion in the database, specifically: a description of the product; identification of the manufacturer or private labeler; a description of the harm related to the use of the product; contact information for the reporter, including a verification of the information and anything else CPSC deems in the public interest.

The statute also clarifies how the dataset should be organized. The database should be searchable by date of report, the name of the product as well as model and other names given by

the manufacturer and anything else CPSC deems in the public interest. In addition, the database cannot disclose the name of or contact information for an individual consumer using the database, in order to protect consumer privacy.

III. Suggestions for Interpretation of Section 212

Since the statute gives CPSC discretion to implement provisions of the Database consistent with what the Commission deems is in the “public interest,” we offer the following suggestions for interpreting content and features that are in the “public interest” which should provide assistance to CPSC as the agency develops the database:

- CPSC should make the entry form or phone script for those reporting to the database clear and easy to follow. Every effort should be made to encourage as many details as possible in the report.
- Lack of any specific information, such as a model number, should not stop the process or prevent a report from inclusion in the database. The manufacturer name might be different from the name on the product – with many licensing agreements, especially in children’s products, consumers will have to be detectives in some cases to find the correct manufacturer name, along with the brand name it is sold under. The form and/or phone script should give detailed instructions on possible places to look for this sometimes hidden information.
- Once detailed information is collected, CPSC has five business days to report to the manufacturer to give them the ability to refute or correct information in the report. The law requires CPSC to post the information within 10 days of reporting it to the manufacturer; it is imperative that this timeline be met for the database to be effective.

- After entry, the information must be organized in such a way that consumers and others can find answers easily. CPSC must build in functionality to allow for searches based upon specific products, all of the various product names (including common misspellings), types of injury, and uses of products.
- CPSC should also link to other relevant information within the database, including staff research. If the product that is subject to the entry has been recalled, CPSC should note that and link to the recall notice. If it is recalled as a result of the complaint or at a later date, that information should also be added. Consumers should have access to both the report of the hazard and the recall information at the same time.

Public access to information is vital to safety. Simply allowing consumers access to the safety record of products will increase safety and encourage the speedy removal or redesign of unsafe products. Allowing consumers to report problems they encounter with products will also help the Commission to do its job of protecting the public from unsafe products.

We also hope that CPSC will use this information to analyze this valuable data and mine it for trends and emerging problems.

IV. Comments Regarding CPSC's report to Congress on the Database

In September of this year, CPSC issued a report to Congress about its efforts to implement section 212 of the CPSIA.

A. Strengths of the Report

CPSC makes clear that it will meet the March 2011 deadline for implementation. We applaud this development since the earlier information will be available to consumers, the more informed consumers will be about making decisions about product safety. Second, CPSC

outlines an extensive public outreach campaign to encourage use of the database and other CPSC resources.

We agree that the strength of the database is contingent upon the data that is included within it. Ensuring that consumers and others know about the database, both as a place to report as well as to access data, is a critical to the effectiveness and utility of the information included in the database. We also applaud the priority that CPSC places upon improving its ability to identify risks and respond quickly, particularly that the database is intended to “enhance the quality, value and accuracy” of the data collected. We support the work of the Commission to eliminate the information “silos” that have existed for years at the Commission. The plans to integrate the database with other CPSC programs and information is vital to assisting CPSC with their work to reduce product hazards as well as enable consumers to have access to all sources of information from one portal.

B. Suggestion for Improvement

Much of the focus of the report seems to be upon individual consumers reporting their experiences with products and then using the database to research purchases. However, the needs of all users should be integrated into the planning, evaluation, outreach and use of the database. The users, as articulated in part by the statute, will include consumers, industry, consumer organizations, health care providers, child care providers, reporters, researchers and others.

In addition, we urge CPSC to address how it will integrate pre-database incident data into the new system. It is vital to include incident data that pre-dates the database into the new repository in order to ensure that the database is robust, and any analyses of new data can

adequately assess risks posed by all data collected by the agency, not just that data collected after the database is up and running.

Further, we recommend that a timely and transparent appeals process be created so that when CPSC redacts, corrects, or removes data, the complainant can show why such information should be included. Industry may use a broad brush when making determinations about what information should not be made public because they claim it is a “trade secret.” In order to prevent abuses of “trade secret” protections, and to ensure that the database serves its purpose and the statutory directive, clear guidelines should be used and noted when decisions are made to include, amend or exclude specific information.

V. Criticisms of the Database

Some industry representatives have expressed concerns that competitors will use the CPSC database to their advantage to discredit other companies. The CPSIA database provision addresses this issue by allowing companies to refute complaints on the database, and requires the CPSC to remove or correct any false information. Concerns have also been raised that such a database would result in attorneys “shopping” for personal injury clients. The provision addresses this issue by prohibiting CPSC from disclosing the names and addresses of consumers on the database – therefore, identifying a particular consumer would not be possible.

VI. Conclusion

We strongly support the existence of the database that will create a mechanism where consumers and others can report and obtain critical safety information about the products they use every day. We are encouraged by the Commission’s work on the database thus far, and look forward to working with the Commission as the database is implemented.

This database will help CPSC to do its job more effectively. The public posting of consumer, health care professional and public safety officials' information about the known hazards posed by specific consumer products means that CPSC will be able to better identify emerging problems with dangerous products and take steps to remove such products from the marketplace and protect consumers more quickly. This database will help save lives.

Ami Gadhia
Consumers Union

Stevenson, Todd

From: Gadhia, Ami [GadhAm@consumer.org]
Sent: Tuesday, November 03, 2009 3:39 PM
To: CPSC-OS
Cc: Duncan, Janell; Mays, Don
Subject: Testimony for Implementation of a Public Consumer Product Safety Incident Database
Attachments: Database hearing testimony Nov 2009.pdf

To Whom It May Concern:

Please find attached Consumers Union's testimony for next Tuesday's public hearing on the Implementation of a Public Consumer Product Safety Incident Database.

Thank you,

Ami Gadhia

Ami V. Gadhia
Policy Counsel
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Consumers Union

Nonprofit Publisher
of Consumer Reports

Statement of

Ami V. Gadhia
Policy Counsel
Consumers Union

Before the
U.S. Consumer Product Safety Commission

Establishment of a Public Consumer Product Safety Incident Database

November 10, 2009

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Chairman Tenenbaum, Commissioners Adler, Moore, Nord, and Northup, and CPSC staff, thank you for the opportunity to testify on the vital consumer safety issue of the public database. I am Ami Gadhia, Policy Counsel with Consumers Union (CU), the non-profit publisher of *Consumer Reports*®. Consumers Union wholeheartedly supported the inclusion of a robust public database provision in the Consumer Product Safety Improvement Act (CPSIA) signed into law last year, and we are pleased that the agency's implementation of this directive is underway.

Consumers Union is pleased to sign onto the testimony that Consumer Federation of America has submitted for today's public hearing. In addition, we wish to make these additional comments regarding the public database.

As noted above, CU strongly supports the development of a robust public product safety database at the agency. The critical role of a public complaint database in protecting consumer safety has been demonstrated in the context of the motor vehicle safety database maintained by the National Highway Transportation Safety Administration (NHTSA), and we hope that the CPSC's database will serve a similar safety function. It was independent mining of NHTSA's complaint data base that uncovered the Bridgestone/Firestone tire failure several years ago. Researchers who raised this to public attention probably helped save the life of hundreds of people. In addition, consumer safety was advanced last year when researchers working with the database uncovered a high failure rate of Chinese tire valve stems. That discovery from the NHTSA complaint database resulted in a recall of millions of tire valves used as aftermarket equipment across the country. These two examples alone demonstrate that a robust, public complaint database can be used by the public and researchers to alert them and the agency – and, ultimately, the public – to emerging hazards. One of the goals of the CPSIA is to improve the CPSC's ability to protect the public from emerging product safety hazards, so that products are

not recalled only after injuries or deaths occur, and this database needs to be a critical part of the agency achieving this goal.

Further, as a testing organization and publication, Consumers Union receives a number of complaints from consumers about the safety – or lack thereof – of various products. These complaints are helpful, and sometimes result in a modification of our testing methods. The creation of a publicly-accessible, user-friendly, robust database would further inform Consumers Union’s testing work, and it also would help Consumers Union to educate consumers about emerging hazards in the marketplace.

Again, Consumers Union thanks the Commission for the opportunity to present our views here today, and looks forward to assisting the agency as it moves forward with creating this important consumers product safety information system.

Christine Hines
Public Citizen's Congress Watch

Stevenson, Todd

From: Christine Hines [chines@citizen.org]
Sent: Tuesday, November 03, 2009 4:14 PM
To: CPSC-OS
Subject: Establishment of a Public Consumer Product Safety Incident Database
Attachments: PC_database hearing comments110309.pdf

Dear Sir or Madam,

Attached is the text of my oral presentation for the November 10 hearing regarding the establishment of a public consumer product safety incident database.

Thank you for your assistance.

Sincerely,

Christine Hines
Consumer and Civil Justice Counsel
Public Citizen's Congress Watch
215 Pennsylvania Ave., SE
Washington, D.C. 20003
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**STATEMENT OF CHRISTINE HINES
CONSUMER AND CIVIL JUSTICE COUNSEL
PUBLIC CITIZEN**

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.

Stevenson, Todd

Leland Badger
Door & Access Systems
Manufacturers Association

From: Chris Johnson [cjohnson@thomasamc.com]
Sent: Tuesday, November 03, 2009 12:48 PM
To: CPSC-OS
Cc: John Addington; 'Naomi R. Angel'; 'ljb@howehutton.com'
Subject: Attn: Todd Stevenson, DASMA Comments on Implementation of a Public Consumer Product Safety Incident Database
Attachments: DASMA Comments on Implementation of Public Consumer Product Safety Incident Database.doc

Mr. Stevenson,

Attached are comments from the Door & Access Systems Manufacturers Association regarding the establishment of a consumer product safety incident database. Mr. Leland Badger is registering to present these comments on our behalf at the hearing on November 10, 2009. If you have any questions, please contact me.

Sincerely,

R. Christopher Johnson
DASMA
1300 Sumner
Cleveland, OH 44115
P: 216-241-7333
F: 216-241-0105

Implementation of a Public Consumer Product Safety Incident Database

Todd A. Stevenson
Office of the Secretary
Consumer Product Safety Commission
4330 East West Highway
Bethesda, Maryland 20814

We appreciate the opportunity to present our views regarding the Consumer Product Safety Incident Database. The Door and Access Systems Manufacturers Association (DASMA) is the trade association of manufacturers of garage door openers, garage door systems, gate openers, rolling steel and fire doors, high performance doors, and related accessories and components. DASMA focuses on technical and safe use aspects of the products manufactured by its members.

We support the goals behind the new consumer product database as outlined in Section 1.1 of the Consumer Product Safety Commission's *Report to Congress Pursuant to Section 212 of the Consumer Product Safety Improvement Act of 2008*. As a stakeholder, we offer to work with any team or committee working on the database that might desire our input or assistance, particularly if questions arise regarding products within our scope: garage doors and systems, garage door openers and systems, gate openers and systems, rolling steel doors, fire doors, high performance doors, or components. A properly designed, implemented, and overseen database will enhance consumer protection, will help CPSC become aware of issues and prioritize efforts, and will help manufacturers allocate resources more effectively to improve provision of safe products for consumers.

DASMA offers the following comments in an attempt to refine some of the concepts that have been proposed:

NEISS

It is not clear from the Consumer Product Safety Act of 2008 or from the Commission's report to Congress how, or if, the new database will interact with the National Electronic Information Surveillance System (NEISS). DASMA believes the new database should be entirely separate from NEISS and should contain only those incidents which are actually reported, without attempts to extrapolate.

The methodology employed in the NEISS is not suited to the searchable database that is being developed for consumer products. It has been our experience that incidents can be misreported in the NEISS, and when included in extrapolations, this misreporting can lead to inaccurate conclusions that may lead to misallocation of time and resources. For example, an incident in which a homeowner fell in a garage and injured a hand in a car door may be reported incorrectly as a garage door injury.

While the NEISS does serve a purpose, we encourage the Commission to explore improvements, working with stakeholders, that will enhance the usefulness of the data generated by the system.

Aside from misreporting of incidents, miscoding and erroneous data entry are sometimes caused by the lack of sufficiently descriptive codes to assist emergency personnel in reporting incidents. These are issues that can be addressed by bringing more relevant information and consistency to the process.

Resolution of Disputed Information

We note with approval the ability of manufacturers to comment on reported incidents that are related to their products. In general, we support the process outlined in the Act and in the Commission's report. We do feel that it is essential that incident reports that contain factual errors or disputed information be removed until errors are corrected and disputes have been resolved. At a minimum, if the Commission becomes aware of potential inaccuracies in an incident report after reviewing a report and distributing a report to the manufacturer identified in the report, the Commission should delay posting the incident report until the potentially inaccurate information can be investigated.

Improper Identification of Manufacturer

It is sometimes difficult for consumers to identify the manufacturer of a product, and we are concerned that incidents may be posted that improperly identify entities other than the manufacturer of the product as its manufacturer. For example, DASMA staff members regularly receive requests for information about, or parts for, "our doors." DASMA has developed a safety label, and consumers see the DASMA name on the label and assume DASMA is the manufacturer. A manufacturer of a component of a finished product could also be identified improperly as the manufacturer of the product in an incident report.

"Wizards"

We applaud the concept of "wizards" to help consumers complete incident reports. We offer our assistance in identifying terminology or concepts related to our industry that may help consumers properly report incidents. Greater consistency in reporting will enhance the usefulness of the database.

We look forward to working with the Commission to develop the Consumer Product Safety Incident database and to generally improve the incident report data that is available.

Thank you for the opportunity to provide these comments.

Stevenson, Todd

Eileen O'Connor
McDermott Will & Emery

From: Hartenstein, Geoffrey R. [hartegr@wernerco.com]
Sent: Tuesday, November 03, 2009 3:49 PM
To: CPSC-OS
Cc: O'Connor, Eileen M.; Slaughter, Justin; Stankovich, Dave P.; Melendez, Madelene; Showalter, Cecilia
Subject: Establishment of a Public Consumer Product Safety Incident Database - Werner Co. Testimony
Attachments: Establishment of a Public Consumer Product Safety Incident Database - Letter from Werner Co.pdf; Establishment of a Public Consumer Product Safety Incident Database - Werner Co. Testimony.pdf

From: Geoffrey R. Hartenstein
Senior Vice President, Secretary & General Counsel
Werner Co.
93 Werner Road
Greenville, PA 16125
Tel: (724)-588-2000, ext. 2639
Facsimile: (724)-589-4412

David P. Stankovich
Senior Counsel and Director of Litigation
Werner Co.
93 Werner Road
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Tel: (724)-588-2000, ext. 2638
Facsimile: (724)-589-4412

To: Todd A. Stevenson
Office of the Secretary
Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814
Tel: (301)-504-7923
Facsimile:(301)-504-0127

Dear Mr. Stevenson:

Werner Co., the nation's largest manufacturer and distributor of climbing products, would like to formally request authorization to make an oral presentation at the public hearing on the Establishment of a Public Consumer Product Safety Incident Database on November 10, 2009. Our proposed presentation is attached to this e-mail. We would like to request that our counsel, Eileen M. O'Connor, of McDermott Will & Emery, make the presentation on our behalf.

Further, we would like to register the following people for attendance at the public hearing: Geoffrey R. Hartenstein, David P. Stankovich, Raymond A. Jacobsen, Eileen M. O'Connor, and Justin B. Slaughter.

Please contact us or our counsel, Eileen O'Connor, whose contacts are also included below, with any questions. Thanks.

Sincerely,
Geoffrey R. Hartenstein
Senior Vice President | **Werner Co.** | 93 Werner Rd. | Greenville, PA 16125 |
Tel: (724) 588 2000 extension 2639

Sincerely,

David P. Stankovich

Director of Litigation | **Werner Co.** | 93 Werner Rd. | Greenville, PA 16125 |

Tel: (724) 588 2000 extension 2638

Eileen M. O'Connor

Counsel

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November 3, 2009

Geoffrey R. Hartenstein
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Mr. Todd A. Stevenson
Office of the Secretary
Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

Dear Mr. Stevenson:

Werner Ladder Co. ("Werner Co.") would like to formally request authorization to make an oral presentation at the public hearing on the Establishment of a Public Consumer Product Safety Incident Database on November 10, 2009. Our proposed presentation is attached to this e-mail. We would like to request that our counsel, Eileen M. O'Connor, of McDermott Will & Emery, make the presentation on our behalf.

Further, we would like to register the following people for attendance at the public hearing: Geoffrey R. Hartenstein, Dave P. Stankovich, Raymond A. Jacobsen, Eileen M. O'Connor, and Justin B. Slaughter.

Please contact us or our Counsel, Eileen O'Connor, whose contacts are also included below, with any questions.

Eileen M. O'Connor, Counsel
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600 Thirteenth Street, N.W.
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Sincerely,

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Dave P. Stankovich
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FROM: Geoffrey R. Hartenstein
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SUBJECT: Establishment of a Public Consumer Product Safety Incident Database -
Werner Co.

DATE: November 3, 2009

Werner Co. ("Werner") is a fully integrated manufacturer and distributor of fiberglass, aluminum, and wood climbing products. Our products are backed by over 60 years of state-of-the-art product design, thorough testing, and evaluation experience, making us a leader in climbing equipment. We manufacture a full line of safe, professional-grade products for any job and build them to withstand even the most challenging professional jobs. They are the pro's choice in ladders.

Werner ladders have a history of innovation in design and manufacturing. We use cutting-edge technology and continue to expertly craft our products by researching and upgrading facilities and practices year after year. We educate both the end user and the professional user about ladder safety through print, video, and online materials and training programs. Werner incorporates a number of safety innovations into our products such as our professional bracing system and ALFLO rung-to-rail joint.

All Werner products are designed and manufactured to rigorous quality standards and with a common goal of building the safest climbing equipment possible. Our products meet or exceed all applicable American National Standards Institute (ANSI) and Occupational Safety and Health Administration Code (OSHA) requirements.

We welcome any efforts to improve product safety and understand issues that users are having with products they purchase. Nothing is more important to us than the safety of the people who use our products. While we welcome user comments on our products and take any complaints seriously, we also know the importance of transparency in being able to determine if problems are due to faulty product design or, instead, the misuse of the product. Transparency is also critical in determining the motivations behind a complaint.

For those reasons, we believe there are problems with the proposed methodology regarding the establishment of a Public Consumer Product Safety Incident Database. Specifically, we have comments and suggestions regarding transparency and verification with regard to 1) the availability of contact information for individuals submitting entries; 2) the persistence of reports in the database over time; 3) verification of the veracity of reports prior to posting; 4) timing of transmission of reports to manufacturers and private labelers, comment period, and posting of entries; 5) procedures for dealing with inaccurate information once posted; 6) the use of the database as an “early warning system” and the potential misuse of this information.

Availability of Contact Information

According to the Consumer Product Safety Commission Report to Congress, September 10, 2009, Appendix B (hereinafter, “Commission’s Report to Congress”) – CPSIA Section 212, “The Commission may not disclose, under this section, the name, address, or other contact information of any individual or entity that submits to the Commission a report described in paragraph (1)(A), except that the commission may provide such information to the manufacturer or private labeler of the product with the express written consent of the person submitting the information.” Commission’s Report to Congress, at 23.

We believe that the contact information of individuals or entities submitting information should be required to be released to manufacturers or private labelers of the product. Without such information, the manufacturers will be unable to obtain additional, necessary information to determine if the product was truly unsafe or if there was possible, inadvertent, misuse of the product.

In addition, requiring contact information will prove a deterrent to “gaming” the system and enable manufacturers and the Commission to better determine if those people submitting information are distinct, independent individuals or are submitting reports as underlying “proof” in potential litigation.

Persistence of Reports

While we recognize the importance of having a compendium of product-related incidents available to the public, we are concerned that the database might eventually become a repository of outdated and inaccurate information. The Commission’s Report to Congress states that it intends to use the database as a “Data Warehouse.” Commission’s Report to Congress, at 8. If reports will remain on the database permanently, however, even products that are extremely safe may appear unsafe simply because they have been involved in expected and ordinary incidents over the course of several years, especially if those products are sold in high volume or used extensively. We believe that it is critical that the Commission remove all incidents over five years-old connected to products that have not been recalled.

Additionally, users should not be able to report an incident after a substantial period of time has passed from the alleged incident since the passage of time renders the veracity of such reports inherently suspect. We thus propose that the Commission should not publish any report that is submitted more than six months after the incident allegedly occurred.

Verification of the Veracity of Reports

According to its report to Congress, if the Commission “determines that the information in such report or comment is materially inaccurate, the Commission shall—(i) decline to add the materially inaccurate information to the database; (ii) correct the materially inaccurate information in the report or comment and add the report or comment to the database; or (iii) add information to correct inaccurate information in the database.” Commission’s Report to Congress, at 25.

Nothing in its Report to Congress made on September 10, 2009 explains how the Commission will determine if material inaccuracies exist. Will the Commission undertake an investigation upon receipt of each entry to determine 1) the accuracy of the identity of the person making the report and 2) the accuracy of the report itself? How will such an investigation be done? How long will this take and will the Commission delay posting of the entry until the report is complete? Finally, what are CPSC’s procedures for verifying an incident report when a manufacturer claims that there is nothing wrong with the product? Will CPSC simply send out the possibly-false report and only then begin the process of verifying whether it is accurate?

It is also imperative for verification purposes that incidents reports are sufficiently detailed such that manufacturers are able to engage in a targeted, rapid investigation of a product involved in a reported incident. To this end, we urge the Commission to require that all submitted reports specify the year, model, or “mark number” of the product in question. It does a manufacturer no good for a database user to report that his Honda Accord has brake problems – only by giving the product’s year, model, or “mark number” will a report allow a manufacturer and the Commission to conduct accurate investigations. By the same token, we urge the Commission to require that database users describe product incidents in detail. In order to ensure that all reports have sufficient information to let manufacturers conduct significant investigations, we recommend that that Commission require that all published incident reports spend at least eight sentences describing the incident in detail and answer specific questions such as how the product was being used at the time of the incident, who was using the products (an adult or child); and was this the first time the product had been used?

Timing of Transmission of Reports to Manufacturers and Private Labelers, Comment Period and Posting of Entries

Pursuant to the preceding, it is unclear how a proper investigation can take place by either the Commission or a manufacturer and private labeler if reports submitted to the database are to be given to manufacturers “Not later than 5 business days after the Commission receives a report,” but such reports will be “available in the database not later than the 10th business day after the date on which the Commission transmits the report...” Commission’s Report to Congress, at 23, 24.

We realize that this provision is mandated by the statute itself and suggest that reports that have not been fully vetted be posted with notice of that fact. We do not believe 5 business days gives manufacturers enough time to investigate the matter and issue comments for submission on the database. We propose at least a 60-day period whereby a notice is posted to the database on the report stating that the report has not been properly investigated and cleared as accurate and, therefore, should not be used as evidence of any kind of safety issue with the product.

In addition, it is unclear as to what kind of investigation is required of manufacturers before their comments will be posted. Will the CPSC require an on-site inspection before posting a comment saying that it was product misuse and not a defective product that was the cause of the incident? In the case of Werner Ladder Company, the cause of incidents can often be determined by a photo of the ladder and would not require on-site inspection, which would cost an average of \$5,000 per incident.

Procedures for Dealing with Inaccurate Information Once Posted

While there will be at least some efforts to ensure that the information in the database will be accurate, we believe the current proposals are inadequate. As explained in the Commission's report to Congress, "All incident data submitted via SaferProducts.gov will be subject to CPSC review to verify its authenticity – that the submitters are who they say they are." Commission's Report to Congress, at 6. While we applaud the Commission for appreciating the dangers posed by inaccurate data, it is not enough for the Commission to merely promise to remove inaccurate data.

Further, we are troubled again by the lack of transparency in this verification process. Specifically we seek transparency in the following areas: 1) Will the Commission promise to authenticate all data prior to its publication? 2) What specific form will the Commission's investigation take? And 3) What information will the Commission seek in determining the veracity of the report? As it stands, the Commission has indicated it will verify only whether the contact information is accurate. We believe that limited verification does not, in our view, guarantee the veracity of the facts being stated in the report.

We propose that the Commission commit to authenticating all submitted data within 5 business days of receipt, and if that is not possible, posting a notice, as stated above, that the report has not been verified. This would dramatically decrease the number of false reports that are both sent to manufacturers and published, as well as minimizing the risk of needlessly frightening the populace. It is far easier for the Commission to prevent inaccurate data from being distributed to the public than it is for the Commission to reassure frightened users after false warnings are made to the public.

Use of Database as "Early Warning System" and Potential Misuse of Information

As the Commission knows, the database is intended to serve a greater role than simply a compendium of incident reports. As envisioned by the statute, the database will be supplemented with an "Early Warning System," a "tool that provides CPSC staff with the ability to compare

reported incidents with all prior incidents to look for patterns that would indicate a potential problem.” Commission’s Report to Congress, at 8. In addition to this manual device, the database will also include a “Predictive Modeling” system, “a set of algorithms that will automatically scan incident data to more rapidly identify product hazards.” Commission’s Report to Congress at 9. While we support the use of better information technology to ensure that products are safe, we are afraid that these systems will produce more false positives than actual dangers, prompting the release of unwarranted warnings that will scare the public away from many safe and useful products. We again seek transparency in this process. We thus propose that all of these tools and algorithms are made available to manufacturers and retailers at least nine months in advance of the database’s launch to determine if their methodology for predicting trends is sound.

While the Commission is required by statute to “provide clear and conspicuous notice to users of the database that the Commission does not guarantee the accuracy, completeness or adequacy of the contents of the database,” we believe that is not enough to protect manufacturers from serious misuse of the database to allegedly “prove” a product is unsafe. Commission’s Report to Congress, at 23.

The risks to manufacturers posed by the Searchable Consumer Product Safety Incident Database are objectively evident by observing the problems and misuse associated with another incident reporting database, the Vaccine Adverse Event Reporting System (VAERS).

Much like the CPSC's proposed database, the VAERS is a voluntary reporting system - anyone can quickly and easily report a problem that he or she believes is connected to a vaccine. Co-sponsored by the Centers for Disease Control and the Food and Drug Administration, VAERS was created in 1990 to serve as “a post-marketing safety surveillance program, collecting information about adverse events (possible side effects) that occur after the administration of vaccines licensed for use in the United States.” As such, VAERS was intended to detect dangerous side effects of vaccines before they injure a significant part of the general populace. Since anyone can make a report with a false name or information, however, the veracity of database entries and their use to prove causation has been questioned. HHS, which manages the system, grants that VAERS “does not determine causality” and that any data from the system is subject to numerous limitations, including questions about its accuracy. Read more about the VAERS Program at <http://vaers.hhs.gov/about/index>.

A 2006 article in the Official Journal of the American Academy of Pediatrics by Michael J. Goodman, PhD, and James Nordin, MD, MPH, found that many of the entries in VAERS were made in connection with pending litigation, presumably in an attempt to create the appearance of a causal connection between certain vaccines and medical conditions. Vaccine Adverse Event Reporting System Reporting Source: A Possible Source of Bias in Longitudinal Studies, 117 Pediatrics 387 (2006). Regarding entries claiming vaccines “caused” autism or other neural abnormalities, “nearly one third of reports in 2002 were related to litigation, and for mental retardation, it was nearly one half of reports.” *Id.* at 389. The authors concluded that “it is apparent that a large enough percentage of reports are being made related to litigation [and] that failure to exclude these will seriously skew trends.” *Id.* at 390.

The possibility that the VAERS can be manipulated to create the appearance of scientific proof has not gone unnoticed by the courts. Earlier this year, in *Blackwell v. Wyeth*, the Maryland Court of Appeals held that data from VAERS was not reliable enough for the use in medical studies. 971 A.2d 235 (Md. 2009). In that case, a family sued Wyeth alleging that a vaccine given to their child when he was a baby caused his autism. As part of their case, the plaintiffs attempted to introduce a report by their primary expert, Dr. Mark Geier, stating that the vaccine ingredient thimerosal causes autism in certain individuals. *Id.* at 250. Affirming the decision of the lower court to exclude the conclusions of Dr. Geier, the Court of Appeals held that Dr. Geier's "theory" amounted to nothing more than "hypothesis and conjecture, devoid of a generally accepted methodology to support it" since it relied on questionable data from VAERS. *Id.* at 261. Further, the Court quoted the lower court, which found "that the American Academy of Pediatrics ("AAP"), in a May, 2003 posting to their website, strongly [sic] denounced the Geier and Geier publication . . . stating:

This paper uses data from the [VAERS] inappropriately and contains numerous conceptual and scientific flaws, omissions of fact, inaccuracies, and misstatements. . . . fail[ing] to acknowledge the inherent limitations of the VAERS database when drawing conclusions of adverse event associations . . . *Id.* at 251.

VAERS thus serves as a strong example of how anonymous reporting databases can be manipulated to create the appearance of trends or causation where none exist in order to form the basis of costly litigation. It is clear that even when federal agencies stress that such databases should not be used in litigation or for scientific studies, self-interested parties will try to take advantage of the databases for personal benefit.

Conclusion

Werner Ladder Company is committed to manufacturing the safest possible climbing products. We believe in user education and are proud that our products are the choice of professionals based on our safety and reliability. But we also see a danger posed by a database that can be misused by those seeking gain from litigation based on false accusations against certain products.

We commend the Commission for its work in insuring the safety of end users each day and commit to working with the Commission to ensure the accuracy of reports and comments on this public database.

Stevenson, Todd

Robert Lange
Exponent Failure Analysis Associates

From: Robert Lange [rlange@exponent.com]
Sent: Tuesday, November 03, 2009 4:32 PM
To: CPSC-OS
Subject: Consumer Product Safety Commission Public Hearing re: Establishment of a Public Consumer Product Safety Incident Database
Attachments: Draft 9a edits Exponent Comments to CPSC database hearing October 29 version.pdf; Robert Lange

To, Mr. Todd A. Stevenson

Director, Office of the Secretary

Consumer Product Safety Commission

4330 East West Highway

Bethesda, Maryland, 220814

Dear Mr. Stevenson,

Please find attached written testimony prepared and submitted by the professional staff at Exponent regarding establishment of a public consumer product safety incident database.

<<Draft 9a edits Exponent Comments to CPSC database hearing October 29 version.pdf>>

Exponent is an engineering and scientific consulting firm. Technical issues brought to the firm for consideration often call for the assessment of various data collections and databases and the application of such data in the characterization and classification of specific reported incidents of interest.

Bob

Exponent Failure Analysis Associates

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<<Robert Lange>>

Establishment of a Public Consumer Product Safety Incident Database

Comments to CPSC from Exponent,

November 2, 2009

Introduction

Injury is a significant public health challenge in the United States. There is significant potential for improvement in public health if injuries were less frequent and if the effects of injuries could be mitigated through intervention and countermeasure development. The Consumer Product Safety Commission (CPSC) has an important role in working to develop injury control strategies and tactical implementation plans directed at public health improvements through injury reduction.

Injury Control

The model for injury control mirrors the public health control model for any disease. The community of interest (public health officials, medical professionals, first responders, retailers, manufacturers of products, regulators, safety researchers, and safety practitioners) must have reliable and accurate data on incidents in which injuries are reported. The data necessary for understanding of injury occurrence and harm require: injury profile for type and severity, measures of exposure populations, assessment of injury causation, product usage, and product status in reported injury events (proper function, adjustments, modifications, operational condition, etc.). A foundation of reliable, accurate, scientifically sound data enables analysis for trends, causation factors and interactions, magnitude of risk, and measures of relative risk. Analyses then enable prioritization of needs, development of potential countermeasures, and where appropriate, countermeasure deployment into the stream of commerce.

Of course, a complaint database as contemplated by the CPSC cannot supply all of the information necessary to provide accurate and comparative assessments of risk for the use and application of specific products but such a database can

potentially have important utility in possibly signaling emerging issues and possible injury trends.

Complaint Database Considerations

The CPSC is proposing to establish a database that will register reports of incidents, including injury events from consumers and other sources. The resultant collection may be similar in some ways to databases that manufacturers and others now utilize to collect information and data from consumers and product users. Such databases have utility in providing notice that injury events have occurred; may be informative regarding unique, distinguishing, or identifying characteristics; may facilitate follow up for detailed event investigations; and can possibly provide early notification of developing trends in product performance or injury occurrence.

It is also the case however that consumer complaint data collections often are compromised and therefore are of limited use in that:

- they are constructed of case reports provided by self nominating complainants;
- evaluation criteria are not likely to be consistent across reports;
- reporting thresholds are not uniform;
- the quality, accuracy, and timeliness of reports are variable.

Such databases can be appropriate for consideration of further investigative actions but are not suitable for determinations of causation. Complaint data as collected in the CPSC database might be appropriate for use in calculating incident rate but will not be appropriate for risk calculations or comparisons.

Consumer reports of events are likely to be highly correlated to publicity cycles related to specific products and concerns. Consideration of attributable risk, relative risk, and over all societal harm will thus likely be affected by such cycles. Corollaries in disease control are documented in that diagnosticians respond to public notice and publicity regarding a particular disease with more frequent

disease identification and reporting, even though the underlying disease rate remains constant during the period.

Missing data fields

The current version of the proposed CPSC incident database has a significant omission in that there are no fields that require entry of fact circumstances related to the injury incident. Understanding of fact circumstances can greatly illuminate the nature of the event and may provide insights crucial to determination of injury causation. Descriptions of fact circumstances are essential to provide even the most basic determination as to similarity of incidents. CPSC should consider addition of data entry fields for: incident description, a narrative of what had occurred to result in the injury or complaint; product use, how the product was being used at the time of the event; specifics of the occurrence, date and location of the event; product status, what was the state of repair of the product at the time of the incident, had it been properly maintained as recommended, and whether it had been modified from the original design or service conditions.

Additionally, although the database requests a narrative description of “harm caused”, it does not call for a report of the nature of the injury. It is unlikely any consumer reporting an event will be competent to assess the true “harm” (“harm” is a product of injury frequency, population exposure, injury severity, and the associated economic costs of treatment). It would appear inappropriate and unnecessary to task consumers to supply such an assessment. It would seem rather that CPSC’s interest is to seek reports of injury events related to product usage but there is no field that requests a consumer to report the nature or type of any injury. Perhaps the need for information could be addressed by replacing the field “Description of harm caused” with a field or fields that call for consumers to report whether an injury had occurred in the incident and what the nature of the injury had been. Some reports will possibly be related to the potential for injury. The data gathering mechanism should clearly distinguish an injury event from an incident that provides the potential for injury. If an injury had occurred,

the type and nature of the injury and the affected body region should be recorded, perhaps through pull down menus of possible choices. Further, if an injury had resulted, consumers and others making reports could be asked in another pull down menu to record how the injury was treated; i.e., was it “untreated” or “treated at home?”; did the injured party receive medical treatment at a clinic, doctor’s office, or hospital, or was the injured party hospitalized for treatment?; etc.

Addition of information fields regarding the circumstances of the event and the nature or severity of the resultant injury (if any) will greatly increase the utility of the database and facilitate critical assessment of appropriate resource allocation for investigation of potential injury mechanisms.

Other considerations

Heightened public attentiveness to a particular product as might result from complaint registration may precipitate increased reporting of benign events unrelated to injury causation or injury control. Other challenges regarding the accuracy and completeness of consumer reported events can complicate and potentially confound analysis for identification of subject matters offering potential for additional research. Consumers are unlikely to self report behavioral conditions or product mis-use that may have contributed to or caused the injury.

Consumers may report products by brand names that can also serve as generic names for a class of products, thus brand identification may not always be accurate. CPSC perhaps has a potential opportunity to address this concern by the application of the “model number” data field it proposes to include in the report form. Making this a required field will substantially address the potential for consumer confusion with manufacturer identification in event reporting.

Timeliness of reporting is also a challenge in self reported data in that over time, recollections can fade in accuracy and detail.

Further, public attentiveness to a particular issue or product may illicit responses affected in part by “recall bias”, the tendency for recollection of past events to be

influenced by current publicity.¹ Linking the database to popular social sites is likely to exacerbate these reporting problems.

Exposure data is necessary to enable assessment of data on some normalized basis. CPSC has reported it will endeavor to collect exposure data from manufacturers and retailers so as to enable such normalized assessments. Obviously, CPSC should endeavor to ensure such exposure data is accurate and complete to enable reliable exposure assessment.

Uniform application of accurate and complete exposure data could possibly facilitate CPSC's application of standardized performance measures in periodic database reviews. Constant data review can permit CPSC to create a historical response surface of products and harm. Periodic database reviews can be used to regularly calculate incident report rate measures and thereby make comparisons among the instantaneous report rate values and historical performance levels in efforts to identify newly developing incident trends. Identified emerging issues can then be assessed with application of consistent criteria.

November 2, 2009

Exponent

¹ E. Hassan, "Recall Bias can be a Threat to Retrospective and Prospective Research Designs," *The Internet Journal of Epidemiology*, 2006, 3:2. See <http://www.ispub.com/ostia/index.php?xmlFilePath=journals/ije/vol3n2/bias.xml>, accessed 10/27/2009.

Stevenson, Todd

From: Sean Kane [sean@safetyresearch.net]
Sent: Friday, November 06, 2009 4:45 PM
To: Stevenson, Todd
Subject: RE: Public Database Hearing
Attachments: CPSC Public Database 2009.pdf

Mr. Stephenson

Attached is my presentation outline.

Thank you

Sean

Sean Kane
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508-252-2333
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From: Stevenson, Todd [mailto:TStevenson@cpsc.gov]
Sent: Wednesday, November 04, 2009 1:34 PM
To: Sean Kane
Subject: Public Database Hearing

You registered to make a presentation at the Commission Hearing for the Public Consumer Product Safety Incident Database on Nov. 10. Please provide your presentation or outline to me so I can distribute it to the staff and Commission. If you are not presenting also let me know.
thanks

Todd Stevenson
Director, Office of the Secretary
Division of Information Management
Office of Information Technology Services
US Consumer Product Safety Commission
(301) 504-6836, Fax (301) 504-0127

*****!!! Unless otherwise stated, any views or opinions expressed in this e-mail (and any attachments) 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 Internet e-mail, as they are released by CPSC. To subscribe or unsubscribe to this service go to the f web page: <https://www.cpsc.gov/cpsclist.aspx> *****!!!



CPSC Establishment of a Public Database

November 10, 2009

Sean Kane
Safety Research & Strategies, Inc.
340 Anawan Street, Suite 200
Rehoboth, MA 02769
www.safetyresearch.net



Background

- NHTSA
 - SRS has more than 10 years of extensive experience with NHTSA data.
 - Consumer Complaints
 - Recalls
 - Defect Investigations
 - Crash / Compliance Tests
 - Manufacturer Technical Bulletins
 - Manufacturer Claims (death, injury, property damage)
 - FARS / NASS (crash data)
 - These data are available through:
 - Web based search engine
 - Raw data downloads



Essential Elements of a CPSC Public Database

- Concise, comprehensive and easy to find / use consumer reporting form.
- Simple, accessible public web portal for searching and viewing data
- Real-time raw data availability for professional and research partners.



Good Policy, Surveillance, Enforcement and Prevention Begins with Good Data

- Providing consumers a quick and easy reporting mechanism creates a larger pool of data.
- Providing access to raw data in real time creates a stronger partnership between the commission and NGOs involved in product safety research and injury prevention.
 - The mission of the CPSC is best served when it embraces outside partners in prevention and surveillance.



Lessons from NHTSA

- A web-based interface that is too limited or constraining can deter users.
 - Each dataset has to be searched separately – lacks a central search portal.
- Datasets are located in different locations online and can be hard to locate.
 - Centralize access points to data.
- Accessing source documents can be extraordinarily time consuming.
 - Simplify document access in standardized formats.



Lessons from NHTSA: Complaint Reporting Form

- The NHTSA complaint reporting form spans a minimum of six pages; this number increases depending on the item being reported.
- Consumers are asked to code portions of their complaints – this may be confusing for those with little vehicle knowledge; it also negatively affects the quality of the data.
- Editing the complaint during the process is difficult, as is amending an existing complaint.



Lessons from NHTSA: Complaint Reporting Form

- Elements of a good consumer reporting form:
 - Quick and easy to fill out and submit
 - Requests important details of incidents and products without requesting information too specific or technical
 - Allows consumers to review and make changes throughout the reporting process and edit post-submission when additional information is obtained.
 - Is reviewed internally and coded as necessary before becoming part of the public dataset.



Lessons from NHTSA – Public Access Web Portal

- Elements of a good public access web portal:
 - Simple search mechanism for casual users.
 - Option for central searching for all public data with shared elements.
 - Quick turn around on search results.
 - Optional advanced search that allows regular users to query on more detailed and multiple criteria.



Lessons from NHTSA: Serving Research Partners

- NHTSA raw data available to users as a downloadable compressed text file.
- Many datasets are updated daily, giving the users access to NHTSA's most current data.
- This model creates a partnership between NHTSA and NGOs in support of its surveillance, enforcement, and prevention mission.



VSIRC Model

- In 2008, SRS launched an online search tool for professional users based on NHTSA data (www.vsirc.com).
- Data include: Investigations, recalls, complaints, and crash / compliance testing
- The system is designed to overcome the deficiencies of the NHTSA system and includes:
 - Single, simple interface to search all datasets in one query
 - Text searching to allow for more precise results
 - Built-in smart search brings back related information
 - Automatic retrieval of model twins / model year ranges
 - Easy export of search results
 - Advanced query options
 - Real-time access to test videos
 - Consolidated / compressed PDF documents



VSIRC Basic Search

Welcome, Felix Click! | [Basic Search](#) | [Enhanced Search](#) | [Settings](#) | [History](#) | [Favorites](#) | [User Admin](#) | [Data Admin](#) | [Access Log](#) | [Logout](#) | [Home](#)



VSIRC Basic Search

- Category:
- Vehicle
- Child Restraint
- Tire
- Equipment

Make:

Model:

Model Year:

Text:

- Type of Report:
- Complaints
 - Recalls
 - Investigations
 - Crash/Compliance Tests

[Download search results](#)

[Complaints](#) | [Recalls](#) | [Investigations](#) | [Crash/Compliance Tests](#)

[Exact \(141\)](#) | [Model Range](#) | [Model Twins](#) | [Related Info](#)

ODINO	Make	Model	Year	Summary	Component	Docs	Misc.
10147216	FORD	EXPLORER	2005	DT*: THE CONTACT STATED THE VEHICLE STALLED INTERMITTENTLY...	ENGINE AND ENGINE COOLING:ENGINE		
10148266	FORD	EXPLORER	2005	I WAS DRIVING MY 2005 FORD EXPLORER WHICH I PURCHASED...	FUEL SYSTEM, GASOLINE:DELIVERY:FUEL PUMP		

Sean Kane
Safety Research & Strategies, Inc.



VSIRC Enhanced Search

Welcome, Felix Click! | [Basic Search](#) | [Enhanced Search](#) | [Settings](#) | [History](#) | [Favorites](#) | [User Admin](#) | [Data Admin](#) | [Access Log](#) | [Logout](#) | [Home](#)



Enhanced Search

[Complaints](#) | [Recalls](#) | [Investigations](#) | [Crash/Compliance Tests](#)

Category: Vehicle Child Restraint Tire Equipment

Manufacturer:
AM GENERAL
AMC
AMERICAN GENERAL
AUDI
BIG DOG MOTORCYCLES

Injured Fatality
 Crash Fire

- OR -

Make:
ACURA
ALFA ROMEO
AM GENERAL
AMC
AMERICAN GENERAL

Date Added:

ODINO ID #:

Text:

Model:
0309D BUS
1/2 TON PICKUP
100
110
124

Year Range: to

Component:
AIR BAGS
AIR CONDITIONER
ALARM-BACKUP
ANTI-THEFT
BODY

Sean Kane
Safety Research & Strategies, Inc.

Revised 11/6/09
Public Hearing – Database (November 10, 2009)

Four written comments were received but will not be presented orally at hearing.

Stephanie Lester
Vice President, International Trade
Retail Industry Leaders Association (RILA)

Jean Public

Steven W. Hansen
Law Offices of
Steven W. Hansen

Jane E. Wishneff
Regulatory Counsel &
Director of International Affairs
Consumer Specialty Products Association

Stevenson, Todd

From: Stephanie Lester [Stephanie.Lester@retail-leaders.org]
Sent: Tuesday, November 03, 2009 2:25 PM
To: Stevenson, Todd; Hammond, Rocky; Mullan, John
Cc: Jim Neill
Subject: RILA comments on public database
Attachments: CPSIA public database comments 11 03 09.pdf

Attached please find RILA's (short) written comments on the CPSC's plan to establish and maintain a searchable consumer product safety incident database. We do **not** plan to present our comments orally at the Nov 10 public meeting.

Please don't hesitate to contact me if you have any questions.

Regards,
Stephanie Lester

Stephanie Lester
Vice President, International Trade
Retail Industry Leaders Association
1700 N. Moore Street, Suite 2250
Arlington, VA 22209
Direct Dial: 703-600-2046
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To learn more about RILA, go to www.rila.org



1700 N. Moore Street, Suite 2250, Arlington, VA 22209
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Email: info@rila.org Web: www.rila.org

November 3, 2009

Office of the Secretary
U.S. Consumer Product Safety Commission
Room 502
4330 East West Highway
Bethesda, MD 20814

Re: Implementation of a Searchable Consumer Product Safety Incident Database

Dear Secretary:

The Retail Industry Leaders Association (RILA) appreciates this opportunity to provide comments on the Consumer Product Safety Commission's (CPSC) plan to establish and maintain a searchable consumer product safety incident database. RILA does not plan to speak at the public hearing on November 10, and we hope the CPSC will take these written views into account. RILA understands that the CPSC is also creating a contact list of parties interested in issues related to the public database. RILA would also like to be included on that contact list to be updated on any new developments related to the public database. RILA members support transparency in product safety, and believe that a public database that is populated with timely, true and accurate product safety information can help to further consumer awareness and protection.

By way of background, RILA promotes consumer choice and economic freedom through public policy and industry operational excellence. Our members include the largest and fastest growing companies in the retail industry--retailers, product manufacturers, and service suppliers--which together account for more than \$1.5 trillion in annual sales. RILA members provide millions of jobs and operate more than 100,000 stores, manufacturing facilities and distribution centers domestically and abroad.

Sufficient Time to Respond to Product Safety Postings on the Database

The CPSC's report to Congress on the public database says that the CPSC will create an industry portal to allow manufacturers and retailers to comment on incident reports submitted in the

public portal. The CPSC plans to provide industry with ten business days to comment on any incident reports before they are publicly posted. RILA appreciates the importance of providing consumers with timely product safety information. RILA also believes it is equally important to ensure that the information maintained by the CPSC on the public database is true and accurate. Industry's input on the incident report can substantially improve the accuracy and veracity of information.

Ten business days is not sufficient time for retailers to comment on incident reports. Currently, when retailers receive a report of a product safety incident, they seek to determine the exact product that is affected, what happened, when the product was sold, and what action is warranted to address the problem. Oftentimes, the information included is not complete, and it takes time for a retailer to determine the exact nature of the incident. Unless the CPSC determines that there is an imminent hazard to public health and safety, RILA believes that industry should be provided 30 days to comment on incident reports before they are publicly posted on the database.

Information Gathered on the Public Database

The CPSC's report to Congress on the public database says that the CPSC will establish a step-by-step process to allow users to more easily submit complete information on a product safety incident. RILA believes that the CPSC should seek as much detailed information as possible about the product and the incident. For example, RILA encourages the CPSC to include data fields such as the manufacturer, brand name and model of the product, a tracking label (if available), a UPC or bar code on the product, a photograph of the product, a time frame for when the product was purchased, and where it was purchased. In particular, a photograph of the product would greatly enhance the ability of all parties to most accurately identify the product in question. As the CPSC is aware, photographs are a key element of recall notices to help consumers identify the recalled product.

Conclusion

We respectfully request the CPSC to implement measures to ensure the timeliness, veracity and accuracy of product safety information posted on its public database, and to provide industry with sufficient time to comment on product safety incident reports submitted via the public portal.

RILA members place the highest priority on ensuring the safety of their customers and the products sold to them. RILA appreciates this opportunity to comment on the CPSC's proposed public database. Should you have any questions about the comments as submitted, please don't hesitate to contact me by phone at (703) 600-2046 or by email at stephanie.lester@rila.org.

Sincerely,

A handwritten signature in black ink that reads "Stephanie Lester". The signature is written in a cursive style with a horizontal line at the end.

Stephanie Lester
Vice President, International Trade

Stevenson, Todd

From: jean public [jeanpublic@yahoo.com]
Sent: Thursday, October 22, 2009 6:55 AM
To: americanvoices@mail.house.gov; CPSC-OS; info@taxpayer.net; media@cagw.org
Cc: info@starmagazine.com
Subject: public comment on federal register

it is clear that this agency is not acting for the consumer. the consumer is one party fighting for help against multi country giant corporations so the consumer needs help. instead this agen [Federal Register: October 22, 2009 (Volume 74, Number 203)]

[Notices]

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[DOCID:fr22oc09-38]

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CONSUMER PRODUCT SAFETY COMMISSION

Establishment of a Public Consumer Product Safety Incident Database; Notice of Hearing

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of public hearing.

SUMMARY: The Consumer Product Safety Commission (Commission) will conduct a public hearing to receive views from all interested parties on Section 212 of the Consumer Product Safety Improvement Act of 2008 (CPSIA), Establishment of a Public Consumer Product Safety Incident Database. Participation by members of the public is invited. Oral presentations concerning the Commission's implementation of Section 212 of the Consumer Product Safety Improvement Act of 2008 (CPSIA), Establishment of a Public Consumer Product Safety Incident Database, will become part of the public record.

DATES: The hearing will begin at 9 a.m. on November 10, 2009. Requests to make oral presentations and the written text of any oral presentations must be received by the Office of the Secretary not later than 5 p.m. Eastern Standard Time (EST) on November 3, 2009.

ADDRESSES: The hearing will be in the Hearing Room, 4th Floor of the Bethesda Towers Building, 4330 East West Highway, Bethesda, Maryland 20814. Requests to make oral presentations can be made online at <http://www.cpsc.gov/cgibin/dbmeeting.aspx> or, send an e-mail, call, or write Todd A. Stevenson, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814; e-mail cpssc-os@cpssc.gov; telephone (301) 504-7923; facsimile (301) 504-0127 not later than 5 p.m. EST on November 3, 2009. Texts of oral presentations should be captioned "Establishment of a Public Consumer Product Safety Incident Database" and sent by electronic mail (e-mail) to cpssc-os@cpssc.gov, or mailed or delivered to the Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814, not later than 5 p.m. EST on November 3, 2009.

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FOR FURTHER INFORMATION CONTACT: For information about the hearing or to request an opportunity to make an oral presentation, please register online at <http://www.cpsc.gov/cgibin/dbmeeting.aspx> or, send an e-mail, call, or write Todd A. Stevenson, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814; e-mail cpSC-os@cpSC.gov; telephone (301) 504-7923; facsimile

(301) 504-0127. An electronic copy of the CPSC ``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'' can be found at <http://www.cpsc.gov/about/cpsia/sect212.html>.

SUPPLEMENTARY INFORMATION: On August 14, 2008, the Consumer Product Safety Improvement Act of 2008 (Pub. L. 110-314) became law. Section 212 of the CPSIA amended the Consumer Product Safety Act (CPSA) to create a new section 6A, titled ``Publicly Available Consumer Product Safety Information Database.'' Section 6A(a)(1) of the CPSA states that the Commission, subject to appropriations, shall ``establish and maintain a database on the safety of consumer products, and other products or substances'' regulated by the Commission. The statute declares that the database must be publicly available, searchable, and accessible through the Commission's Web site.

The Commission will conduct a public hearing on November 10, 2009, to hear oral comments from interested parties concerning the Commission's establishment of a searchable consumer product safety incident database.

Persons who desire to make oral presentations at the hearing on November 10, 2009, should register online at <http://www.cpsc.gov/cgibin/dbmeeting.aspx> or, send an e-mail, call, or write Todd A.

Stevenson, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814, e-mail cpSC-os@cpSC.gov, telephone (301) 504-7923, facsimile (301) 504-0127 not later than 5 p.m. EST on November 3, 2009. Presentations should be limited to approximately ten minutes.

Persons desiring to make presentations must submit the text of their presentations to the Office of the Secretary not later than 5 p.m. EST on November 3, 2009. The Commission reserves the right to impose further time limitations on all presentations and further restrictions to avoid duplication of presentations. The hearing will begin at 9 a.m. EST on November 10, 2009, and will conclude the same day.

Dated: October 16, 2009.

Todd A. Stevenson,
Secretary, Consumer Product Safety Commission.
[FR Doc. E9-25420 Filed 10-21-09; 8:45 am]

BILLING CODE 6355-01-P

cy has far too often been on the side of the giant multi country rich corporation and the consumer has not had the help that it should be getting from this agency. in fact, the consumers problems need far more attention than this agency gives it. i do not think there is sufficient help for the consumer at this agency.
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REPLY TO LAKEWOOD OFFICE

November 5, 2009

Total of 3 page(s) via email cpssc-os@cpssc.gov

Todd A. Stevenson, Office of the Secretary,
Consumer Product Safety Commission,
4330 East West Highway,
Bethesda, Maryland 20814

Re: Written comments re "Establishment of a Public Consumer
Product Safety Incident Database"

Dear Mr. Stevenson:

I have reviewed the Sept 10, 2009 report entitled "Establishment of a Public Consumer Product Safety Incident Database" along with the Current reporting form <http://www.cpsc.gov/cgibin/incident.aspx> also attached to this letter.

Initially I am quite concerned that any "supplier" (meaning a manufacturer, distributor or retailer) can respond to an incident and make any real attempt at determining whether it is accurate and bonafide within 10 days of the report first being made by the consumer. Clearly this will all but require a supplier to be very conversant with the system and will also require that they have full access to all the information about the consumer and the incident so that they can speak directly with the consumer to gain further details that are needed to asses the report. That will be mandatory. As it stands now the consumer can refuse to have his/her identity released to the supplier. I think with the internet publication of these reports that release of information to the supplier should now be mandatory. Also I have serious reservations about CPSC staff being able to vett all these claims within 10 days or even 30 days of being made by the consumer.

There needs to be a real attempt to verify not only the "accuracy" of the raw information but the "accuracy" of some of the conclusions drawn or assertions made by consumers, especially now that this data is being released in wholesale fashion. Under existing CPSC protocol the ability to challenge the accuracy of information is quite limited. These reports should remain unpublished until there is a resolution of the "accuracy" of the raw information AND the "accuracy" of some of the conclusions drawn or assertions made by consumers.

There are huge problems with making this information on "prior" "related" incidents available on the internet. As we have already seen on similar private websites there is an attempt by certain people to "game" the system and make complaints for nefarious reasons. For example I have personally seen reports being made to the CPSC by former employees (to get back at their employer) and by employees of suppliers that sell competing products.

As we have also seen in the age of blogs, online comment postings etc. there seems to be a trend toward the posting of defamatory or incorrect information on the internet as it is so easy for people to hide their identity. Hopefully the proper checks and balances will be put in place before this system goes live to ensure that suppliers will not have their reputations sullied by "non existent consumers" posting on the site.

Another problem carried over from the existing system of reporting is that fact that consumers do not clearly identify the specific models and model years involved and all models tend to be grouped together in CPSC reports even when the models do not share any relevant common features for purposes of determining a Substantial Product Hazard. I think much of this problem can be corrected by revising all the detail fields on the current "consumer product incident report" form attached. Also all the fields should be mandatory and information categories should not be grouped together on one data field as they are now in some instances.

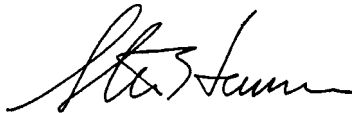
I also fear that if consumers names and contact information is released publicly in this database that it will simple become a fishing pool for plaintiff's attorney to contact claimants and or organize class action lawsuits.

Another problem with supplier access is that on a product like bicycles which has hundreds of component parts you can have the bike brand distributor along with three or four other suppliers involved with components that could be the subject of an inquiry. Just finding out which distributor or part supplier must be involved to make an investigation may take more than 10 days.

Finally I think there needs to be some sort of statement of policy by the CPSC in the regulations implementing this CPSIA mandated database that these reports are not independently verified, are not claims for damages or other such language so that plaintiff's attorneys do not get carried away in attempting to introduce the CPSC reports as "evidence" of other claims in litigated matters.

I would appreciate being considered as a beta tester of the new database site either individually or on behalf of my supplier clients.

Very Truly Yours,



Steven W. Hansen

Attached: consumer product incident report



Consumer Product Incident Report

NOTE: if you have a drywall complaint, please use our special drywall report form and questionnaire - thank you.

By filling out the form below and then submitting it, you can report any injury or death involving consumer products to us, or report an unsafe product to us. We may contact you by mail, phone or internet email for further details. In addition, you will be contacted to confirm the information you sent. Please provide as much information as possible. Your name, address, and telephone number are optional, but we can't contact you without that information. You can also report an incident or unsafe product by calling toll-free at 1-800-638-2772 or by sending an e-mail to info@cpsc.gov

Please be advised that you may be contacted by one of CPSC's field investigators if we wish to obtain additional information about your report. It is possible that CPSC might want to obtain the product involved in the incident for further evaluation so please try to retain the product for at least 30 days after you file this report.

AGAIN, CPSC does not have jurisdiction over automobiles, trucks and motorcycles, car seats protecting children in on-road vehicles, foods, medicines, cosmetics, and medical devices, or dissatisfaction with business practices (links to the proper agencies can be found on the 'Report Unsafe Products' page).

When filling out the form, use the TAB key or your mouse to go to the next data area. Use the scroll bar to scroll down the form

Form fields for reporting details: Your name, address, city, state, zip code, email, telephone, date of incident; Name of victim, address, city, state, zip code, telephone, age, sex. Includes a note: 'The term 'Victim' covers any individual killed, injured or exposed to a possible product-related hazard and does not imply that the product caused an incident.'

Please describe the incident or hazard, including description of injuries

Large text area for describing the incident or hazard.

Product details section: Describe product involved, Product Brand Name/Manufacturer, Manufacturer street address, Place where manufactured (city and state or country), Product model, serial #, manufacture date/date code if available.

Was the product damaged, repaired or modified? Yes No

If yes, before or after the incident? Before After

Please describe damage / repair / modification

When was the product purchased?

Do you still have the product? Yes No If yes, please try to retain the product for at least 30 days after you file this report

Have you contacted the manufacturer? Yes No

If not, do you plan to contact them? Yes No

May we use your name with this report? I request that you do not release my name; You may release my name to the manufacturer but I request that you do not release it to the general public; You may release my name to the manufacturer and to the public.

Send to CPSC Clear Form buttons

This information is collected by authority of 15 U.S.C. 2054 and will be entered into a database by a Consumer Product Safety Commission contractor. The information is not retrievable by name. The information may be shared with product manufacturers, distributors, or retailers. However, no names or other personal information will be disclosed without explicit permission

OMB Control Number 3041-0029



November 6, 2009

Todd A. Stevenson
Office of the Secretary
Consumer Product Safety Commission
Room 502
4330 East West Highway
Bethesda, Maryland 20814

Re: Consumer Product Safety Incident Database

Dear Mr. Stevenson:

The Consumer Specialty Products Association (CSPA) supports the important mission of the Consumer Product Safety Commission ("Commission") to protect the public from unreasonable risk of injury. We do, however, have serious concerns with the Commission's plans, as described in its September 10th Report to Congress, to implement the consumer product safety incident database as required under section 212 of the Consumer Product Safety Improvement Act (CPSIA). As currently constructed, CSPA fears that the incident database will fail to provide the Commission or the public with accurate and high quality data about the risks of consumer products and could be misused to sensationalize the dangers of consumer products.

The Consumer Specialty Products Association (CSPA) is the premier trade association representing the interests of approximately 240 companies engaged in the manufacture, formulation, distribution and sale of approximately \$80 billion annually in the U.S. of hundreds of familiar consumer products that help household, institutional and industrial customers create cleaner and healthier environments. Our products include disinfectants that kill germs in homes, hospitals and restaurants; candles, fragrances and air fresheners that eliminate odors; pest management products for home, garden and pets; cleaning products and polishes for use throughout the home and institutions; products used to protect and improve the performance and appearance of automobiles; aerosol products and a host of other products used everyday. Through its product stewardship program Product Care[®], scientific and business-to-business endeavors, CSPA provides its members a platform to effectively address issues regarding the health, safety, sustainability and environmental impacts of their products. For more information, please visit www.cspa.org.

CPSIA Section 212 (b)(2)(B)(v) does not require any direct confirmation by the Commission as to the accuracy of an alleged incident reported by a consumer. Consumers are only required to

include verification “that the information submitted is true and accurate to the best of the person’s knowledge and that the person consents that such information be included in the database.” Unfortunately, the current mock-up of the webpage, as illustrated in the Commission’s report to Congress, does not require a consumer to affirmatively include such a verification with his or her report, nor does it even require the consumer to actively agree or disagree with this verification. The Commission should require consumers to affirmatively include the verification statement in their narrative description of the incident, or at a minimum to affirmatively choose to agree or disagree with the verification statement. Additionally, the Commission should consider appropriate repercussions of filing a false claim/allegation or incident.

To ensure the accuracy of the information being submitted by consumers, CSPA recommends that the Commission require more information from submitters to substantiate their claims. Not only will this allow the Commission to better review and ensure the accuracy of incident claims, but it will enhance the quality of data ultimately available to consumers on SaferProducts.gov.

Examples of additional information that the Commission should require consumers to provide in reporting alleged incidents include:

- a. Information regarding the product involved in the incident, including the following:
 - i. Product manufacturer as identified on product label or packaging;
 - ii. Type of product;
 - iii. Product brand;
 - iv. UPC code;
 - v. Date of purchase;
 - vi. Product code date (or equivalent designation on the product); and
 - vii. Place of purchase.
- b. Date of incident;
- c. Location of incident;
- d. Verification that the label instructions were followed when using the product; and
- e. Brief description of the circumstances of the incident, including the following information:
 - i. How the product was being used at the time of the reported incident;
 - ii. Whether the consumer has used this product before;
 - iii. Whether the consumer used any other products along with the product involved in the incident;
 - iv. How much of the product was used over what period of time (if applicable);
 - v. Description of what happened;
 - vi. Description of harm incurred during incident;
 - vii. Describe types of symptoms and/or injuries that were sustained; and

- viii. If the individual sought medical care indicate the type of medical care sought (i.e., clinic, hospital emergency department, private physician, Poison Control Center, hospital inpatient, none).

Even more concerning, the Commission fails to explain or describe any procedures it will take to review and ensure the accuracy of the information submitted by consumers. Through the reporting requirements under Section 6(a)(2) of the Consumer Products Safety Act, we have seen an overwhelming amount of incorrect, invalid and downright fraudulent incident information which must be carefully scrutinized before being posted to a public website and it would be useful to know what steps the Commission will take in ensuring the accuracy of information being posted to SaferProducts.gov. CSPA believes that a critical component of this program must include proper verification by the Commission of the accuracy and validity of the information being submitted to ensure that frivolous and mischievous reports are not made publicly available. Additionally, there should be a transparent and streamlined process for removing a report from the site when a manufacturer can demonstrate that the underlying facts are inaccurate. Once a manufacturer has submitted a protest regarding a report, the Commission should have a limited time to render a decision or remove the report until it can render a decision. Any inaccuracy should be sufficient to warrant removal of the entire report until all other facts can be verified and a corrected report can be posted.

Neither the Commission's Report to Congress nor the CPSIA defines the scope of claims that will be allowed for inclusion in the incident database and CSPA recommends that the Commission do so. For instance, only those incidents that truly reflect the safety of a product should be published on the incident database. SaferProducts.gov should not be a portal for consumers to publish their dissatisfaction with a particular consumer product. Additionally, claims that should be outside the scope of the incident database include those where the consumer clearly did not follow the product instructions on the label.

CSPA Recommendations:

1. The Commission should require consumers to affirmatively include a verification statement in their narrative description of the incident, or at a minimum to affirmatively choose to agree or disagree with a verification statement that the information they have supplied is accurate. The Commission should consider appropriate repercussions of filing a false claim/allegation or incident.
2. The Commission should develop a process for verification of the accuracy and validity of the information being submitted by consumers to the incident database. Public reporting of an incident should not be made until the Commission has verified accuracy of the alleged incident.
3. The Commission should develop a transparent and streamlined process for removing a report from the site when a manufacturer can demonstrate that the underlying facts are inaccurate. Once a manufacturer has submitted a protest regarding a report, the Commission should have a limited time to render a decision or remove the report until it can render a decision. Any inaccuracy should be sufficient to warrant removal of the entire report until all other facts can be verified and a corrected report can be posted.

4. The Commission should require more information to be submitted by consumers, including the following information:
 - a. Information regarding the product involved in the incident, including the following:
 - i. Product manufacturer as identified on product label or packaging;
 - ii. Type of product;
 - iii. Product brand;
 - iv. UPC code;
 - v. Date of purchase;
 - vi. Product code date (or equivalent designation on the product) and
 - vii. Place of purchase.
 - b. Date of alleged incident;
 - c. Location of alleged incident;
 - d. Affirmative or active verification that the label instructions were followed when using the product; and
 - e. Brief description of the circumstances of the incident, including the following information:
 - i. How the product was being used at the time of the reported incident;
 - ii. Whether the consumer has used this product before;
 - iii. Whether the consumer used any other products along with the product involved in the incident;
 - iv. How much of the product was used over what period of time (if applicable);
 - v. Description of what happened;
 - vi. Description of harm incurred during incident;
 - vii. Describe types of symptoms and/or injuries that were sustained; and
 - viii. If the individual sought medical care indicate the type of medical care sought (i.e., clinic, hospital emergency department, private physician, Poison Control Center, hospital inpatient, none).
5. Claims should be limited in scope to truly reflect safety concerns of consumer products and prohibit malicious consumer complaints.

Conclusion

Once again, we appreciate the Commission's solicitation of stakeholder comments on this very important issue and look forward to being involved in more discussions on this issue as it develops. If you have any questions regarding these comments, please do not hesitate to contact me at 202-833-7303 or jwishneff@cspa.org.

Sincerely,

A handwritten signature in cursive script that reads "Jane E. Wishneff".

Jane E. Wishneff
Regulatory Counsel & Director of International Affairs

Stevenson, Todd

From: Jane Wishneff [jwishneff@cspa.org]
Sent: Friday, November 06, 2009 8:40 AM
To: CPSC-OS
Cc: Jane Wishneff; Brigid Klein
Subject: Comments on Public Consumer Product Safety Incident Database
Attachments: CSPA Comments on Consumer Product Incident Database.pdf

Importance: High

Mr. Stevenson –

Please find attached comments from the Consumer Specialty Products Association regarding the Commission's implementation of the Public Consumer Product Safety Incident Database that will be discussed at the public hearing on Tuesday, November 10th. Please do not hesitate to contact me if you have any questions regarding these comments or for future stakeholder meetings on the issue.

Thank you,

Jane E. Wishneff
Regulatory Counsel & Director of International Affairs
Consumer Specialty Products Association
900 17th Street, N.W., Suite 300
Washington, D.C. 20006
(202) 833-7303
jwishneff@cspa.org

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