



U.S. CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

STATEMENT OF COMMISSIONER NANCY NORD
ON THE NOTICE OF PROPOSED RULE FOR THE CPSC PUBLIC DATABASE
April 23, 2010

Reluctantly, I have voted against publishing for comment the notice of proposed rulemaking (NPR) to establish a searchable database of consumer complaints. It would be an error to interpret my vote as somehow opposing the concept of a database. My vote is premised on the fact that this proposal is significantly flawed. Our obligation is to create as good and useful a resource as we can. What is being proposed is not that resource.

As was discussed extensively with Congress when this provision was being drafted, section 212 of the CPSIA provides an opportunity for much more than just a public database. It provides the impetus to revamp the agency's data collection procedures so that the data we get into the agency is shared across the agency using modern technology that allows for sorting, searching, analyzing and using the data regardless of how it comes to us. That is a capability that we did not have under our old and outmoded technology. However, that is a capability we have been aiming at for some time and section 212 and related appropriations have given us the direction and resources for getting that job done.

The public database is only one part of a much bigger project, but especially because the public will be using this database, it is important that it be done right. Unfortunately, the proposal does not get it right in a number of ways.

First, the quality of the information allowed to go onto the public site is potentially so poor as to limit its usefulness. While we keep all information submitted for reference, my understanding of the intent of Congress is that we post reports on the public site that can actually be of use to consumers. Consumers are not helped by complaints that are inaccurate, unfounded, fabricated, based on rumors, or "information" gleaned from newspapers or the internet. Under this proposal, all that information—even when it is obtained second and third hand--may go onto the public site. Further, we are not even requiring the most basic type of information, such as date and location, be in the complaint before we post it. Indeed, beyond the general requirement that submitters verify (i.e., that they are who they say they are and are submitting what is on the form), there is not even any statement warning submitters that there are consequences of making intentionally false submissions.

Second, while the agency will "review" the complaints, this review is only a "capture and post" process without screening for facts through a filter of required information. It is important that the public using the data understand that any review of the agency is not directed at the substance of the complaint. In addition, we will not be investigating, and do not have the capacity to investigate, the vast majority of the complaints that come in and are posted. This point is not clearly made in the NPR, and it may well create a public expectation that complaints posted to the federal government's database have had some level of investigation and therefore can be relied on for making safety assessments or purchasing decisions.

Third, the mechanism for transmitting complaints to and considering information from manufacturers is flawed. While every effort will be made to transmit complaints to a manufacturer, a complaint will be posted regardless of whether it is actually sent to the company. The company has only ten days to complete an investigation and respond before a complaint is posted. Because the information required from submitters is so sketchy, a company may not even know if the product is one of theirs and hence can only make that comment. If a company believes that the complaint contains material inaccuracies, the company may tell us why and, if we have the resources, we may do an investigation to determine if a correction needs to be made. There is no time limit for doing that investigation so the potentially inaccurate complaint sits out in public view misleading consumers who will not even know that we are investigating its accuracy. The NPR has a convoluted discussion of limiting the company's submittal regarding inaccuracy to five pages if it wishes us to undertake an expedited investigation. This approach is patently inappropriate; the timing and scope of investigations should be based on the seriousness of the issues in question and not on how briefly they can be described.

Fourth, the NPR does not include appropriate safeguards to allow parents and guardians to remove information about their families submitted by a third person. This potential for intrusiveness should be corrected.

I am disappointed that the proposal was not one I could support. Nevertheless I do hope that the public will provide comments so that any final rule will be as good as we can make it. Specifically, I am interested in comments that address the following:

- Whether the definition of consumer (which seems very broad and certainly does not comport to any dictionary definition) needs to be revised;
- Whether it is legal to include the category of "others" in the list of submitters, and if so, whether we should include it;
- Whether the type of information that makes up the submittal should be expanded with additional required fields (such as date, location and how submitter learned of incident) so that both the company and the consumer have a better sense of the details of the complaint;
- Whether the complaint should reference a specific incident rather than generalized concerns;
- Whether the site's value would be enhanced if it contained complaints about incidents that occurred after a particular date (such as the date of CPSIA enactment) rather than including complaints that go back indefinitely in time;
- Whether it is clear that the majority of complaints will not be substantively reviewed and investigated by staff;
- Whether the mechanism for transmitting complaints to companies, posting responses and handling materially inaccurate complaints are sufficient to assure high-quality data; and
- How will this rule impact your business.

This NPR is just "not ready for prime time." Perhaps with considerable work we can design a tool—carrying the imprimatur of the federal government—that will help, rather than mislead consumers and, hence, advance safety.