



January 29, 2010

Todd A. Stevenson
Office of the Secretary
U.S. 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.

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.

Data Analysis and Reporting

Due to CSPA's concerns regarding the validity of the data submitted for the consumer product incident database, we do not support the use of this data for scientific statistical analysis.

Reports of Harm (Incident Report Form)

Neither the Commission's Report to Congress nor the Consumer Product Safety Act (CPSA) defines the scope of claims that will be allowed for inclusion in the incident database. 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. Such opinion-based comments regarding a product's quality or effectiveness (versus its safety) should be considered outside the scope of the incident database and should be rejected for submission by the Commission. Allowing the database to become a "blog" of sorts for commentary about a product's quality or utility diminishes the real intent of the database, namely to inform consumers with *reports of harm* that are truthful, correct, and properly verified.

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.

The Commission should not post reports that are incomplete. Incomplete reports omit the following information, which is mandated under §6A(b)(2)(B) of the CPSA:

- Description of the consumer product;
- Identification of the manufacturer or private labeler of the consumer product;
- Description of the harm relating to the use of the consumer product;
- Contact information for the person submitting the report; and
- Verification by the person submitting the information 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.

Any submission omitting the above information should automatically be rejected by the Commission as an incomplete claim.

CSPA believes that there should be a time frame in which consumers can file claims concerning a particular incident (i.e., one year following the incident). Reports made after that time frame should automatically be rejected by the Commission. Additionally, the Commission should establish a timeframe for which reports will be included in the database. Information contained in the database for a period of one to two years most likely will be obsolete and of little value to consumers as manufacturers respond quickly and efficiently to reports of harm from the use of their products.

Manufacturer Notification and Response

As the Commission's Report to Congress on the database indicates, the database is to be designed to "engage manufacturers, retailers, and distributors to ensure their full partnership in protecting consumers from dangerous products." CSPA agrees with the Commission that "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." As the Commission considers manufacturer notification and response with

regards to reports of harm for inclusion into the database, CSPA offers the following recommendations:

- Notification by email, fax, or phone should be permitted according to the manufacturer or private labeler's preference;
- The Commission should create a system for allowing manufacturers to register the appropriate contact(s) within their organizations to receive notification of an incident report, and allow manufacturers to periodically check their registration for currency and be able to make any necessary changes easily and quickly;
- The Commission needs a clearly identified process with criteria to determine whether certain content is confidential business information (CBI); and
- The Commission should consider allowing a manufacturer to "flag" reports that it believes contains CBI. For instance, information about third party manufacturers is considered confidential and proprietary information by many manufacturers.

Materially Inaccurate information

The CPSA 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.

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 §6(a)(2) of the CPSA, 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.

CSPA encourages the Commission to develop a clear, understandable definition of what constitutes "materially inaccurate information," as well as procedures for addressing materially inaccurate information in consumer reports and manufacturers' comments. CSPA believes certain information should be considered materially inaccurate because it misidentifies the product in question in the incident report. That information is identified below:

- Incorrect brand;
- Incorrect manufacturer or private labeler;

- Incorrect model;
- Incorrect product;
- Any information that is not directly related to the incident, such as unsubstantiated opinion statements about the product’s design or general safety; and
- Reports of an injury or hazard caused by something other than the product identified in the report.

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 and consumers who knowingly make, use, or cause to be made or used, a false or misleading submission or statement should be subject to a fine.

Weeding out inaccurate reports benefits all parties involved – consumers, the Commission, and manufacturers – and enables the database to perform its fundamental function, namely to protect and inform the public with truthful, correct, and verified information pertaining to the safety of consumer products.

Additional Database Content

To ensure the accuracy of the information being submitted by consumers, CSPA recommends that in addition to the information required to be submitted by statute under §6A(b)(2)(B), the Commission also request the following 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 and help manufacturers follow-up on incident reports. Reports that do not include this information, however, should still be accepted as complete as long as it contains the mandatory information required under §6A(b)(2)(B) of the CPSA.

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:
 1. Product manufacturer as identified on product label or packaging;
 2. Type of product;
 3. Product brand;
 4. Model number or name;
 5. Serial number;
 6. UPC code;
 7. Date of purchase;
 8. Product code date (or equivalent designation on the product); and
 9. Place of purchase.

- b. Date of incident;
- c. Location of incident;
- d. Whether the manufacturer or private labeler was contacted prior to submission of the incident report;
- e. Verification that the label instructions were followed when using the product; and
- f. Brief description of the circumstances of the incident, including the following information:
 - 1. How the product was being used at the time of the reported incident;
 - 2. Description of what happened;
 - 3. Whether the consumer used any other products or devices along with the product involved in the incident;
 - 4. How much of the product was used over what period of time (if applicable);
 - 5. Description of harm incurred during incident;
 - 6. Describe types of symptoms and/or injuries that were sustained; and
 - 7. 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).

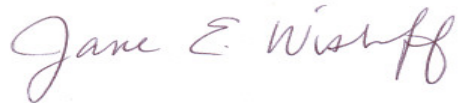
Further, to the greatest extent possible, the Commission should require that the submitter retain the product in question for at least one year. Retaining the product helps facilitate proper investigation by the Commission and the manufacturer.

From a design perspective, the submission form should include drop down menus to assist consumers in answering questions.

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,



Jane E. Wishneff
Regulatory Counsel & Director of International Affairs