

CPSC Moves Ahead on Harmful Products Database

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Online resource will allow consumers to report issues and manufacturers to respond.

The Consumer Product Safety Commission (CPSC) posted on its website on October 14, 2010, its draft final rule concerning the creation of a publicly available, searchable database on the safety of consumer products and other substances subject to CPSC regulation. The database is intended to provide a single point of access to reports of harm involving consumer products, manufacturer's comments on the reports, and recall information. This article discusses this important new database, and briefly considers its implications.

Background

Under Section 212 of the Consumer Product Safety Improvement Act of 2008 (CPSIA), CPSC is required to create and maintain the database within 18 months after it submits a plan to Congress. CPSC submitted its plan on September 10, 2009, and the database must be established by March 2011 (<http://www.cpsc.gov/about/cpsia/sect212.html>).

CPSC's May 24, 2010, notice of proposed rulemaking defined "consumers" as including, users of consumer products, family members, relatives, parents, guardians, friends and observers of the consumer products being used. Importantly, CPSC expanded the definition in the draft final rule to include attorneys, investigators, professional engineers and agents of a user of a consumer product. CPSC states that it chose this interpretation of "consumer" as it reflects its experience in "maintaining a database of consumer product incident reports."

Under the draft final rule, to submit a report of harm for inclusion in the database, a consumer must describe the product involved; identify the manufacturer of the product; describe the injury; verify that the report submitted is true; give CPSC permission to put the report in the database; and provide information that will allow CPSC to contact the submitter. Once CPSC checks the incident report to confirm it has the required information, CPSC forwards the report to the manufacturer within five calendar days of receipt, where practicable, for review and comment. The manufacturer has 10 business days to comment on the report or submit a claim that the report contains confidential or materially inaccurate information, before CPSC posts it in the database.

Consumers can now obtain incident reports only through Freedom of Information Act requests. In contrast, reports submitted after CPSC implements the database will be available on the Internet. The current system also allows for longer time frames to review some types of incident reports.

While some commenters suggested that CPSC add a notation to the incident report form regarding penalties for filing a false report, and that CPSC take an aggressive stance to

discourage malicious and false information from being submitted, CPSC declined to add a reference to penalties. CPSC says it will "take all appropriate actions" to remove materially inaccurate information and punish those involved if it receives false reports from the same entity or individual.

Regarding who may submit manufacturer comments, one commenter suggested that industry members, other than those specifically identified in the report, should be able to submit comments. CPSC rejected this suggestion, stating that "based upon a plain reading of the statute," it believes that the procedural requirements are unambiguous and relate only to manufacturers or private labelers who are identified in a report and allow only parties mentioned to post a responsive comment.

According to CPSC, it would not be in the public interest to allow industry members, other than the manufacturer or private labeler, to comment on a report. CPSC does not believe that the database "was intended to be a forum for commentary between disinterested parties (i.e., persons who are neither the submitter nor the manufacturer or private labeler identified in the report)."

Commenters objected to the 10-day time frame for manufacturers to respond to a report and asked CPSC to consider adopting provisions for exceptions and extensions. CPSC responds that it is bound by the time frame set forth in the CPSIA and that does not have the authority to establish a different time frame.

Implications

Consumer product manufacturers should prepare now to respond to the reports of harm that will populate the database. Manufacturers will need to ensure that reports do not include materially inaccurate or confidential and proprietary information. Manufacturers will also have to weigh whether to prepare comments on the reports, for inclusion in the database. While it is too soon to speculate, product manufacturers will need to be vigilant to ensure the database does not become the hunting ground of the plaintiffs' bar, overly zealous competitors or consumer product activists.

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