



U.S. CONSUMER PRODUCT SAFETY COMMISSION
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STATEMENT OF COMMISSIONER NANCY NORD
ON THE COMMISSION VOTE TO APPROVE THE FINAL RULE FOR THE PUBLICLY
AVAILABLE CONSUMER PRODUCT SAFETY INFORMATION DATABASE
November 24, 2010

I voted against the final rule on the public database because it is so flawed that it is both contrary to the statute and to good public policy. Congress directed that the database be established but, presumably, expected that we would use both good sense and practicality in carrying out its mandate. We have used neither. Further, the rule adopted today is another example of poorly conceived and excessive regulation that, sadly, has become the norm at the CPSC over the past months.

While there are a number of objectionable provisions in the final rule, here are my main concerns:

- Who can submit complaints? Congress provided us with a discrete list of those whose complaints would go into the public database. This list included “consumers” – that is, those who had purchased or used the product—as well as those who, in a professional capacity, would be in a position to understand and comment on the incident. In the Notice of Proposed Rulemaking, the majority expanded this list – with an expansive “others” category – to include virtually anyone who wished to submit information. A strong majority of the comments received criticized this approach. In response, the majority dropped the “others” category and (1) defined “consumer” to include anyone, thereby making the category so expansive as to be meaningless, and (2) defined “public safety entities” to include self-defined consumer advocacy organizations. This “shell game” is not responsive to the comments and ignores Congressional direction. More importantly, it devalues the complaints of harm from actual consumers of dangerous products. Under the majority’s approach, the database will not differentiate between complaints entered by lawyers, competitors, labor unions, and advocacy groups who may have their own reasons to “salt” the database, from those of actual consumers with firsthand experience with a product. Safety is not advanced by this approach.
- What must be in the complaint? While Congress was very specific in its direction as to who may report (a direction the majority has ignored), it gave the agency discretion as to what may be in the report. However, the majority has chosen to require only minimal information – not even the location of the incident or the model number of the product. Without more precise information, it is questionable whether a manufacturer can adequately respond to the complaint. More importantly, consumers easily could be misled by an incomplete, inaccurate or misleading complaint. Safety is not advanced by this approach.
- How will inaccuracies be corrected? Unfortunately, the answer to this question is that inaccuracies will probably not be corrected. While the proposed rule included a limited ability to correct information before it was posted, the majority has removed even this small protection. In addition, there is absolutely nothing in this rule to force the Commission to address claims of material inaccuracy made by manufacturers. While there is a supposed process for “expedited” review of allegations of

inaccuracy, it is purely voluntary on the Commission's part – it has no deadlines or other mechanism to force the agency to act. Further the majority has steadfastly resisted any suggestion to flag complaints that are alleged to contain inaccuracies so that consumers can be warned prior to a resolution of the inaccuracies (a tacit admission on their part that allegations of inaccuracy may not be dealt with). As a result, there is a good chance that this will be a “post it and forget it” activity with inaccurate information remaining in a government sanctioned database. Safety is not advanced by this approach.

- What other issues does this present? The majority approach is replete with other provisions that call into question the workability of the database as a consumer protection tool. Some examples:
 - While the majority says that complaints will be verified, what they mean is that we will verify that the complaint form is completed correctly. What they do not say is that we will not be verifying the substance of the information submitted. What they also do not say is that in those few instances where we do investigate the substance of a complaint, we will not post that information either. Consumers expect, rightly, that information on a government website has legitimacy. And consumers expect that if they post a complaint, it will be investigated and acted upon. Consumers will be disappointed in both respects.
 - While each page of the database will have a disclaimer that the CPSC does not guarantee the accuracy of the information on the database, that disclaimer will not necessarily carry over if the information is downloaded, but the majority has refused to call for watermarking or other appropriate protections. In other words, we are doing only the minimum; it is entirely predictable that inaccurate information in the database will migrate to the public through modern electronic communications means. This will further mislead consumers.
 - The majority makes the bald and unsupported assertion that this rule will have no impact on small business and therefore no regulatory flexibility analysis need be done. This conclusion is based on the very strange logic that since the numbers of products sold by small business are proportionately smaller than those sold by large businesses, it is less likely that the products they make will be subject to a complaint, and even if this happens, it will only take a few hours to investigate the complaint. This conclusion ignores examples we have in the agency of companies harmed by unfounded complaints made against products later determined not to be unsafe.

There are many other examples of both technical and substantive deficiencies in the majority approach. Because of these deficiencies, my colleague, Commissioner Northup, and I proposed an alternative rule that addressed these shortcomings. Not only was our alternative voted down, it was given little meaningful consideration by the majority. The agency's established approach of trying to reach consensus on issues coming before the commission has been studiously ignored at every step along the database rulemaking process. The majority apparently had no interest in trying to find consensus on this issue. This is inexplicable, inexcusable and irresponsible.

Unfortunately, the database is symptomatic of a growing problem at the agency of regulating without a solid basis and with no regard for, or interest in, the costs and benefits of the regulations being developed. The Consumer Product Safety Improvements Act is being read by the majority as a license for regulating with no regard for the consequences. The majority approach has imposed unnecessary costs on consumers, has limited their choices, has shut down businesses and has forced safe products off the market. In addition, the CPSC's priorities will now be driven not by the needs of safety but by whatever crisis de jour that shows up in the database. Safety is not advanced by this approach.