UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

STATEMENT OF THE HONORABLE THOMAS H. MOORE ON THE NOTICE OF PROPOSED RULEMAKING ON THE PUBLICLY AVAILABLE CONSUMER PRODUCT SAFETY INFORMATION DATABASE

April 23, 2010

I voted, with pleasure, to approve the Notice of Proposed Rulemaking on the Publicly Available Consumer Product Information Database, the establishment of which was mandated by the Consumer Product Safety Improvement Act of 2008 (CPSIA). The public has long suffered from a lack of timely information about potential product hazards because the Commission has been hamstrung by a governing statute that precluded the agency from providing information about potential product hazards until they had been identified by our agency, and recalls of the products had been negotiated and announced. With the launch of the Database next year, owners of consumer products will have the same ability that owners of motor vehicles, car seats and users of pacemakers or other medical devices have. They will be able to see safety-related complaints that have been filed with our agency about consumer products. Just as there were predictions of harm by automakers when the National Highway Traffic Safety Administration's database was launched, there are predictions about the potential for reputational and other harm to the makers of consumer products from our Database. The predictions did not come to pass with the NHTSA database and the statutory requirements in the CPSIA will prevent it from coming to pass with the CPSC Database.

There is an inherent tension in establishing this type of Database. On one side is the desire to obtain the most information from, and provide the most information to, the public about potential hazards associated with consumer products. On the other side is a desire to include nothing but the most accurate, verified complaints, only from people directly involved in the incident associated with the product. This would eliminate complaints about a product that may be relevant to its safety but are also imprecise or incomplete in some other way. Both are valid viewpoints.

I appreciate the need to make the information in the Database as accurate as possible. However, winnowing out valid reports of harm based simply on the submitter's lack of a relationship with the victim or because the submitter does not have a piece of information about an incident that may aid certain data system tasks, would create blind spots for our public system's users. For example, someone may have witnessed a terrible incident associated with the use of a consumer product and be moved to report on it. If the victim is deceased, the unrelated observer may have the most relevant information as to what happened. I do not believe submitters of reports of harm need to have first-hand knowledge of the incident, and I think that is borne out by the categories of submitters listed in the statute, many of whom will not have first-hand knowledge of the incident. Congress anticipated that not every report will be

accurate in every respect. By requiring that the Commission's Database state that the accuracy, completeness, or adequacy of the database contents is not guaranteed, Congress made it clear that it anticipated broad acceptance of complaint data and that reports of harm would be part of an early warning system and not just a continuation of the old, post-recall way of alerting the public to product hazards.

In addition to the fields required to be in the database, every report will undergo at least three reviews. First, our staff will review the reports to make sure the complaint is safety-related and will remove information that has privacy implications. Next, manufacturers of products will have an opportunity to comment on and challenge the inclusion of any confidential or materially inaccurate information in the report. And, finally, the consumer users of the Database will exercise their own judgment about the content of the reports they read. We should not assume consumers are going to be duped by false reports. Consumers who take the time to review our safety complaints are likely to be very thoughtful consumers.

The details in the information given in the required fields, such as specifics about the product involved, and the description of the incident will, by their very nature, lend credibility to reports both for the agency and for the public users of the Database. We need to encourage as much detail as possible without making the submission of a report of harm so time-consuming that it discourages submitters from completing a report. That was the delicate balance our staff undertook in drafting this proposal. With that in mind, I am sympathetic to trying to get information from the submitters about the location of the incident and some timeframe as to when the incident occurred. This will help with identifying duplicate reports of the same incident, but it may also help in establishing hazard patterns and the geographic reach of products we may seek to investigate. I suspect most reports will have this information anyway, but if there is a way to more strongly encourage the submission of this information (perhaps by asking for it as an optional piece of information at several points in the process), without requiring it for submission of the report, I would be interested in hearing about that.

I must point out that in public discussions on the Database, it has been alleged that including an additional category ("other") in the list of potential submitters of reports of harm is inconsistent with my stance on the first civil penalty proposed rule back in 2006. In fact, my position, now and then, is completely consistent. In the civil penalty proposal, I voted to go out for public comment on the additional factors in the proposal and I asked for comment on whether the Commission had the authority to add factors to the list in the statute. At the time there was discussion among the CPSC staff attorneys as to whether or not the Commission could add other factors to the statutory list. I took no position on the issue, a point I reiterated in my response to then Acting Chairman Nord's reauthorization proposals, which included a request that Congress clarify the Commission's ability to use factors not listed in the statute in determining civil penalty amounts. Every statutory provision must be analyzed based on its unique language and in the context of the statute as a whole. In the Database rule, the "other" category was a staff recommendation based on their reading of the statutory provisions involved. As before, I take no position as to whether an "other" category is allowed by the language in 6A(b)(1)(A). And, as before, I am voting to seek comments on that issue. It would be particularly helpful to hear from people proposed to be listed in that "other" category on their experiences in reporting incidents

to our agency and the loss, if any, to the public if their reports were not in the publicly available database.

Once a report of harm has been submitted, it is the property of the Commission. While we would certainly welcome clarification or correction of information from the original submitter, decisions to delete a report of harm from the public database should be made solely by the Commission to discourage attempts by product manufacturers from influencing a submitter to withdraw a report. The reports of harm are there to inform and protect the entire consuming public. The public good would not be served by private deals that serve only a few.

I see no reason to limit submissions of reports of harm to incidents that happened either after the enactment of the CPSIA or to incidents that happen after the launch of the Database next March. While I imagine that the vast majority of reports we receive will involve recent incidents, an incident, even one not so recent, is an incident, and the value of our Database will grow as the volume of reports it contains grows.

Several suggestions have been made about flagging reports of harm for one reason or another. One would require the identification of reports where the submitter declined to share their contact information with the manufacturer of the product involved in the incident. Singling out these reports would imply that the report of a submitter who declines to provide contact information is somehow less trustworthy than one who did not. This is not an assumption I would be comfortable making. It is perfectly acceptable for a submitter of a report of harm to have many valid and reasonable concerns about providing their contact information to the manufacturer of a product that they believe exposed someone to harm.

A number of privacy concerns have been raised about information reported to the Database and the Commission will be mindful of them. The Database is a collection of records under the Privacy Act and personally identifiable information will be protected unless the person to whom it pertains agrees to its disclosure.

For years I have supported the creation of a Consumer Product Safety Information Database. Now we are moving forward to launch a Database that will finally level the playing field and give consumers information that will help them use and choose their products more wisely. The Database will be part of the agency's more refined data collection and data mining system, which should lead to faster and better decision making at the agency. I applaud Congress for giving us this tool and the resources to develop it. I believe one day it will be the most important consumer protection resource in this country.