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*Vice President*

*Infrastructure, Legal and Regulatory Policy*

March 8, 2011

Mr. Todd A. Stevenson  
Office of the Secretary  
Consumer Product Safety Commission  
Room 502  
4330 East West Highway  
Bethesda, MD 20814

Dear Mr. Stevenson:

The National Association of Manufacturers respectfully requests the Consumer Product Safety Commission (“CPSC” or “Commission”) to 1) reconsider aspects of its final rule on the Publicly Accessible Database (“Database”),<sup>1</sup> and 2) continue for at least three months the “Soft Launch” phase of the Database to allow the Commission and affected business users to address operational and administrative flaws identified in the “Soft Launch” to date.

On January 21, 2011 the Commission announced a “Soft Launch” to test procedures and processes to implement the database requirements, as interpreted by the Commission in its final rule. As the official Database launch date approached, companies have registered or attempted to register to participate in the Database. A total of 723 registrant companies were reported in testimony to the House Subcommittee on Commerce, Manufacturing and Trade on February 17, which is only a fraction of companies manufacturing or importing consumer products in the United States. In addition, due to reported technical problems only a few preliminary “reports of harm” (as defined in the CPSC’s Final Rule on the Database) have now been able to be subject to completed processing. NAM has similarly sought information from manufacturers, importers and private labelers on experiences and problems encountered during such soft launch.

Based upon surveys of manufacturer experience, the following have been discovered to be problems which must be addressed by the Commission prior to final launch of the database:

1. Manufacturers with different divisions and brands among different product lines have indicated an inability on the part of CPSC staff to timely register multiple parties within such corporations. It is important to both the CPSC and manufacturers that the system allow for the assignment of adequate identifiers to permit review and comment on the material inaccuracy of filed complaint data within the database in a timely fashion as required by the final rule, minimizing duplicative filings for multiple corporate entities within a broader organization and allowing for streamlined communications between

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<sup>1</sup> 75 Fed. Reg. 76832-76872 (December 9, 2010).

businesses and the CPSC. The difficulty in registering by brand/product line/division and the slow or incomplete response by the CPSC to registration raises troubling questions about the promised flow of information between the CPSC and registered companies.

2. A number of manufacturers, importers and private labelers have reported that reports not directly involving “*Harm*” (an express precondition to processing and posting) have contaminated the Database. Some respondents report that as many as 30% of the complaints forwarded were not adequately scrubbed to assure that they involve “harm,” as defined by law, as an express precondition to processing and posting within the database. Other respondents indicate that some claims are simply conjecture based on a review of Internet postings or product listings on a website. Such unresolved errors can undermine the integrity and purpose of the Database.
3. Licensors have indicated that they have received reports that are materially inaccurate since they involve products for which they are not the manufacturer, importer or private labeler, but which have been identified as suitable for posting. This has occurred notwithstanding a response from licensors verifying that they have been falsely identified as the manufacturer, importer or private labeler of the product, when they are not. The challenge to accurately identify the responsible party is apparently not being met by the filers, and these inaccuracies are not currently being rectified by the CPSC staff.<sup>2</sup>
4. Manufacturers, importers or private labelers have indicated that they have received reports of harm identifying an incident as involving their product that did not in fact involve their product, so were materially inaccurate, and advised CPSC of this fact. They have not received return affirmative confirmation that CPSC staff will not post such false claims in the database. CPSC staffers have indicated they may not possess the resources to adequately scrub the database to avoid posting upon such notification. This is contrary to the express direction of Congress that materially inaccurate information with the potential for irreparable reputational harm be vetted prior to posting. This is essential to fundamental fairness. Although the Commission has sought to transfer the burden of proof to manufacturers, it cannot do so once a claim is made that such data is false or materially inaccurate. The Commission can assure the public during an extended soft launch that no such harm occurs.
5. Registrant businesses also report that the completed complaint forms they received often omitted necessary data such as the model, serial number, date of manufacture or date/tracking code information (required by law to be contained on many products,

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<sup>2</sup>According to the CPSC, firms receiving notice of a report of harm that incorrectly identifies them as the responsible manufacturer or private labeler of a product that immediately informs the Commission of such misidentification can reasonably expect the CPSC to stop the 10 day clock for publication of the report in the Database. If the recipient of the report of harm is not the manufacturer or private labeler, the Commission can decide not to post the report either because it is materially inaccurate or because it has determined that the report of harm is missing one of the minimum requirements for publication. CPSC staff has noted that given its experience with the incident reporting system, it recognizes that consumers may misidentify the product manufacturer or private labeler. Such claims of material inaccuracy generally are resolved quickly and easily if the receiving firm provides sufficient information. Staff further notes that Firms have an incentive to immediately report errors to prevent reports of harm from being published in the Database that misidentify them as the manufacturer or private labeler. This underscores the importance of an accurate registration system that allows businesses to be identified and to quickly get reports of harm to relevant business contacts within the company so that a response can be provided. The CPSC has not yet defined what information will be deemed “sufficient” to block publication, leaving manufacturers, importers and private labelers to guess on how to deal with inaccurate identification of their products or brands in database filings.

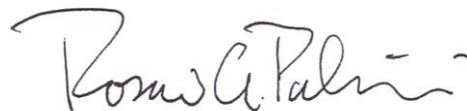
including specifically children's products) so as to better identify the products alleged to be involved with the potential for harm. The absence of this critical data makes such reports unverifiable, which can result in unfair damage to the reputation of products, brands and manufacturers.

6. The Commission's decision in the final rule to define the term "consumer" very broadly appears contrary to the intent of Congress, and will result in the potential for multiple reports of harm involving the identical incident. This will result in public confusion about the potential extent of any possible harm and will result in the inclusion of reports based on second-hand information without the possibility of verification. Experience with paper-based reporting demonstrates that often multiple products are erroneously cited as related to reported injuries without an actual causative connection. This results in misidentification and duplication of reports, which must be avoided in the Database.

While the NAM supports a product incident database serving consumers' need for accurate product information, we do not believe a poorly-functioning database serves the public interest. Based upon the foregoing, we respectfully request and petition the Commission to reconsider the final rule and extend the "Soft Launch" for a period of three months, so as to enable its staff to implement the statutorily mandated Database in accordance with the conditions imposed under statute and the Commission's own regulations.

To ensure the accuracy of information submitted to the database, we specifically ask that the Commission reconsider, under its final rule, the expansive definition of "consumer" and "public safety entities" that include attorneys, investigators, or other agents of a consumer and consumer advocates, individuals who work for NGO's, consumer advocacy organizations and trade associations. Additionally, we ask the Commission to reconsider its provisions for review of claims of materially inaccuracy and its decision not to withhold potentially inaccurate information from publication until it makes a final determination of its accuracy. Last, we ask that the Commission reconsider any provisions or sections of its rule that prevent it from effectively implementing Congressional intent or its stated aims to ensure timely review and processing of database submissions and to ensure the accuracy of its contents.

Sincerely,

A handwritten signature in black ink, appearing to read "Ronald A. Palmieri". The signature is written in a cursive style with a long horizontal flourish at the end.