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**Testimony
of
Wayne Morris
Vice President, Division Services
Association of Home Appliance Manufacturers**

**Before the
Energy and Commerce
Sub Committee on Commerce, Manufacturing and Trade
U.S. House of Representatives**

Hearing on CPSC

February 17, 2011

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House Energy and Commerce Subcommittee on
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Hearing on Review of CPSIA and CPSC Resources

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Chair Bono Mack and members of the Subcommittee, thank you for inviting the Association of Home Appliance Manufacturers to testify on this important matter.

AHAM represents manufacturers of major, portable and floor care home appliances, and suppliers to the industry. AHAM's membership includes over 150 companies throughout the world. In the U.S., AHAM members employ tens of thousands of people and produce more than 95% of the household appliances shipped for sale. The factory shipment value of these products is more than \$30 billion dollars annually. The home appliance industry, through its products and innovation, is essential to the US consumer lifestyle, health, safety and convenience. Through its technology, employees and productivity, the industry contributes significant number of U.S. jobs and economic security.

For over 30 years, AHAM has been at the forefront of product safety through consumer education, support of safety standards and promoting good safety practices in the United States and throughout the world. We have worked with the Commission closely in a number of areas, including, for example, advocating improvement in safety design, manufacturing and practices in China. We supported passage of the CPSIA (albeit we advocated significant amendments) and

greater Commission funding. Recently, we supported the use of the Commission's new authority under CPSA section 15(j) with respect to hair dryers.

All throughout my career, I have been engaged in a variety of safety activities. I oversaw product safety for several appliance manufacturers, helped manage a leading safety testing laboratory, and since having been at AHAM, have led our efforts with the Commission and safety standards organizations in the United States and internationally. I serve on the board of the International Consumer Product Health and Safety Organization. I hope that my friends and colleagues at the CPSC and consumer groups understand that AHAM's and my motivation is to support product safety in the context of a reasonable and fair regulatory system. I also want to clarify that my comments are not a criticism of the hardworking and dedicated employees at the CPSC with whom I have worked for many years and who do their best even under difficult circumstances. The Commission and its staff have done an excellent job of making sure that viewpoints from industry have been heard. There have been several meetings, open hearings, and web meetings to allow for questions and comments. The process has been quite open.

In addition, I currently serve as the Chairman of the Industry Trade Advisory Committee Number 16 on Standards and Technical Trade Barriers to the U.S. Department of Commerce and the Office of the U.S. Trade Representative. In this work, our FACA Committee looks at the openness, transparency and national treatment of technical standards and testing work that is done around the world. In addition, our committee advises Congress on trade agreements.

AHAM supports the creation of a public database and we also support the funding necessary to execute this endeavor properly. Even before the enactment of CPSIA, the Commission had authority to create such a database, and we recognize that many consumers are

interested in easy access to relevant safety information. Of course, there are many private internet sites that play the same role so it makes little sense for the Commission to expend major resources to create a competing website unless it adds value. We believe that a critical part of that value proposition is that information should be of reasonably high quality, accuracy and utility. Otherwise, the application of significant CPSC resources is redundant and wasteful.

Unfortunately, in several respects, the Commission has made a policy choice or a legal interpretation to structure the design and operation of the website to decrease the quality and accuracy of information, to place unreasonable burdens on manufacturers, and not to require timely resolution of good faith material inaccuracy claims.

Fortunately, a few changes in the statute will make the operation of the database more fair, reasonable and accurate without undercutting the program. AHAM would like to make sure that the database contains “news you can use.” The database will never be perfect but at least where there are motivated manufacturers who want to ensure more accurate entries, this participation ought to be supported.

I want to preface our specific recommendations by being clear that nothing we are proposing inhibits in any way the Commission from pursuing reports it receives from consumers or anyone else to see if a corrective action is necessary or a violation of standards has occurred. Reports of serious or potentially serious injury or harm, and even reports without a lot of detail, can still be reported to and pursued by Commission. Our testimony here is limited to what is placed on the public incident, internet-based database.

These comments are consistent with President Obama’s new executive order on regulatory review which requires tailored, balanced rules. OMB has urged independent agencies to comply with the executive order and memoranda.

1. Information Should Not be Released to the Public Database While There is a Pending Claim of Material Inaccuracy

Commission's decision under CPSA Section 6A(c) (4) regarding material inaccuracy claims is dismaying.

According to CPSC, materially inaccurate information in a report of harm is a report which contains "information that is false and misleading, and which is so substantial and important as to affect a reasonable consumer's decision-making about the product." This includes misidentification of the product, manufacturer or private labeler or the harm or risk of harm. The manufacturer has the burden of proof and must provide specific information and evidence and describe how the report might be corrected.

To meet such a high standard of proof, companies need sufficient time to investigate the claim. In this regard, we think that the 10-day requirement is unreasonable and provides substantial challenges for the responding companies. Surely, since thousands of reports will be posted to the database every year (most unchallenged), if Congress increases the 10-day response, it would certainly not undermine the benefits to consumers and, as noted, would have no impact on the Commission investigating serious allegations.

A slight increase in time would also deal with the problem of CPSC not allowing brands to be registered. The extra time needs to be used by the brand owner to notify the manufacturer or importer. A retailer may have brands of the same product built by several manufacturers. Parties who raise frivolous allegations should be sanctioned (as should reporters of harm).

Moreover, it is in every legitimate party's interest that the Commission does not post materially inaccurate information to the database - there is no value in inaccurate or misleading information. Under the current regulation, all harm-reports (except for the ones with outstanding confidentiality claims) have to be posted to the database within ten days of transmitting the reports to the companies. Accordingly, even if the companies meet their burden of proof and respond within an incredibly short period (10 days) to a notice of a proposed posting and submit colorable and substantial evidence of material inaccuracy, the Commission will post the complaint to the database even if it has not resolved the material inaccuracy claims. Indeed, there is no specific obligation under the regulation for the Commission to resolve the material inaccuracy claims by any particular time. Yet, as we all know, once information has been published in the public, internet database, even if it is revised or retracted later, it stays in cyberspace forever and may already have been used and disseminated to many other sites and for many purposes.

It is wrong for the federal government to allow companies and their brands to be unfairly characterized, even slandered, without the government evaluating a company's claim. Further, it is unwarranted that the Commission has as much as seven days to remove the complaint from the database, even after it determines that the report was materially inaccurate.

The law should be changed so that it is clear that no information may be published on the database if there is a pending claim of material inaccuracy. If the Congress wants a federal program that provides valuable information to consumers, while not unnecessarily burdening or harming US industry, then this simple due process should be required.

Because of the extremely limited timeframe to receive the information, raise it with the appropriate personnel within the company, analyze it, and develop a response, it is unlikely that

many companies will be able to respond in a timely manner to a significant percentage of reports of harm. If a company, however, does go through those lengths in such a short period of time, basic fairness requires that the government respond before the data is publicly released. Note, we are not advocating extra time for litigation or appeals, just a basic administrative decision.

2. The Eligible Reporters to the Database Should be Limited, as Congress Intended, to those with First Hand Information about the Harm or with a Relationship to the Consumer.

CPSIA Section 6A(b)(1)(A) lists those who may submit reports of harm for inclusion in the public incident database: (i) consumers; (ii) local, state or federal government agencies; (iii) healthcare professionals; (iv) child service providers; and (v) the public safety entities. The Congressional specificity of these groups was purposeful: to encourage their involvement and to make clear that those who are not the consumers, representative of the consumers, first responders or care providers to consumers should not participate in this database for their own ends. This applies to trial lawyers, consumer groups and even trade associations. Remarkably, originally the Commission proposed an “other” category, but then recognizing that that was clearly unauthorized, has now in the final Database rule shoehorned certain non-governmental organizations into the definition of “public safety entities.” This action also is improper. Congress should reinstate the intent of the legislation.

Whatever value the database will have will not be because of rumor, speculation, misuse or “salting” of the database. Groups with a variety of motivations should not be allowed and do not need to place their often unwarranted opinions in a federal government database; there are countless internet sites for that purpose. The database ought to be limited to those who purchase

the product, use the product or cared or treated those who may have suffered from injury related to the product. Otherwise, the database is simply a blog, and there is no reason for federal government to displace or compete with private blogs.

3. **In the Interest of Accuracy, the Commission Should Require Registration of Model or Other Descriptor Information.**

There are thousands of categories of consumer products, manufacturers and brands where there are numerous models of a product within a general family of products. Although the Commission provides space and encourages submitters to provide more detailed information which will allow the public and manufacturers to identify which particular product was subject to the alleged incident or harm, it does not require that information as long as it is confident that it is a product covered by CPSC. This is a mistake which the Congress should remedy.

In most cases, more specific information is available to the consumer, which includes not only the manufacturer or brand but also the model number or other descriptor. Yes, there are consumer products (like rubber balls) where it is doubtful that the consumer will be able to provide much information beyond a name or brand, but where such information is available, the Commission should require it to be reported. The fact that such a requirement cannot always be adhered to is no reason not to apply it as much as possible. This action, which the Commission has resisted and in which our own thinking has evolved, will increase the usefulness of the report to reviewing consumers and will enable manufacturers a better chance to respond to the alleged report or to at least evaluate it for need to improve the product or take other actions.

We do not believe the totality of these suggestions prevents a useful, accessible public database. Rather, we believe that these proposals enhance the utility of this new mechanism. Improving the quality and fairness of the program will help prevent improper, unverified information from being publicized by the federal government.

Thank you for this opportunity to testify, and I will be glad to answer any questions.