IAAPA

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2010 EVENTS

Euro Attractions Show
October 6-8
Rome, Italy

IAAPA Attractions Expo
November 15-19
Orlando, Florida, USA

2011 EVENTS

Asian Attractions Expo
21-24 June
Singapore

By Federal eRulemaking Portal

July 23, 2010

Office of the Secretary
Consumer Product Safety Commission
Room 502
4330 East West Highway
Bethesda, MD 20814

Re: Docket No. CPSC-2010-0041

The International Association of Amusement Parks and Attractions (IAAPA) is the largest international trade association for permanently situated amusement facilities and attractions. IAAPA represents more than 4,100 facility, supplier, and individual members from more than 90 countries. Member facilities include amusement/theme parks, waterparks, attractions, family entertainment centers, arcades, zoos, aquariums, museums, science centers, resorts, and casinos. IAAPA welcomes the opportunity to comment on the Proposed Rule on the Publicly Available Consumer Product Safety Information Database under the Consumer Product Safety Improvements Act.

The accuracy and integrity of the database are critical to achieving Congress' intent to provide a useful consumer database. IAAPA is concerned that the lack of specific information in the reports of harm coupled with the difficulties a consumer could encounter in correctly identifying a specific product's manufacturer could create a large database filled with misleading information. At best this could be confusing to consumers and at worst harmful to both consumers and manufacturers. IAAPA is also concerned that the process of contacting the manufacturer, providing information to them, and the time frameworks provided for responding before a report of harm is made public are inadequate to give manufacturers the opportunity to thoroughly investigate the reports and respond in a manner which is useful and beneficial to the public. IAAPA's comments seek to improve the quality of information in the database.

Proposed 16 CFR Section 1102.10(a)(6)—*Reports of Harm: Who May Submit; Others*

The CPSIA specifically enumerates the groups who should be allowed to submit reports of harm. This list includes: consumers; local, state or Federal government agencies; health care professionals; child service providers and public safety entities. Expanding the list of who may submit beyond this group is going beyond the scope of the statute and is needlessly diluting the information received. Information derived first hand will be most accurate. The groups enumerated in the statute have first hand information of the incident or are specifically tasked with identifying public safety and/or health hazards. It is critical to the success and accuracy of the database that the group of submitters is not expanded to a larger group. Not only does expanding beyond this list exceed the CPSC's statutory authority, it also needless dilutes the information that Congress wants made available in the database. Section 1102.10(a)(6) should be eliminated from the proposed rule.

Proposed 16 CFR Section 1102.10(d)—*Reports of Harm: Minimum requirements for publication*

The House and Senate Conferees noted their intention that the Commission, "prevent duplicative reports from being added to the publicly available database."[1] This is a critical point in ensuring that the public has accurate information. The proposed rule appears to be premised on the fact that the submitter of the report of harm is the same as the harmed party. But, because the proposed rule seeks information, not just from the person harmed but from a designated list of other possible sources, any one incident is likely to elicit multiple reports of harm. The proposed rule does not specifically address this issue. IAAPA believes that in order to avoid duplicate reports of harm, causing confusion and over reporting, the CPSC should require the harmed party's identity be provided (this can remain unpublished). Requiring the harmed party's name will ensure that the CPSC can accurately cross check the database and prevent duplicate reports. The public may benefit by having the additional information provided from multiple sources, as noted in the conference report, but only if it is clear that the information pertains to the single report of harm. An incident date would be another useful piece of information to ensure that reports of harm clearly identify the incident, but date alone is not enough. The name of the person harmed remains critical to ensuring duplication does not exist. The proposed rule should add this as an additional requirement to Section 1102.10(d).

Proposed 16 CFR Section 1102.10(d)(5)—*Reports of Harm; Minimum requirements for publication; Verification*

IAAPA also believes the database will be enhanced if each submitter is required to identify which of the aforementioned groups he or she belongs to when filing a report (e.g., a victim or health care provider). This will provide context to the reader. Different weight will be placed if the submitter is the actual harmed individual or a medical professional. Both views are important but knowing the perspective from which someone is reporting adds valuable and necessary insight to the reader.

Proposed 16 CFR Section 1102.10(d)—*Reports of Harm; Minimum requirements for publication*

In an effort to maintain accurate information and reports, there should be a requirement that reports of harm be filed within one year of the incident's occurrence. The likelihood of inaccuracies occurring after that length of time is greatly enhanced.

[1] Joint Explanatory Statement of the Committee of Conference, July 28, 2008, page 6.

Proposed 16 CFR Section 1102.10(f)(3)—***Reports of Harm; Minimum requirements for publication; Information not published***

The scope of the database must be limited to reports of harm and not to reports relating to general product quality, service issues, or other types of quality complaints. The harm must relate to the use of the consumer product, or the database should be limited to the information the Commission determines is reasonably related to the safety of consumer products as indicated by specific reports of harm caused by those products. The CPSC should add a section specifying that information that does not do this will not be published.

The CPSC should also clarify that photos should be limited to whole product only. Photos beyond this scope such as photos of injuries, product components or people are not in the public interest and will not be published. The proposed rule should make clear that photos submitted are for product identification purposes.

Anonymous reports which cannot be verified and incomplete reports should not be accepted and/or published in the database.

Proposed 16 CFR Section 1102.10(g)—***Reports of Harm; Minimum requirements for publication; Reports of harm from persons under 18***

IAAPA strongly believes that reports of injuries to minors should be submitted by parents or guardians rather than the minor themselves. This will ensure a degree of maturity in the reporter and will likely increase the accuracy of the report. This requirement should be amended to state that the minimum age to report an incident should be 18.

Proposed 16 CFR Section 1102. 12—***Manufacturer Comments***

Manufacturers and private labelers are likely different for a given product. IAAPA has many questions about how reports about these products will be treated:

- How will CPSC identify the correct entity to respond?
- Will the notification be sent to both simultaneously?
- Will both be alerted to the other's interest?
- If there is a manufacturer and a private labeler, should the entities be given a few more days to respond?
- Will both set of comments be posted?
- Who takes precedence in responding to incident reports?
- If licensors are considered private labelers, then what about products with multiple licenses on them?

The CPSC should work with industry to clarify these issues and ensure that the appropriate entity has adequate time to accurately respond to reports of harm prior to publication.

The Commission should "restart" the statutory timeframes if notification goes to the wrong manufacturer or private labeler, if incomplete information is provided in the report form, or if the submitter corrects the original report form, especially where information in a required field has been changed.

Proposed 16 CFR 1102.26(d)—*Designation of materially inaccurate information; Timing of Submission*

Generally the timeframe for challenging a report as materially inaccurate before publication is too short. Better and more thorough information is often more useful than incomplete information obtained quickly.

The Commission should work with industry to identify realistic time limits for businesses to accurately and thoroughly respond in the case of "materially inaccurate information." Consumers and manufacturers will be better served by accurate fulsome information.

Miscellaneous comments

Unfortunately, intellectual property theft is an issue for the attractions industry. Despite the best efforts of IAAPA members, government officials and law enforcement officers, counterfeit products do make their way into the market.

How will manufacturers know whether the product is a counterfeit? Counterfeit products are often difficult to identify, will the reports of harm provide the manufacturer with ample information to determine this?

In order to prevent fraud or the malicious filing of false reports, IAAPA believes there should be a mechanism to detect if multiple reports are being filed from the same IP address, and those reports should be flagged for further inspection prior to posting them for the public.

Regulatory Flexibility Act

IAAPA disagrees that the proposed rule will have "little or no impact" on small businesses.

Unlike large businesses, who may have in-house counsel, engineers and testing facilities, small businesses will likely need to contract these services out, which would take more than "a few hours" and place a significant financial burden on these small firms. Furthermore, "a few hours" is multiplied by the number of small businesses subject to this law, the time burden is substantial.

IAAPA believes the Commission should do a complete RFA review on the economic impact of this rule prior to implementation.