



U.S. SENATE COMMITTEE ON
COMMERCE, SCIENCE, & TRANSPORTATION

CPSC SECTION 6(B) DATA HANDLING

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I. Executive Summary

The Consumer Product Safety Commission (CPSC) is an independent agency with jurisdiction over the regulation of consumer products and services. The CPSC was created pursuant to the Consumer Product Safety Act (CPSA)¹, which was enacted in 1972 to protect the public against unreasonable risks of injuries associated with a wide array of consumer products. As a part of that effort, the CPSC maintains several databases of information related to reported injuries and deaths associated with consumer products. In April of 2019, the Senate Committee on Commerce, Science, and Transportation learned that requests for this information had been fulfilled without redacting manufacturer information as well as consumers' personal information as required by section 6(b) of the CPSA. The Committee first learned of these improper disclosures from a senior CPSC official, who expressed frustration at the lack of information about the situation from then-Acting Chairman Ann Marie Buerkle.

On April 15th, 2019, Chairman Wicker and Subcommittee Chairman Moran sent a letter to then-Acting Chairman Buerkle requesting additional information about the disclosures, as well as a staff-level briefing on the issue. After the Committee received then-Acting Chairman Buerkle's response on April 30th, the senior CPSC official informed Committee staff of deficiencies in the response and expressed concerns that the presence of personally identifiable information of individual consumers in the disclosures was not being adequately addressed. A second senior CPSC official also shared concerns with the Committee about then-Acting Chairman Buerkle's conduct surrounding the issue. This senior official expressed suspicion that these disclosures may not have been inadvertent.

On May 30th, Chairman Wicker and Subcommittee Chairman Moran sent a second letter to then-Acting Chairman Buerkle requesting additional information, as well as documentation of the requests to and responses from the Clearinghouse that led to the unauthorized disclosures. Then-Acting Chairman Buerkle responded on June 14 and produced some requested documents. She acknowledged, however, that the document production was incomplete and would continue.

On July 31st, Committee staff conducted interviews with employees who handled Clearinghouse disclosures as well as their supervisors. These interviews resulted in the following five conclusions that will be explored in more detail in section two of this report.

1. The series of improper disclosures is likely attributable to incompetence and mismanagement rather than deliberate, bad-faith efforts by senior managers or commissioners.
2. There was little to no section 6(b) training for front line employees.
3. There may not have been any official training implemented since the disclosures were discovered.
4. The systems used by front line employees for accessing CPSC data are convoluted and ineffective.
5. Chairman Buerkle's June 14th letter to Chairman Wicker and Subcommittee Chairman Moran may not have been completely accurate.

¹ 15 U.S.C. §§ 2051 et seq.

After reviewing hundreds of documents and emails and conducting multiple interviews, the Committee's investigation found that disclosures violating section 6(b) of the CPSA were due to a lack of training, ineffective management, and poor information technology implementation rather than deliberate efforts by CPSC employees.

We recommend that the CPSC implement the following procedures to ensure that Clearinghouse data requests are handled appropriately.

1. Conduct an internal review of training programs for new hires. New hires should undergo *formal* training on proper data handling procedures as well as all applicable CPSA requirements.
2. Review and simplify information technology systems used to access and process data requests.
3. Implement clear and consistent review processes by which sensitive disclosures are reviewed by CPSC management, to potentially include CPSC Office of General Counsel (OGC) employees.

II. Findings

Between December of 2017 and March 22nd, 2019, the CPSC clearinghouse made improper disclosures to 29 unique entities. The bulk of the disclosures went to two entities: Consumer Reports and a Researcher at Texas A&M University. These disclosures contained information on approximately 10,900 unique manufacturers, as well as street addresses, ages, and genders of approximately 30,000 consumers.

On April 1st, upon learning of the disclosures from an employee of Consumer Reports, CPSC staff requested that Consumer Reports return the data and destroy any copies. Consumer Reports refused this request, as well as a subsequent request from the CPSC OGC.

On April 5th, CPSC staff sent emails to all recipients of unauthorized information to request that information be returned or destroyed.

On April 11th, CPSC staff began sending notifications to the 10,900 manufacturers identified in the disclosures. This process is ongoing and has involved 6 phases of correspondence with affected manufacturers.

As of July 31st, all recipients of disclosures have agreed to return or destroy personally identifiable information contained in the disclosures.

On July 31st, Committee staff conducted interviews with the frontline employees responsible for the disclosures at CPSC headquarters, as well as their supervisors. Committee staff interviewed a Supervisory Program Analyst, a Senior Program Analyst, the Division Director of Hazard Injury Data Systems, the Associate Executive Director for Directorate of Epidemiology, the Acting Deputy Assistant Executive Director of the Office of Hazard Identification and

Reduction, and the Acting Director of the Office of Hazard Identification and Reduction. The five key findings from those interviews are outlined below.

1. The series of improper disclosures is likely attributable to incompetence and mismanagement rather than deliberate, bad-faith efforts by senior managers or commissioners. All employees stated that no supervisor or commissioner knowingly directed front line employees to violate 6(b) requirements. All frontline employees stated that they had not been trained on 6(b) requirements and did not know that the disclosures were improper.
2. There was little to no training for frontline employees. As stated above, employees responsible for the disclosures stated that they had little to no knowledge of 6(b) requirements and had not been trained on them. More broadly, they reported having had little to no training at all beyond informal conversations with their managers.
3. There may not have been any official training implemented since the disclosures were discovered. Frontline employees reported having received no formal 6(b) training since the April 2019 report of the disclosures beyond a notice sent out to employees about the breach. However, one manager stated that additional training had been developed but not implemented because they did not want to burden employees as they were still responding to the April disclosures. Another manager stated that he had arranged for a management consultant to conduct an off-the-shelf training program on “internal controls” in September that didn’t specifically deal with 6(b) requirements and procedures. A third manager stated that, in fact, formal training had already been implemented that “reinforced a focus on 6(b).”
4. The software applications used by front line employees for accessing CPSC data are convoluted and ineffective. There are reportedly three different applications in use for accessing the data. The first is a legacy application designed in 1997 that was supposed to be phased out years ago. The second is an application designed to replace the legacy application. According to frontline employees, it is of limited effectiveness. The third application was written by a now-retired CPSC employee for use in the statistical software “SAS.” It is not always clear to frontline employees which application to use for a given project. According to one manager interviewed, only one of the three applications has formal, written instructions associated with it. Many employees don’t have any training for, or knowledge of, the “SAS” programming language and are thus unable to make use of one of the three applications.
5. Then-Acting Chairman Buerkle’s June 14th letter to Chairman Wicker and Subcommittee Chairman Moran may not have been completely accurate. In her letter she states that

“CPSC staff are also routinely trained on the requirements of Section 6 of the CPSA and instructed on the proper steps for following its requirements. Documents that are prepared by CPSC staff go through an internal 6(b) clearance process where they are

reviewed by senior staff including the general counsel's office and program staff."

As previously mentioned, frontline employees indicated that they had never received formal training on 6(b) requirements. They also indicated that there was no internal 6(b) clearance process and that information was, to their knowledge, never reviewed by senior staff in any capacity.

III. Background

The CPSC is an independent agency with jurisdiction over the regulation of consumer products and services. The CPSC was created pursuant to the Consumer Product Safety Act (CPSA)², which was enacted in 1972 to protect the public against unreasonable risks of injuries associated with a wide array of consumer products. These products span from lawn mowers to cigarette lighters to baby strollers, and include items manufactured domestically or outside the United States.³ To accomplish this mission, the CPSC primarily works with relevant industry stakeholders and standards organizations, such as the American National Standards Institute, Underwriters Laboratories, and others to develop voluntary standards.⁴ The Commission is also empowered under certain circumstances to issue mandatory standards, obtain recalls of products that need a specific repair, or even ban products if necessary.⁵ The CPSC also researches potential product hazards and conducts campaigns to educate consumers about product safety.⁶

Commissioners

The CPSC is composed of a maximum of five commissioners, no more than three of which may be of the same political party.⁷ Commissioners are appointed by the President with the advice and consent of the Senate to seven-year terms.⁸ Like the leadership of other independent agencies, commissioners do not serve at the pleasure of the President, and may only be removed "for neglect of duty or malfeasance in office but for no other cause."⁹ One of the commissioners is selected by the President, again with the advice and consent of the Senate, to serve as Chairman. The CPSC Chairman is empowered to conduct the executive and administrative functions of the agency, including hiring and firing personnel, delegating duties among other commissioners and staff, and expending appropriations.

The current commissioners are: Acting Chairman Robert Adler, a Democrat, whose term expires in October 2021; Commissioner Ann Marie Buerkle, a Republican, whose term expires in October 2019 (and who served as Acting Chairman during the time period pertinent to this investigation); Commissioner Dana Baiocco, a Republican, whose term expires in October 2024;

² 15 U.S.C. §§ 2051 et seq.

³ *Id.*

⁴ U.S. Consumer Product Safety Commission. Voluntary Standards. June 17, 2019. Available at: <https://www.cpsc.gov/Regulations-Laws--Standards/Voluntary-Standards>.

⁵ *Id.*

⁶ *Id.*

⁷ 15 U.S.C. § 2053(c).

⁸ *Id.* at § 2053(a)-(b).

⁹ *Id.* at § 2053(b).

Commissioner Peter Feldman, a Republican, whose term expires in October 2026; and Commissioner Elliot Kaye, a Democrat, whose term expires in October 2021.

Statutes

In addition to the CPSA and amendments, the CPSC is charged with administering the following statutes:¹⁰

- The Children’s Gasoline Burn Prevention Act, Pub. L. 110-278 (codified at 15 U.S.C. § 2056), which requires portable gasoline containers manufactured for sale in the United States to conform to safety requirements and child resistant packaging;
- The Federal Hazardous Substances Act, Pub. L. 86-613 (codified as amended at 15 U.S.C. §§ 1261 – 1278), which requires warning labels on certain hazardous household products, including toys, cribs, rattles, pacifiers, bicycles, and children’s bunk beds, and grants the CPSC the authority to ban hazardous substances or products under certain circumstances;
- The Flammable Fabrics Act, Pub. L. 83-88 (codified as amended at 15 U.S.C. §§ 1191 – 1204), which allows the CPSC to issue standards for the manufacture of highly flammable clothing and interior furnishings;
- The Poison Prevention Packaging Act, Pub. L. 91-601 (codified at 15 U.S.C. §§ 1471 – 1477), which requires a number of household substances to be packaged in child-resistant packaging;
- The Refrigerator Safety Act, Pub. L. 84-930 (codified at 15 U.S.C. 1211 – 1214), which requires refrigerators to be able to be opened from the inside in the event of accidental entrapment;
- The Virginia Graeme Baker Pool and Spa Safety Act, Pub. L. 110-140 (codified at 15 U.S.C. §§ 8001 – 8007), which establishes a federal swimming pool and spa drain cover standard;
- The Child Nicotine Poisoning Prevention Act, Pub. L. 114-116 (codified at 15 U.S.C. § 1472a), which requires any nicotine provided in a liquid nicotine container sold in the United States to meet certain special packaging requirements; and
- The Drywall Safety Act, Pub. L. 112-266 (codified at 15 U.S.C. 2056c), which requires drywall manufactured or imported into the United States to comply with limitations on sulfur content.

Enforcement

The CPSC has the authority to seek the assessment of civil penalties against violators of the CPSA.¹¹ Each “knowing” violation is subject to a civil penalty of as much as \$100,000, and individuals or organizations that engage in multiple related violations can be penalized by as much as \$15 million.¹² The CPSC may mitigate these penalties in the process of entering into settlement agreements with such parties. Violators of the CPSA can also be subject to criminal penalties.

¹⁰ See Statutes, CPSC.gov, <https://www.cpsc.gov/Regulations-Laws--Standards/Statutes>.

¹¹ 15 U.S.C. § 2069.

¹² *Id.*

Disclosure of manufacturer information

The CPSC maintains several databases containing information regarding potential product-related injuries under the framework of the National Injury Information Clearinghouse. Members of the public are able to request information from the Clearinghouse, and such information can be provided subject to the requirements of section 6(b) of the CPSA. Section 6(b) prohibits the Commission from disclosing information from the Clearinghouse without taking reasonable steps to assure that the information is accurate, that disclosure of the information is fair in the circumstances, and that disclosure of the information is reasonably related to effectuating the purposes of the Act and of the other laws administered by the Commission. Section 6(b) requirements are meant to incentivize manufacturers to provide more safety information without fear of public backlash.

IV. Our Investigation

The Committee's investigation into improper disclosures of manufacturer and consumer information began during the week of April 8th when a senior CPSC official reached out to Committee staff to express frustration at the lack of information about the situation from then-Acting Chairman Buerkle's office. Chairman Wicker and Subcommittee Chairman Moran sent a letter to then-Acting Chairman Buerkle's office asking for information regarding the disclosures and for a staff-level briefing. Then-Acting Chairman Buerkle responded on April 29, and the briefing was held on April 30. According to the response and briefing, after notification by Consumer Reports on April 1, CPSC staff analyzed Clearinghouse activity and found unauthorized disclosures to 29 recipients going back to December 2017. CPSC staff alleged that this coincided with new personnel who may not have been properly trained or overseen.

On April 30th, a senior CPSC official informed Committee staff of perceived deficiencies in then-Acting Chairman Buerkle's response and expressed concerns that the presence of personally identifiable information of individual consumers in the disclosures was not being adequately addressed.

On May 16th, a second senior CPSC official met with Committee staff with serious concerns regarding then-Acting Chairman Buerkle's conduct surrounding this issue. The official asserted that the then-Acting Chairman's office had been preventing the official's office from fully reviewing the disclosed information. The official stated their suspicion that the then-Acting Chairman had been improperly coordinating with other commissioners and possibly even Consumer Reports on the inclined sleeper issue and others.

On May 30th, Chairman Wicker and Subcommittee Chairman Moran sent a follow up letter to then-Acting Chairman Buerkle asking for additional information including documentation of the requests to and responses from the Clearinghouse that led to the unauthorized disclosures. Then-Acting Chairman Buerkle responded on June 14 and produced some requested documents. She acknowledged, however, that the document production was incomplete and would continue.

On June 17th, Committee staff discussed the document production with CPSC staff and requested the opportunity to speak with CPSC analysts who handled the Clearinghouse disclosures.

On July 31st, Committee staff conducted interviews with frontline employees responsible for the disclosures at CPSC headquarters as well as a number of senior staff overseeing the office responsible. Additionally, Committee staff received a briefing on data-handling procedures at the Clearinghouse.

V. Conclusion and Recommendations

After reviewing hundreds of documents and emails and conducting multiple interviews, the Committee's investigation found that disclosures violating section 6(b) of the CPSA were due to a lack of training, ineffective management, and poor information technology implementation rather than deliberate efforts by CPSC employees. CPSC staff directly responsible for the disclosures had little to no knowledge of 6(b) requirements and received, processed, and completed information requests through the Clearinghouse independent of any managerial review. These employees are provided three different software applications to access and process relevant data without the necessary training on how to use these often confusing and idiosyncratic systems.

We recommend that the CPSC implement the following procedures to ensure that Clearinghouse data requests are handled appropriately.

1. Conduct an internal review of training programs for new hires. New hires should undergo *formal* training on proper data-handling procedures as well as all applicable CPSA requirements.
2. Review and simplify information technology systems used to access and process data requests.
3. Implement clear and consistent review processes by which sensitive disclosures are reviewed by CPSC management, to potentially include CPSC OGC employees.