



TUCKER ELLIS & WEST LLP
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CLIENT ALERT

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**PASSAGE OF THE PROPOSED RULE ON THE PUBLICLY
AVAILABLE CONSUMER PRODUCT SAFETY INFORMATION DATABASE**

The Consumer Product Safety Improvement Act of 2008 brought about sweeping reforms of U.S. consumer laws, including the creation of a Publicly Available Consumer Product Safety Information Database (“Database”). Although not as widely publicized as other reforms, this Database will undoubtedly impact manufacturers and suppliers of consumer products.

In its ongoing attempt to meet Congress’s March 2011 deadline for implementing the Database, the Consumer Product Safety Commission (“CPSC”) recently issued a Proposed Rule outlining the implementation of the Database. The public has until July 23, 2010 to comment on the CPSC’s interpretation of the statutory language before a final rule is proposed and the Database is rolled out in March 2011. The Database will have broad implications for manufacturers and now is the time for manufacturers to determine how they will respond to and monitor reports of harm posted on the Database.

What is the Database? Both Congress and the CPSC intend the Database to serve as a publicly-accessible tool for consumers to submit reports of harm. They also intend for the Database to serve as a medium in which manufacturers can respond to reports and

consumers can see any corrective action that has been instituted by the manufacturer about a given product.

What is a report of harm? The CPSC defines a report of harm as injury, illness, or death, or a potential risk of injury, illness, or death, caused by a consumer product. Under the Proposed Rule, anyone can submit a report of harm as long as it contains the required information. To be reported on the Database, a report of harm must include a description of the product, a description of the harm (or potential harm), identity of the manufacturer, contact information of the submitter, a verification by the submitter that the information is true and accurate, and consent to publish the information. The contact information and consent of the submitter, however, will not be made public. Additionally, the report may, but is not required to, include the date of harm, date of manufacture, place of purchase, medical records, and pictures. As currently written, the Proposed Rule does not require the CPSC to verify the information submitted or the identity of the submitter.

How will the Database work? If the proper information is submitted, the report will be posted on the Database and will be

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transmitted to the manufacturer generally within five business days. Once the information is received, the manufacturer will have only ten days to investigate the report, object to materially inaccurate information, claim certain information as confidential, determine whether or not a response is warranted, and possibly post a response. If information is deemed to be materially inaccurate or confidential, the CPSC can decline to post the report, remove the information, or add additional information to correct the inaccuracy.

What does this Database mean for manufacturers of consumer products?

While the CPSC has gathered and maintained product safety information and reports of harm for decades, the information was not immediately available to the public and easily searchable. This Database will create a brand new portal for consumers to access all of this information and report incidents of harm for any consumer product regulated by the CPSC. It can be anticipated that the database will also be used by lawyers, bloggers, and researchers looking for patterns of reports of harm.

The public has until July 23, 2010 to submit comments to the CPSC. At that time, the CPSC will adopt a final rule and begin implementation of the Database with a final roll-out in March 2011. As the CPSC continues to move forward with the Database, now is the time for manufacturers to act. Manufacturers should determine how the Database will affect their business, as well as how best to prepare for the Database based on their specific products and business plans. There is no “one-size-fits-all” approach to preparing for the Database.

All recent information and templates for the Database can be viewed at www.saferproducts.gov. Tucker Ellis & West LLP will continue to monitor this important development in consumer product law. Additionally, look for details of an early fall presentation on this topic from our team of consumer product lawyers.

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