

October 2009

**PREPARING FOR THE CONSUMER  
PRODUCT SAFETY COMMISSION'S PUBLIC DATABASE  
OF CONSUMER PRODUCT INCIDENT REPORTS**

On August 12, 2008, President Bush signed the Consumer Product Safety Improvement Act of 2008 ("CPSIA"), enacting the most comprehensive consumer products legislation since 1972. A striking feature of the CPSIA is section 212, which directs the creation of a publicly accessible, searchable consumer product safety database. The database, which must be released by March 11, 2011, will have a profound effect on consumer product manufacturers.

On September 10, 2009, the Consumer Product Safety Commission (the "Commission") presented to Congress a detailed report to implement the database, tentatively called SaferProducts.gov. The Commission touts the new database as a single central location where consumers can post the details of product safety-related incidents, and search for prior incidents and recalls on products. Establishing the means to receive and collect information (electronic, telephonic or in writing) relating to harm from the use of consumer products and other products or substances regulated by the Commission will not be easy. The vast amount of data to be collected and made available to the public through the database is daunting. "Harm" is not limited to injury, illness or death; it also includes the risk of injury, illness or death, as determined by the Commission. The database must also publish information about products the Commission deems a substantial product hazard. Any products subject to voluntary corrective action by the manufacturer or private labeler must also be published in the database. The Commission will be required to sift through mountains of reports from consumers; local, state and federal government agencies; health care professionals; child service providers; and public safety entities.

At a minimum, every report to the Commission must (i) describe the consumer product; (ii) identify the manufacturer or private labeler; (iii) describe the harm relating to the use of the consumer product; (iv) provide the contact information of the person submitting the report; and (v) verify that the information submitted is true and accurate to the best of the person's knowledge, and consent to the inclusion of the information in the database. The Commission may supplement this report with any other information it deems to be in the public interest.

The flaw and inherent unfairness of section 212 is the insufficient time a manufacturer or private labeler is allotted to check the accuracy of the report before its publication. After a report is submitted, the Commission must forward it to the manufacturer or private labeler identified in the report within five (5) business days "to the extent practicable." The manufacturer or private labeler has only ten (10) business days, at most, to read, investigate, draft comments to the report, and/or file a lawsuit to prevent disclosure of confidential information contained in the report. Within this abbreviated time period, a manufacturer or private labeler may draft comments to the report and request that the Commission add them to the report. Portions of the report may be designated as confidential. If the Commission determines that a report contains or relates to a trade secret, the Commission can redact the information before publication. If the Commission disagrees with the



manufacturer's confidential designation, the Commission can override the objection and publish the information in the database. The manufacturer's last resort to protect confidential, proprietary information from public disclosure is filing a lawsuit in federal court to seek removal of the information from the database.

The time to investigate each report is extremely compressed. The CPSIA requires the Commission to publish the report in the database no later than fifteen (15) days from its receipt; hardly enough time to read the report, let alone verify its accuracy and scan it for traces of confidential information.

Even though a disclaimer on the database notifies users that "the Commission does not guarantee the accuracy, completeness, or adequacy of the contents of the database," the imprimatur of the Commission is indirectly stamped on the information contained in the report. The Commission is charged with removing or correcting inaccurate information from the database, but that provides little solace to the manufacturer of a consumer product whose reputation is damaged as a result of misinformation published on a government agency's website.

It is vital that manufacturers of consumer products immediately develop a strategy to meet the challenges created by this new database. We have developed simple and time-saving remedies to blunt the adverse impact of the Commission's searchable public database. Our attorneys are experienced and equipped to guide you in creating specific programs tailored to navigate your company through the minefields created by the Commission's proposed database.

---

This *Products Liability Alert* was written by Haekyoung Suh, a Member of Norris, McLaughlin & Marcus, P.A. and its Product Liability Group. If you have any questions regarding the information in this alert or any other matter concerning the Consumer Products Safety Improvement Act of 2008, please feel free to contact her by telephone at (908) 722-0700, Ext. 4271 or by email at [hsuh@nmmlaw.com](mailto:hsuh@nmmlaw.com).

Copies of the entire Consumer Product Safety Improvement Act of 2008 and the Commission's Report to Congress Pursuant to Section 212 of the CPSIA are available upon request.

## SAVE THE DATE

### Products Liability Law Seminar

Managing Products Liability Risk for Manufacturers and Distributors:

- Prevention and Risk Management Tactics
- Insurance Considerations
- Foreign Manufacturer/Supplier Concerns and Solutions
- Strategies for Handling Recalls Under the New CPSIA

November 11, 2009 • 8:30 AM - 11:30 PM  
NMM Media Room, 721 Route 202/206, Bridgewater, NJ 08807

The *Products Liability Law Alert* provides information to our clients and friends about current legal developments of general interest in the area of products liability. The information contained in this Alert should not be construed as legal advice, and readers should not act upon such without professional counsel. Copyright © 2009 Norris McLaughlin & Marcus, P.A.



NJ: 721 Route 202-206 P.O. Box 5933 Bridgewater, NJ 08807-5933 • P: (908) 722-0700 • F: (908) 722-0755  
NY: 875 Third Avenue, 18th Floor New York, NY 10022 • P: (212) 808-0700 • F: (212) 808-0844  
PA: The Paragon Centre, Suite 300 1611 Pond Road Allentown, PA 18104-2258 • P: (610) 391-1800 • F: (610) 391-1805

[www.nmmlaw.com](http://www.nmmlaw.com) E: [info@nmmlaw.com](mailto:info@nmmlaw.com)