

A horizontal banner image divided into several vertical panels. From left to right, the panels show: a pair of scales of justice, a stack of books, a computer keyboard, and a gavel. Overlaid on this image is the text "JONES DAY" in a smaller font and "COMMENTARY" in a large, bold, white font.

JONES DAY  
**COMMENTARY**

## **THE CONSUMER PRODUCT SAFETY DATABASE: FREQUENTLY ASKED QUESTIONS**

In March 2011, consumers, governmental agencies, and others will be able to submit reports of harm involving consumer products to a public database created by the Consumer Product Safety Commission ("CPSC"). Manufacturers and private labelers will receive copies of these reports and have an opportunity to comment on them and have those comments published on the database along with the report of harm. The database, located at [www.saferproducts.gov](http://www.saferproducts.gov), will allow the public to search for and review reports on consumer products, as well as the comments that manufacturers or private labelers provide in response to those reports. The CPSC will also use this data to assist in identifying potential product hazards or safety concerns. As the CPSC prepares for implementation of this database, manufacturers and private labelers should understand how it works and prepare accordingly. Below are some common questions and answers about the database.

### **HOW DOES IT WORK?**

Consumers and others can log onto [www.saferproducts.gov](http://www.saferproducts.gov) and submit reports of harm about consumer products. They are asked to provide the CPSC with basic information, including a description of the product, the identity of the manufacturer, and a description of the harm or risk of harm related to the use of the product. After they complete the information and verify that they have reviewed the report and that the information is true and accurate to the best of their knowledge, the report is submitted to the CPSC.

The CPSC then will review the report to determine whether it meets the minimum criteria for publication. If so, the CPSC will post the report on the database 15 business days after submission. The CPSC will also forward, usually within five business days of submission, reports meeting the minimum criteria to the manufacturer or private labeler for comment.

The manufacturer or private labeler will thus have 10 business days to comment if it wishes to have its comments published simultaneously with the posting of the report. Regardless of whether the manufacturer comments, the CPSC will publish the report of harm 15 business days after submission, as long as the report meets the criteria for publication and the CPSC has not in those 15 days determined that the report contains materially inaccurate information (which it is unlikely the CPSC will have done).

## **HOW DO MANUFACTURERS RECEIVE NOTIFICATION OF REPORTS AND PROVIDE COMMENTS?**

Manufacturers and private labelers who are registered on the business portal located at [www.saferproducts.gov](http://www.saferproducts.gov) will receive electronic notification of reports of harm. They can also use the portal to respond to reports online and provide comments to be published on the public database along with the consumer report. If a manufacturer or private labeler is not registered with the portal, notification will come via regular U.S. mail to the principal place of business.

Although the database will not be fully operational until March 2011, a soft launch test period began January 24. If a manufacturer or private labeler registers with the business portal now, it will receive reports of harm from the CPSC and can provide comments in response to those reports. This is an opportunity for manufacturers to participate in the “testing” phase of the database and provide feedback to the CPSC. Reports of harm and manufacturer comments submitted during this “soft launch” period will not be published on the database.

## **HOW SHOULD MANUFACTURERS RESPOND TO REPORTS?**

Timing is key. Once a consumer submits a report that meets the minimum criteria for publication, the CPSC will very likely post it 15 business days from the time of submission. Because the CPSC can take up to five days to transmit a report of harm, if the manufacturer has comments and wants

them published simultaneously with the report of harm, it may have only 10 business days to act.

Standard responses can be used to comment on reports, but all reports should be reviewed to see if a more detailed response is necessary. In some instances, the manufacturer may wish to attach photographs or instructions for consumers to reference.

Manufacturers should also submit a specialized response if a report contains materially inaccurate information. The business portal will allow the manufacturer to inform the CPSC that it believes the report contains such information and request expedited review of the claim. This may allow the CPSC to resolve the inaccuracy before publication of the report.

## **HOW DOES A MANUFACTURER OR PRIVATE LABELER REGISTER WITH THE BUSINESS PORTAL?**

Manufacturers and private labelers can register at [www.saferproducts.gov](http://www.saferproducts.gov) after reviewing and agreeing to the CPSC’s terms and conditions. The business portal allows each firm to designate a primary contact, who will receive the reports via email and who will have administrative rights on the account. The primary contact will choose a username and password and can designate additional users to also have accounts. The primary contact can specify what privileges each user should have, including read-only access and commenting abilities. Additional users can also receive notices of reports via email if the primary contact so determines.

## **WHAT ARE THE BENEFITS OF REGISTRATION?**

Online registration for the business portal will allow the CPSC to directly contact the primary contact for each manufacturer, as well as any additional designated users, almost instantaneously, using email. Without this information, the CPSC would have to search other sources for the correct contact person and address. With only 10 business days to

provide comments or report materially inaccurate information to the CPSC before a report is published, the additional time received by electronic notification is very helpful to manufacturers.

## **IS THERE ANYTHING ELSE THAT MANUFACTURERS SHOULD DO WITH RESPECT TO THE DATABASE?**

Manufacturers and private labelers should review their internal controls and consider ways to incorporate consumer reports from saferproducts.gov into the other information they review as part of their consumer safety program. This includes examining consumer reports, along with other information manufacturers receive, to determine whether it is necessary to submit a Section 15(b) report about a product to the CPSC.

## **WHAT IF A MANUFACTURER OR PRIVATE LABELER MISSES THE DEADLINE TO SUBMIT A COMMENT BEFORE THE CPSC PUBLISHES A REPORT OF HARM?**

Manufacturers and private labelers may still submit comments after the CPSC has posted a report of harm. As long as the comment meets the CPSC's basic requirements, the CPSC will ordinarily post it. If the comment contends that the report of harm is materially inaccurate, the CPSC will investigate. Although there is no deadline for the CPSC to complete its investigation, it must correct materially inaccurate information within seven days of determining that it is materially inaccurate.

## **CAN A MANUFACTURER OR PRIVATE LABELER PROTECT CONFIDENTIAL INFORMATION FROM PUBLICATION?**

Yes. The CPSC's regulations allow a manufacturer or private labeler to designate portions of a report of harm as containing trade secrets or other confidential information. Timely submission of such a designation can prevent publication of the confidential information.

## **LAWYER CONTACTS**

For further information, please contact your principal Firm representative or one of the lawyers listed below. General email messages may be sent using our "Contact Us" form, which can be found at [www.jonesday.com](http://www.jonesday.com).

### **Peter J. Biersteker**

Washington

+1.202.879.3755

[pbiersteker@jonesday.com](mailto:pbiersteker@jonesday.com)

### **C. Kevin Marshall**

Washington

+1.202.879.3851

[ckmarshall@jonesday.com](mailto:ckmarshall@jonesday.com)

### **Danielle M. Hohos**

Washington

+1.202.879.7644

[dmhohos@jonesday.com](mailto:dmhohos@jonesday.com)