U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, DC 20207

ADMINISTRATION OF THE FREEDOM OF INFORMATION ACT FOR FISCAL YEAR 2000

FEBRUARY 1, 2001

U S CONSUMER PRODUCT SAFETY COMMISSION

Report for Fiscal Year 2000
The Administration of
The Freedom of Information Act

I. BASIC INFORMATION REGARDING THE REPORT

A Contact for questions about the report Todd A Stevenson, Freedom of Information Officer and Deputy Secretary, Office of the Secretary, U S Consumer Product Safety Commission, Washington, D C 20207 or 4340 East-West Highway, Suite 502, Bethesda, Maryland 20814 Telephone 301-504-0785, Facsimile 301-504-0127, Email tstevenson@cpsc gov

B Web address for this report http //www cpsc gov/cpscpub/pubs/reports/foia00 pdf

C A paper copy of the report is available from Mr Stevenson

II. HOW TO MAKE A FOIA REQUEST

A All FOIA requests received by the CPSC are processed in headquarters The address is Freedom of Information Act Request, Office of the Secretary, U S Consumer Product Safety Commission, Washington, D C 20207, or for hand deliveries 4340 East-West Highway, Suite 502, Bethesda, Maryland 20814 Telephone 301-504-0785, Facsimile 301-504-0127, Email tstevenson@cpsc gov

B Other Reference Information about the Agency The CPSC's World Wide Web site, www cpsc gov , contains extensive information about the agency's activities, including agency meetings, product recalls and hazards, job vacancies, publications, a calendar of public meetings, other important activities and the Guide to Public Information The site also includes an interactive feature that allows consumers to report unsafe products and related injuries electronically CPSC also maintains an electronic mail address Info@cpsc gov This can be used for inquiries about product recalls or to report potential product hazards The CPSC's public reference reading room contains numerous agency records, including the materials the CPSC makes available for public inspection and

copying pursuant to the FOIA, 5 U S C §§ 552(a)(2) and (5) The reading room is in the Public Information Center in Suite 419 at the CPSC's headquarters at 4330 East-West Highway, Bethesda Maryland 20814 Those reading room records are also available on the CPSC's electronic reading room on CPSC's World Wide Web site, www cpsc gov , in the FOIA portions of the "Library" section

C Response Time Ranges The CPSC responds within 7 days to most of the FOIA requests that are received These are simple requests for materials that are frequently requested or where we have anticipated the subject of the requests More complex requests require additional preparation and processing time The median time to complete the complex requests is 30 days Complex requests involve one of the following voluminous records or records which are not easily accessible and have to be collected from several Commission offices, proprietary data, privacy concerns, part of an investigatory file, or review required by section 6(b) of the Consumer Product Safety Act (CPSA), 15 U S C § 2055(b) [1] The Commission reviews all agency records that are responsive to FOIA requests according to the requirements of section 6(b) These notifications and the extensive analyses they require are in addition to procedures routinely conducted pursuant to the FOIA The process not only involves the staffs of the Offices of the Secretary and the General Counsel, but also frequently involves other technical staffs where their expertise is required for an understanding of the materials being processed The time-consuming reviews and material preparations of FOIA requests involving section 6(b) cause delays in the processing of these requests

D The CPSC generally does not disclose to the public the following types of information

1 Documents prohibited from disclosure by the CPSA, 15 U S C §§ 2055(a) and (b), which prohibits the release of trade secrets and confidential commercial or financial information, and information that identifies manufacturers of consumer products, unless the CPSC has taken reasonable steps to assure it is accurate, its release would be fair under the circumstances, and its release is reasonably related to effectuating the purposes of the acts the Commission administers

2 Information that identifies injured persons and the persons who treated them, without their consent to disclosure

[1] On June 9, 1980, the U S Supreme Court ruled that section 6(b) of the CPSA applies to FOIA requests, CPSC v GTE Sylvania, 447 U S 102 (1980) Section 6(b) requires that, with certain exceptions, the Commission notify manufacturers or private labelers of consumer products before disclosing information from which their identities can be readily ascertained by the public Section 6(b) prohibits the disclosure of information earlier than 30 days after notification to identified firms to allow the firms to make claims and comments Firms must be given 10 days to file suit to block the disclosure if they claim that the information is confidential or inaccurate Efforts to satisfy the statutory requirements in the CPSA necessarily delay many responses to FOIA requests

3 Certain inter-agency and intra-agency memoranda containing opinions and recommendations prepared to assist in decision-making

4 Personnel, medical and similar files, the disclosure of which would be a clearly unwarranted invasion of personal privacy

5 Investigatory records compiled for law enforcement purposes when disclosure could reasonably be expected to interfere with enforcement procedures, reveal identities of confidential information sources, or would disclose techniques, guidelines and procedures for law enforcement investigations or prosecutions

III. DEFINITIONS OF TERMS AND ACRONYMS USED IN THE REPORT

A Agency-Specific Acronyms or Other Terms

1 CPSA • the Consumer Product Safety Act 15 U S C §§ 2051-2084

2 CPSC or Commission • Consumer Product Safety Commission

3 Section 6(a) of the CPSA, 15 U S C § 2055(a) • prohibits the disclosure of trade secrets, confidential or proprietary business information or other matters referred to in 18 U S C § 1905 or FOIA Exemption 4, requires notification to submitters of information prior to disclosure of any potential confidential information

4 Section 6(b) of the CPSA, 15 U S C § 2055(b) • prohibits the disclosure of information from which the identity of a manufacturer or private labeler of a consumer product can be readily ascertained by the public, earlier than 30 days after notification of the manufacturer or private labeler, requires the Commission to take reasonable steps to assure, prior to disclosure, that the information to be disclosed is accurate, that the disclosure is fair in the circumstances and that disclosure is reasonably related to effectuating the purposes of the statutes that the Commission administers, requires the Commission to notify a firm 10 days prior to disclosure of information that the firm claims is inaccurate, but for which the Commission believes it has complied with the requirements of section 6(b)(1)

5 Section 15(b) submissions • Section 15(b) of the CPSA, 15 U S C § 2064(b), requires manufacturers, distributors or retailers of consumer products to notify the Commission of certain hazardous products

B Basic Terms expressed in common terminology

1 FOIA/Privacy Act Request • Freedom of Information Act request A FOIA request is a request for access to records concerning a third party, an organization, or a particular topic of interest A Privacy Act request is a request for records concerning oneself, such requests are also treated as FOIA requests All requests for access to records, regardless of which law is cited by a requester, are included in this report

2 Initial Request • a request to a federal agency for access to records under the Freedom of Information Act

3 Appeal • a request to a federal agency asking that it review at a higher administrative level an initial full denial or partial denial of access to records under the Freedom of Information Act, or any other FOIA determination, such as a matter pertaining to fees

4 Processed Request or Appeal • a request or appeal for which an agency has taken a final action on the request or the appeal

5 Multi-track Processing • a system in which simple requests requiring relatively minimal review are placed in one processing track and more voluminous and complex requests are placed in one or more other tracks Requests in each track are processed on a first-in/first-out basis A requester who has an urgent or compelling need for records may request expedited processing

6 Expedited Processing • an agency will process a FOIA request on a expedited basis when a requester has shown an exceptional need or urgency for the records which warrants prioritization of his or her request over other requests that were made earlier

7 Simple Request • a FOIA request that an agency using multi-track processing places in its fastest (non-expedited) track based on the volume or simplicity of records requested

8 Complex Request • a FOIA request that an agency using multi-track processing places in a slower track based on the volume, availability and complexity of records requested

9 Granted Request • an agency decision to disclose all records in full in response to a FOIA request

10 Partially Granted Request • an agency decision to disclose a record in part in response to a FOIA request, deleting information determined to be exempt under one or more of the FOIA's exemptions, or a decision to disclose some records in their entireties, but to withhold others in whole or in part

11 Denial or Full Denial • an agency decision to not release any part of a record or records in response to a FOIA request, because all the information in the requested records is determined by the agency to be exempt under one or more of the FOIA's exemptions, or for some procedural reason, such as because no record is located in response to a FOIA request

12 Time Limits • the time period in the FOIA for an agency to respond to a FOIA request (ordinarily 20 working days from proper receipt of a "perfected" FOIA request)

13 Perfected Request • a FOIA request for records which adequately describes the records sought, which has been received by the FOIA office of the agency or agency component in possession of the records and for which there is no remaining question about the payment of applicable fees

14 Exemption 3 statute • a separate federal statute prohibiting the disclosure of a certain type of information and authorizing its withholding under FOIA Exemption 3, 5 U S C § 552(b)(3)

15 Median Number • the middle, not the average number

16 Average Number • the number obtained by dividing the sum of a group of numbers by the quantity of numbers in the group

IV. EXEMPTION 3 STATUTES

A Section 6(a)(2) of the Consumer Product Safety Act, 15 U S C § 2055(a)(2)

1 This section was applied in denials of the disclosure of information containing or relating to trade secrets or other matters referred to in 18 U S C § 1905, or subject to FOIA Exemption 4 The denials involved requests for information pertaining to Commission inspections of firms, Commission files on possible product hazards under section 15 of the CPSA, and other Commission files containing submitted proprietary data Deletions were made of information submitted by firms being investigated and determined to be proprietary or confidential, consisting of sales volumes or other financial totals, manufacturing processes, formulas, supplier and dealer identities, pricing and distribution information, testing conducted by firms, and technical and engineering specifications

2 During the fiscal year, no court ruled on the application of Section 6(a)(2) to FOIA denials

B Section 6(b)(1) of the CPSA, 15 U S C § 2055(b)(1)

1 This section was applied in denials of information and after it was determined that the accuracy of the information was uncorroborated by an investigation by the Commission or other independent evaluation, or the information was not otherwise confirmed, or the disclosure would not be fair in the circumstances or would not effectuate the purposes of the acts the Commission administers Such information included unconfirmed consumer complaints and reported incidents, and information provided by firms during negotiations for the settlement of compliance matters

2 During the fiscal year, no court ruled on the application of Section 6(b)(1) to FOIA denials

C Section 6(b)(5) of the CPSA, 15 U S C § 2055(b)(5)

1 This section was applied in denials of information submitted by firms under section 15(b) of the CPSA, unless the Commission issued a complaint against the firm, the Commission accepted in writing a remedial settlement agreement or the firm agreed to the disclosure

2 During the fiscal year, no court ruled on the application of Section 6(b)(5) to FOIA denials

D Section 6(e)(1) of the CPSA, 15 U S C § 2055(e)(1)

1 This section was applied to withhold information submitted by manufacturers where their products were the subject of civil court actions involving deaths or grievous bodily injuries, as required by Section 37 of the CPSA, 15 U S C § 2084

2 During the fiscal year, no court ruled on the application of Section 6(e)(1) to FOIA denials

E Section 25(c) of the CPSA, 15 U S C § 2074 (c)

1 This section was applied to the portions of reported incidents, consumer complaints or investigative materials identifying injured parties and persons treating the injured parties without their consent to the disclosure

2 During the fiscal year, no court ruled on the application of Section 25(c) to FOIA denials

V. INITIAL FOIA/PA ACCESS REQUESTS

A Numbers of Initial Requests

1 Number of requests pending at end of fiscal year 1999 • 194

2 Number of requests received during fiscal year 2000 • 13,138

3 Number of requests processed during fiscal year 2000 • 13,157

4 Number of requests pending at end of fiscal year 2000 • 175

B Disposition of Initial Requests

1 Number of total grants • 11,682

2 Number of partial grants • 704

3 Number of denials • 73

a Number of times each FOIA exemption used in partial grants and denials (counting each exemption once per request)

(1) Exemption 1 • 0

(2) Exemption 2 • 0

(3) Exemption 3 • 691

(4) Exemption 4 • 414

(5) Exemption 5 • 186

(6) Exemption 6 • 8

(7) Exemption 7(A) • 61

(8) Exemption 7(B) • 0

(9) Exemption 7(C) • 0

(10) Exemption 7(D) • 1

(11) Exemption 7(E) • 108

(12) Exemption 7(F) • 0

(13) Exemption 8 • 0

(14) Exemption 9 • 0

b Other reasons for nondisclosure (total) • 698

(1) No records • 176

(2) Referrals • 393

(3) Request withdrawn • 37

(4) Fee-related reason • 5

(5) Records not reasonably described • 51

(6) Not a proper FOIA request for some other reason • 0

(7) Not an agency record • 0

(8) Duplicate request • 36

VI. APPEAL OF INITIAL DENIALS OF FOIA/PA REQUESTS

A Numbers of Appeals

1 Number of appeals received during fiscal year 2000 • 23

2 Number of appeals processed during fiscal year 2000 • 23

B Disposition of Appeals

1 Number completely upheld • 15

2 Number partially reversed • 5

3 Number completely reversed • 0

a Number of times each FOIA exemption used (counting each exemption once per appeal)

(1) Exemption 1 • 0

(2) Exemption 2 • 0

(3) Exemption 3 • 13

(4) Exemption 4 • 6

(5) Exemption 5 • 9

(6) Exemption 6 • 1

(7) Exemption 7(A) • 5

(8) Exemption 7(B) • 0

(9) Exemption 7(C) • 0

(10) Exemption 7(D) • 0

(11) Exemption 7(E) • 1

(12) Exemption 7(F) • 0

(13) Exemption 8 • 0

(14) Exemption 9 • 0

b Other reasons for nondisclosure (total) • 3

(1) No records • 1

(2) Referrals • 0

(3) Request withdrawn • 0

(4) Fee-related reason • 0

(5) Records not reasonably described • 0

(6) Not a proper FOIA request for some other reason • 0

(7) Not an agency record • 0

(8) Duplicate request • 0

(9) Records released after appeal received • 1

(10) Reconsidered withholdings and released records • 1

VII. COMPLIANCE WITH TIME LIMITS / STATUS OF PENDING REQUESTS

A Median Processing Time for Requests Processed During Fiscal Year 2000

1 Simple Requests

a Number of requests processed • 12,380

b Median number of days to process • 7 days

2 Complex Requests

a Number of requests processed • 777

b Median number of days to process • 30 days

3 Requests Accorded Expedited Processing

a Number of requests processed • 0

b Median number of days to process • Not Applicable

B Status of Pending Requests (for Each Multiple Track)

1 Number of simple requests pending at end of fiscal year 2000 • 10

2 Number of complex requests pending at end of fiscal year • 165

Median number of days that such requests were pending as of that date • 50

VIII. COMPARISONS WITH PREVIOUS YEARS

A Comparison of Numbers of Requests Received •

Fiscal Year 1999	Fiscal Year 2000	Number of Change	Percentage of Change
13,558 requests	13,138 requests	-420 requests	-3 1

B Comparison of Numbers of Requests Processed •

Fiscal Year 1999	Fiscal Year 2000	Number of Change	Percentage of Change
13,603 requests	13,157 requests	-446 requests	-3 3

C Comparison of Median Numbers of Days Requests Were Pending as of End of Fiscal Year 2000 •

Fiscal Year 1999	Fiscal Year 2000	Number of Change	Percentage of Change
194 requests pending 50 median days	175 requests pending 45 median days	-19 requests -5 median days	-9 8 -10 0

D Other Statistics Significant to Agency • Numbers of Notifications Under the CPSA and Other Responses Made to Fulfill FOIA Requests

1 Section 6(b)(1) notifications made to manufacturers or private labelers of consumer products to inform them of the proposed disclosure of information that identifies their products and allow them to comment on the disclosure (Many notices are made at the time the documents are initially filed, before the agency has received an FOIA request) • 9,298

2 Section 6(b)(2) notifications made to manufacturers or private labelers to inform them 10 days prior to disclosure of information that the firms had claimed was inaccurate or unfair to release, but for which the Commission believes it has complied with the requirements of section 6(b)(1) and has overruled the comments or claims made by the firm • 157

3 Instances where section 6(b)(1) applied to requested materials and upon completion of notifications and other requirements of sections 6(b)(1) and 6(b)(2), the Commission disclosed materials • 1 538

4 Section 6(a)(3) notifications made to submitters of information to the Commission prior to disclosure of any potential confidential information • 208

5 Section 6(a)(5) notifications made to submitters of information 10 days prior to the intended disclosure, where the Commission had overruled any firm claims of proprietary or confidential business information • 75

E Other Agency Efforts to Improve Timeliness of FOIA Performance and to Make Records Available to the Public • The CPSC has increased its activities to make more available to the public the records of interest, by expanding the placement of records on its World Wide Web site (www cpsc gov) The CPSC's Web site had 3,705,162 visitors during fiscal year 2000, including 22,026 visitors to the

FOIA Electronic Reading Room We responded to 3,991 internet inquiries about agency activities The information sought included records regarding the Commission's regulatory and compliance activities, documents filed in adjudicatory proceedings, Commission decisions, press releases, safety alerts, publications, the Public Calendar of meetings and briefings, briefing materials on matters before the Commission, advisory opinions of the General Counsel, materials requested under the FOIA by more than one requester, contracting activities, job vacancies, and many other matters

The Commission continues to maintain materials of interest to the public in a Reading Room in its headquarters location A staff person is available to assist the public in locating information or in preparing an FOIA request for information

IX. COSTS / FOIA STAFFING

A Staffing Levels

1 Number of full-time FOIA personnel • 8 5

2 Number of personnel with part-time or occasional FOIA duties (in total work-years) • 8 4

3 Total number of personnel (in work years) • 16 9

B Total Costs (Including Staff and All Resources)

1 FOIA processing (including appeals) • $1,407,044

2 Litigation-related activities (estimated) • $0

3 Total costs • $1,407,044

4 Comparison with previous years (including percentage of change) •

Staffing – Total Number of Personnel (in work years)

Fiscal Year 1999	Fiscal Year 2000	Number of Change	Percentage of Change
17 5	16 9	-0 6	-3 0

FOIA Processing (including appeals)

Fiscal Year 1999	Fiscal Year 2000	Number of Change	Percentage of Change
$1,443,892	$1.407,044	-$36,848 00	-3 0

FOIA Litigation-Related Activities (estimated)

Fiscal Year 1999	Fiscal Year 2000	Number of Change	Percentage of Change
$0	$0	0	0

Total FOIA Costs

Fiscal Year 1999	Fiscal Year 2000	Number of Change	Percentage of Change
$1,443,892	$1,407,044	-$36,848	-3 0

X. FEES

A Total Amount of Fees Collected by Agency for Processing Requests • $17,002 10

B Percentage of Total Costs • 1 3 % of Total Costs

XI. FOIA REGULATIONS (INCLUDING FEE SCHEDULE)

A Title 16, Code of Federal Regulations, Part 1015 – Procedures for Disclosures or Production of Information under the FOIA, which includes the fee schedule, is electronically located at http //www cpsc gov/cpscpub/pubs/reports/16cfr1015 pdf A paper copy is attached

B Title 16, Code of Federal Regulations, Part 1101 – Information Disclosure under the Consumer Product Safety Act is electronically located at http.//www cpsc gov/cpscpub/pubs/reports/6b1101 pdf A paper copy is attached

A. ATTACHMENT -

Title 16, Code of Federal Regulations:
Part 1015 - Procedures for Disclosure or Production of Information under the Freedom of Information Act

(3) Section 25(c) of the Consumer Product Safety Act (15 U S C 2074(c)) provides that accident or investigation reports made by an officer or employee of the Commission shall be made available to the public in a manner which will not identify any injured person or any person treating him or her, without the consent of the person identified Consequently, an accident or investigation report which identifies individuals is available to the injured party or the person treating him or her but would not be available for disclosure to a third party without the consent of the injured party or person treating him or her.

(4) Since accident or investigation reports are compiled only for statistical purposes and are not used in whole or in part in making any determination about an individual, they are exempted from the requirement to correct or amend a record as provided by subsection (d)(2) of the Privacy Act (5 U S C 552a (d)(2)) Exceptions from this paragraph, insofar as they relate to amendments or additions, may be allowed by the Executive Director

(b) *Inspector General Investigative Files—CPSC-6* All portions of this system of records which fall within 5 U S C 552a(k)(2) (investigatory materials compiled for law enforcement purposes) and 5 U S C. 552a(k)(5) (investigatory materials solely compiled for suitability determinations) are exempt from 5 U S C 552a(c)(3) (mandatory accounting of disclosures), 5 U S C 552a(d) (access by individuals to records that pertain to them), 5 U S C 552a(e)(1) (requirement to maintain only such information as is relevant and necessary to accomplish an authorized agency purpose), 5 U S C 552a(e)(4)(G) (mandatory procedures to notify individuals of the existence of records pertaining to them), 5 U S C 552a(e)(4)(H) (mandatory procedures to notify individuals how they can obtain access to and contest records pertaining to them), 5 U S C 552a(e)(4)(I) (mandatory disclosure of records source categories), and the Commission's regulations in 16 CFR part 1014 which implement these statutory provisions

(c) *Enforcement and Litigation Files—CPSC-7* All portions of this system of records that fall within 5 U S C. 552a(k)(2) (investigatory materials compiled for law enforcement purposes) are exempt from 5 U S C. 552a(c)(3) (mandatory accounting of disclosures), 5 U S C 552a(d) (access by individuals to records that pertain to them), 5 U S C 552a(e)(1) (requirement to maintain only such information as is relevant and necessary to accomplish an authorized agency purpose), 5 U S C 552a(e)(4)(G) (mandatory procedures to notify individuals of the existence of records pertaining to them), 5 U S C. 552a(e)(4)(H) (mandatory procedures to notify individuals how they can obtain access to and contest records pertaining to them), 5 U S C. 552a(e)(4)(I) (mandatory disclosure of records source categories), and the Commission's regulations in 16 CFR part 1014 that implement these statutory provisions.

[40 FR 53381 Nov 18, 1975, as amended at 42 FR 9161, Feb 15, 1977 59 FR 32078, June 22, 1994 62 FR 48756, Sept. 17, 1997]

PART 1015—PROCEDURES FOR DISCLOSURE OR PRODUCTION OF INFORMATION UNDER THE FREEDOM OF INFORMATION ACT

Subpart A—Production or Disclosure Under 5 U.S.C. 552(a)

Sec

1015 1 Purpose and scope
1015 2 Public reference facilities.
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1015 5 Time limitation on responses to requests for records and requests for expedited processing.
1015 6 Responses Form and content.
1015 7 Appeals from initial denials; reconsideration by the Secretary
1015 8 Requests received during the course of administrative hearings. [Reserved]
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1015 10 Commission report of actions to Congress
1015 11 Disclosure of trade secrets to consultants and contractors nondisclosure to advisory committees and other government agencies
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Subpart B—Exemptions From Production and Disclosure Under 5 U.S.C. 552(b)

1015 15 Purpose and scope

1015 16 Exemptions (5 U S C 552(b))
1015 17 Internal Commission procedure for withholding exempt records
1015 18 Information submitted to the Commission, request for treatment as exempt material.
1015.19 Decisions on requests for exemption from disclosure under 5 U S C 552(b)(4)

Subpart C—Disclosure of Commission Accident or Investigation Reports Under 15 U S C 2074(c)

1015 20 Public availability of accident or investigation reports

AUTHORITY 15 U S C 2051-2084, 15 U S C 1261-1278, 15 U S C 1471-1476, 15 U S C. 1211-1214; 15 U S C 1191-1204, 5 U S C. 552.

SOURCE. 42 FR 10490, Feb 22, 1977 unless otherwise noted

Subpart A—Production or Disclosure Under 5 U.S.C. 552(a)

§ 1015.1 Purpose and scope.

(a) The regulations of this subpart provide information concerning the procedures by which Consumer Product Safety Commission records may be made available for inspection and the procedures for obtaining copies of records from the Consumer Product Safety Commission Official records of the Consumer Product Safety Commission consist of all documentary material maintained by the Commission in any format including an electronic format These records include those maintained in connection with the Commission's responsibilities and functions under the Consumer Product Safety Act, as well as those responsibilities and functions transferred to the Commission under the Federal Hazardous Substances Act, Poison Prevention Packaging Act of 1970, Refrigerator Safety Act, and Flammable Fabrics Act, and those maintained under any other authorized activity Official records do not, however, include objects or articles such as tangible exhibits, samples, models, equipment, or other items of valuable property, books, magazines, or other reference material, or documents routinely distributed by the Commission in the normal course of business such as copies of FEDERAL REGISTER notices, pamphlets, and laws Official records include only existing records Official records of the Commission made available under the requirements of the Freedom of Information Act (5 U S C. 552) shall be furnished to the public as prescribed by this part 1015 A request by an individual for records about himself or herself that are contained in the Commission's system of records under the Privacy Act (5 U S.C 552a) will be processed under the Privacy Act A request by a third party for records that are contained in the Commission's system of records under the Privacy Act will be processed administratively under these regulations with respect to the time limits and appeals rights (§§ 1015 5 and 1015 7), but substantively under the applicable provisions of first the Freedom of Information Act and then the Privacy Act Documents routinely distributed to the public in the normal course of business will continue to be furnished to the public by employees of the Commission informally and without compliance with the procedures prescribed herein

(b) The Commission's policy with respect to requests for records is that disclosure is the rule and withholding is the exception All records not exempt from disclosure will be made available Moreover, records which may be exempted from disclosure will be made available as a matter of discretion when disclosure is not prohibited by law, or is not against the public interest See, § 1015 15(b) Section 6(a)(2) of the Consumer Product Safety Act, 15 U S C 2055(a)(2), prohibits the disclosure of trade secrets or other matters referred to in 18 U S C. 1905.

(c) The Attorney General's Memorandum on the 1974 Amendments to the Freedom of Information Act published in February, 1975 is available from the Superintendent of Documents and may be consulted in considering questions arising under the Freedom of Information Act

[42 FR 10490, Feb. 22, 1997, as amended at 62 FR 46196 Sept 2, 1997]

§ 1015 2 Public reference facilities.

(a) The Consumer Product Safety Commission will maintain in a public reference room or area the materials relating to the Consumer Product Safety Commission that are required by 5 U S C 552(a)(2) and 552(a)(5) to be made

available for public inspection and copying The principal location will be in the Office of the Secretary of the Commission The address of this office is:

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

(b) This public reference facility will maintain and make available for public inspection and copying a current index of the materials available at that facility which are required to be indexed by 5 U.S C 552(a)(2) For the purpose of providing the opportunity for greater public access to records of the Consumer Product Safety Commission, the Commission may establish additional public reference facilities Each such additional reference facility will also maintain and make available for public inspection and copying a current index of the materials available at that facility which are required to be indexed by 5 U S C 552(a)(2)

(c) The Consumer Product Safety Commission will maintain an "electronic reading room" on the World-Wide Web for those records that are required by 5 U S C 552(a)(2) to be available by "computer telecommunications"

[42 FR 10490, Feb 22, 1997 as amended at 62 FR 46197 Sept 2, 1997]

§ 1015.3 Requests for records and copies.

(a) A request for access to records of the Commission shall be in writing addressed to the Secretary, Consumer Product Safety Commission Washington, DC 20207 Any written request for records covered by this part shall be deemed to be a request for records pursuant to the Freedom of Information Act, whether or not the Freedom of Information Act is mentioned in the request An oral request for records will not be considered a request for records pursuant to the Freedom of Information Act Responses to oral requests for records shall be made as promptly as resources and time restraints permit

(b) A request for access to records must reasonably describe the records requested Where possible, specific information regarding dates, title, file designations, and other information which may help identify the records should be supplied by the requester If the request relates to a matter in pending litigation, where the Commission is a party, the court and its location should be identified Where the information supplied by the requester is not sufficient to permit identification and location of the records by Commission personnel without an unreasonable amount of effort, the requester will be contacted and asked to supply the necessary information. Every reasonable effort shall be made by Commission personnel to assist in the identification and location of requested records.

(c) If it is determined that a request would unduly burden or interfere with the operations of the Commission, the response shall so state and shall extend to the requester an opportunity to confer with appropriate Commission personnel in an attempt to reduce the request to manageable proportions by reformulation and by agreeing on an orderly procedure for the production of the records

(d) If a requested record cannot be located from the information supplied, or is known to have been destroyed or otherwise disposed of, the requester shall be so notified by the Secretary or delegate of the Secretary

(e) The Consumer Product Safety Commission uses a multitrack system to process requests under the Freedom of Information Act that is based on the amount of work and/or time involved in processing requests Requests for records are processed in the order they are received within each track. Upon receipt of a request for records, the Secretary or delegate of the Secretary will determine which track is appropriate for the request. The Secretary or delegate of the Secretary may contact requesters whose requests do not appear to qualify for the fastest tracks and provide such requesters the opportunity to limit their requests so as to qualify for a faster track Requesters who believe that their requests qualify for the fastest tracks and who wish to be notified if the Secretary or delegate

of the Secretary disagrees may so indicate in the request and, where appropriate and feasible, will also be given an opportunity to limit their requests

[42 FR 10490 Feb 22, 1997, as amended at 62 FR 46197, Sept 2, 1997]

§1015 4 Responses to requests for records; responsibility.

The ultimate responsibility for responding to requests for records is vested in the Secretary of the Consumer Product Safety Commission The Secretary or delegate of the Secretary may respond directly or forward the request to any other office of the Commission for response In any case where the Secretary or delegate of the Secretary in his/her discretion determines that a request for an identifiable record should be initially determined by the Commission, the Secretary, or the delegate of the Secretary may certify the matter to the Commission for a decision In that event the Commission decision shall be made within the time limits set forth in §1015 5 and shall be final The Commission response shall be in the form set forth in §1015 7(d) for action on appeal If no response is made by the Commission within twenty working days, or any extension thereof, the requester and the Commission may take the action specified in §1015 7(e).

[42 FR 10490 Feb 22, 1997 as amended at 62 FR 46197, Sept 2, 1997]

§1015 5 Time limitation on responses to requests for records and requests for expedited processing.

(a) The Secretary or delegate of the Secretary shall respond to all written requests for records within twenty (20) working days (excepting Saturdays, Sundays, and legal public holidays) The time limitations on responses to requests for records shall begin to run as of the time a request for records is received by the Office of the Secretary and a date stamp notation placed directly on the request

(b) The time for responding to requests for records may be extended by the Secretary at the initial stage or by the General Counsel of the Commission at the appellate stage up to an additional ten (10) working days under the following unusual circumstances

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the Office of the Secretary

(2) The need to search for, collect and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request.

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the Commission having substantial subject matter interest therein

(c) Any extension of time must be accompanied by written notice to the person making the request setting forth the reason(s) for such extension and the time within which a response is expected to be made.

(d) If the Secretary at the initial stage or the General Counsel at the appellate stage determines that an extension of time greater than ten (10) working days is necessary to respond to a request satisfying the "unusual circumstances" specified in paragraph (b) of this section, the Secretary or the General Counsel shall so notify the requester and give the requester the opportunity to

(1) Limit the scope of the request so that it may be processed within the time limit prescribed in paragraph (b); or

(2) Arrange with the Secretary or the General Counsel an alternative time frame for processing the request or a modified request

(e) The Secretary or delegate of the Secretary may aggregate and process as a single request requests by the same requester, or a group of requesters acting in concert, if the Secretary or delegate reasonably believes that the requests actually constitute a single request which would otherwise satisfy the unusual circumstances specified in paragraph (b) of this section, and the requests involve clearly related matters

(f) The Secretary or delegate of the Secretary will provide expedited processing of requests in cases where the

requester demonstrates a compelling need for such processing

(1) The term "compelling need" means

(i) That a failure to obtain requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual, or

(ii) With respect to a request made by a person primarily engaged in disseminating information, that there is an urgency to inform the public concerning actual or alleged Federal Government activity

(2) Requesters for expedited processing must include in their requests a statement setting forth the basis for the claim that a "compelling need" exists for the requested information, certified by the requester to be true and correct to the best of his or her knowledge and belief

(3) The Secretary or delegate of the Secretary will determine whether to grant a request for expedited processing and will notify the requester of such determination within ten (10) days of receipt of the request.

(4) Denials of requests for expedited processing may be appealed to the Office of the General Counsel as set forth in § 1015 7 of this part The General Counsel will expeditiously determine any such appeal

(5) The Secretary or delegate of the Secretary will process as soon as practicable the documents responsive to a request for which expedited processing is granted

(g) The Secretary may be unable to comply with the time limits set forth in this § 1015 5 when disclosure of documents responsive to a request under this part is subject to the requirements of section 6(b) of the Consumer Product Safety Act, 15 U.S C 2055(b), and the regulations implementing that section, 16 CFR part 1101 The Secretary or delegate of the Secretary will notify requesters whose requests will be delayed for this reason

[42 FR 10490 Feb 22, 1997, as amended at 62 FR 46197, Sept 2, 1997]

§ 1015 6 Responses: Form and content.

(a) When a requested record has been identified and is available for disclosure the requester shall either be supplied with a copy or notified as to where and when the record will be made available for inspection If a requester desires to inspect records at one of the regional offices of the Commission the Secretary will ordinarily make the records available at the requested regional office If the payment of fees is required the requester shall be advised by the Secretary in writing of any applicable fees under § 1015.9 hereof

(b) A response denying a written request for a record shall be in writing signed by the Secretary or delegate of the Secretary and shall include:

(1) The identity of each person responsible for the denial.

(2) A reference to the specific exemption or exemptions under the Freedom of Information Act authorizing the withholding of the record with a brief explanation of how the exemption applies to the record withheld, and

(3) An estimation of the volume of requested material withheld. When only a portion or portions of a document are withheld, the amount of information deleted shall be indicated on the released portion(s) of the record When technically feasible, the indication of the amount of material withheld will appear at the place in the document where any deletion is made Neither an estimation of the volume of requested material nor an indication of the amount of information deleted shall be included in a response if doing so would harm an interest protected by the exemption in 5 U S C 552(b) pursuant to which the material is withheld

(4) A statement that the denial may be appealed to the Commissioners of the Consumer Product Safety Commission Any such appeal must be made within 30 calendar days of receipt of the denial by the requester

(c) If no response is made within twenty (20) working days or any extension thereof, the requester can consider his or her administrative remedies exhausted and seek judicial relief in a United States District Court as specified in 5 U S C 552(a)(4)(B) When it appears that no response can be made to the requester within the applicable time limit, the Secretary or delegate of the Secretary may ask the requester to forego judicial relief until a response

can be made The Secretary or delegate of the Secretary shall inform the requester of the reason for the delay, of the date on which a response may be expected and of his/her right to seek judicial review as specified in 5 U S C 552(a)(4)(B).

[42 FR 10490 Feb 22, 1997 as amended at 62 FR 46197 Sept 2, 1997]

§ 1015.7 Appeals from initial denials, reconsideration by the Secretary

(a) When the Secretary or delegate of the Secretary has denied a request for records in whole or in part, the requester may, within 30 days of its receipt, appeal the denial to the General Counsel of the Consumer Product Safety Commission, attention of the Secretary, Washington, DC 20207

(b) The General Counsel, or the Secretary upon reconsideration, will act upon an appeal within 20 working days of its receipt The time limitations on an appeal begin to run as of the time an appeal is received by the Office of the Secretary and date stamped

(c) After reviewing the appeal, the Secretary will reconsider his/her initial denial. If the Secretary upon reconsideration decides to release any or all of the information requested on appeal, an appeal as to the information released will be considered moot, and the Secretary will so inform the requester and submitter of the information in accordance with §§ 1015 6(a) and 1015 18(b) If the Secretary decides to affirm the initial denial, in whole or in part, the General Counsel will decide the appeal within the 20-day time limit or any extension thereof in accordance with § 1015 5

(d) The General Counsel shall have the authority to grant or deny all appeals and, as an exercise of discretion, to disclose records exempt from mandatory disclosure under 5 U S C 552(b) In unusual or difficult cases the General Counsel may, in his/her discretion, refer an appeal to the Commissioners for determination

(e) The General Counsel's action on appeal shall be in writing, shall be signed by the General Counsel, and shall constitute final agency action A denial in whole or in part of a request on appeal shall set forth the exemption relied upon, a brief explanation, consistent with the purpose of the exemption, of how the exemption applies to the records withheld, and the reasons for asserting it A denial in whole or in part shall also inform the requester of his/her right to seek judicial review of the Commission's final determination in a United States district court, as specified in 5 U S C 552(a)(4)(B)

(f) If no response is made to the requester within 20 working days or any extension thereof, the requester may consider his/her administrative remedies exhausted and seek judicial relief in a United States district court When no response can be made within the applicable time limit, the General Counsel shall inform the requester of the reason for the delay, of the date by which a response may be expected, and of the requester's right to seek judicial review as specified in 5 U S C 552(a)(4)(B)

(g) Copies of all appeals and copies of all actions on appeal shall be furnished to and maintained in a public file by the Secretary

(5 U S C 552(a)(6)(A), 5 U S.C. 553; 15 U.S.C. 2076(b)(9))

[50 FR 7753 Feb 26, 1985]

§ 1015 8 Requests received during the course of administrative hearings. [Reserved]

§ 1015 9 Fees for production of records

(a) The Commission will provide, at no charge, certain routine information. For other Commission responses to information requests, the Secretary shall determine and levy fees for duplication, search, review, and other services, in accordance with this section

(b) Fees shall be paid by check or money order, payable to the Treasury of the United States and sent to the Commission.

(c) The following definitions shall apply under this section.

(1) *Direct costs* means those expenditures which an agency actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a FOIA request.

(2) *Search* includes all time spent looking for material that is responsive to a request, including page-by-page or

line-by-line identification of material within documents

(3) *Duplication* refers to the process of making a copy of a document necessary to respond to a FOIA request

(4) *Review* refers to the process of examining documents located in response to a commercial use request to determine whether any portion of any document located is permitted to be withheld

(5) *Commercial use request* refers to a request that seeks information for a use or purpose that furthers commercial, trade, or profit interests

(6) *Educational institution* refers to an entity organized and operated exclusively for educational purposes, whose purpose is scholarly

(7) *Non-commercial scientific institution* refers to an entity organized and operated exclusively for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry

(8) *Representative of the news media* refers to any person or organization which regularly publishes or disseminates news to the public, in print or electronically

(d) A commercial use request may incur charges for duplication, search, and review The following requests may incur charges only for duplication A request from an educational institution for records not sought for commercial use, a request from a non-commercial scientific institution for records not sought for commercial use, a request from a representative of the news media Any other request may incur charges for duplication and search.

(e) The following fee schedule will apply

(1) Copies of documents reproduced on a standard photocopying machine $0 10 per page

(2) File searches conducted by clerical personnel $3 00 for each one-quarter hour (a fraction thereof to be counted as one-quarter hour) Any special costs of sending records from field locations to headquarters for review will be included in search fees, billed at the clerical personnel rate

(3) File searches conducted by non-clerical or professional or managerial personnel $4 90 for each one-quarter hour (a fraction thereof to be counted as one-quarter hour)

(4) Review of records· $4.90 for each one-quarter hour (a fraction thereof to be counted as one-quarter hour)

(5) Computerized records· $0 10 per page of computer printouts or, for central processing, $0 32 per second of central processing unit (CPU) time, for printer, $10 00 per 1,000 lines, and for computer magnetic tapes or discs, direct costs

(6) Postage. Direct-cost basis for mailing requested materials, if the requester wants special handling or if the volume or dimensions of the materials requires special handling.

(7) Microfiche: $0 35 for each frame.

(8) Other charges for materials requiring special reproducing or handling, such as photographs, slides, blueprints, video and audio tape recordings, or other unusual materials· direct-cost basis.

(9) Any other service: An appropriate fee established by the Secretary, based on direct costs

(f) Fees shall be waived as follows:

(1) No automatic fee waiver shall apply to commercial use requests

(2) The first $10 00 of duplication costs shall be waived for requests from educational institutions, non-commercial scientific institutions, and representatives of the news media.

(3) For all other requests, the first $10 00 of duplication costs and the first $40 of search costs shall be waived.

(4) The Secretary shall waive or reduce fees whenever disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and disclosure of the requested information is not primarily in the commercial interest of the requester

(5) In making a determination under paragraph (f)(4) of this section, the Secretary shall consider the following factors

(i) The subject of the request· Whether the subject of the requested records concerns the operations or activities of the government

(ii) The informative value of the information to be disclosed Whether the disclosure is likely to contribute to an

understanding of government operations or activities

(iii) The contribution to an understanding of the subject by the general public likely to result from disclosure Whether disclosure of the requested information will contribute to public understanding

(iv) The significance of the contribution to public understanding Whether the disclosure is likely to contribute significantly to public understanding of government operations or activities

(v) The existence and magnitude of a commercial interest· Whether the requester has a commercial interest that would be furthered by the requested disclosure, and, if so

(vi) The primary interest in disclosure Whether the magnitude of the identified commercial interest of the requester is sufficiently large in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

(6) Any determination made by the Secretary concerning fee waivers may be appealed by the requester to the Commission's General Counsel in the manner described at §1015 7

(g) Collection of fees shall be in accordance with the following

(1) Interest will be charged on amounts billed starting on the 31st day following the day on which the requester received the bill Interest will be at the rate prescribed in 31 U S C. 3717

(2) Search fees will be imposed (on requesters charged for search time) even if no responsive documents are located or if the search leads to responsive documents that are withheld under an exemption to the Freedom of Information Act Such fees shall not exceed $25 00, unless the requester has authorized a higher amount

(3) Before the Commission begins processing a request or discloses any information, it will require advance payment if

(i) Charges are estimated to exceed $250 00 and the requester has no history of payment and cannot provide satisfactory assurance that payment will be made, or

(ii) A requester failed to pay the Commission for a previous Freedom of Information Act request within 30 days of the billing date

(4) The Commission will aggregate requests, for the purposes of billing, whenever it reasonably believes that a requester or group of requesters is attempting to separate a request into more than one request for the purpose of evading fees

(5) If a requester's total bill is less than $9 00, the Commission will not request payment.

[52 FR 28979, Aug 5, 1987, as amended at 62 FR 46198, Sept. 2, 1997]

§1015.10 Commission report of actions to Congress.

On or before February 1 of each year, the Commission shall submit a report of its activities with regard to freedom of information requests during the preceding fiscal year to the Attorney General of the United States. This report shall include

(a) The number of determinations made by the Commission not to comply with requests for records made to the Commission under the provisions of this part and the reasons for each such determination

(b)(1) The number of appeals made by persons under such provisions, the result of such appeals, and the reason for the action upon each appeal that results in a denial of information and

(2) A complete list of all statutes that the Commission relies upon to withhold information under such provisions, a description of whether a court has upheld the decision of the Commission to withhold information under each such statute, and a concise description of the scope of any information withheld.

(c) The number of requests for records pending before the Commission as of September 30 of the preceding year, and the median number of days that such requests had been pending before the Commission as of that date.

(d) The number of requests for records received by the Commission and the number of requests which the Commission processed

(e) The median number of days taken by the Commission to process different types of requests

(f) The total amount of fees collected by the Commission for processing requests

(g) The number of full-time staff of the Commission devoted to processing requests for records under such provisions, and the total amount expended by the Commission for processing such requests

[42 FR 10490, Feb 22 1997 as amended at 62 FR 46198, Sept. 2 1997]

§ 1015 11 Disclosure of trade secrets to consultants and contractors; nondisclosure to advisory committees and other government agencies.

(a) In accordance with section 6(a)(2) of the CPSA, the Commission may disclose information which it has determined to be a trade secret under 5 U S C 552(b)(4) to Commission consultants and contractors for use only in their work for the Commission Such persons are subject to the same restrictions with respect to disclosure of such information as any Commission employee

(b) In accordance with section 6(a)(2) of the CPSA, the Commission is prohibited from disclosing information which it has determined to be a trade secret under 5 U S C 552(b)(4) to advisory committees, except when required in the official conduct of their business, or to other Federal agencies and state and local governments

§ 1015.12 Disclosure to Congress.

(a) All records of the Commission shall be disclosed to Congress upon a request made by the chairman or ranking minority member of a committee or subcommittee of Congress acting pursuant to committee business and having jurisdiction over the matter about which information is requested

(b) An individual member of Congress who requests a record for his or her personal use or on behalf of any constituent shall be subject to the same rules that apply to members of the general public.

[42 FR 10490, Feb 22 1977 as amended at 52 FR 45632 Dec 1, 1987, 53 FR 3868, Feb 10 1988]

Subpart B—Exemptions From Production and Disclosure Under 5 U.S.C. 552(b)

§ 1015 15 Purpose and scope.

(a) The regulations of this subpart provide information concerning the types of records which may be withheld from production and disclosure by the Consumer Product Safety Commission and the internal Commission procedure for withholding exempt records. These regulations also provide information on the method whereby persons submitting information to the Commission may request that the information be considered exempt from disclosure, and information concerning the Commission's treatment of documents submitted with a request that they be treated as exempt from disclosure.

(b) No identifiable record requested in accordance with the procedures contained in this part shall be withheld from disclosure unless it falls within one of the classes of records exempt under 5 U S C 552(b) The Commission will make available, to the extent permitted by law, records authorized to be withheld under 5 U S C. 552(b) unless the Commission determines that disclosure is contrary to the public interest In this regard the Commission will not ordinarily release documents that provide legal advice to the Commission concerning pending or prospective litigation where the release of such documents would significantly interfere with the Commission's regulatory or enforcement proceedings.

(c) Draft documents that are agency records are subject to release upon request in accordance with this regulation However, in order to avoid any misunderstanding of the preliminary nature of a draft document, each draft document released will be marked to indicate its tentative nature. Similarly, staff briefing packages, which have been completed but not yet transmitted to the Commission by the Office of the Secretary are subject to release upon request in accordance with this regulation Each briefing package or portion thereof released will be marked to indicate that it has not been transmitted to or acted upon by the Commission In addition, briefing packages,

or portions thereof, which the Secretary upon the advice of the Office of the General Counsel has determined would be released upon request in accordance with this regulation, will be publicly available in the public reference facility established under § 1015 2 promptly after the briefing package has been transmitted to the Commissioners by the Office of the Secretary Such packages will be marked to indicate that they have not been acted upon by the Commission

(d) The exceptions contained in § 1015 16 are as contained in 5 U S.C 552(b). These exemptions will be interpreted in accordance with the applicable law at the time a request for production or disclosure is considered

[42 FR 10490 Feb 22, 1977, as amended at 45 FR 22022, Apr 3, 1980]

§ 1015.16 Exemptions (5 U S C. 552(b)).

(a) Records specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order

(b) Records related solely to the internal personnel rules and practices of the Commission

(c) Records specifically exempted from disclosure by statute (other than section 552b of Title 5, United States Code), provided that such statute either requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or establishes particular criteria for withholding or refers to particular types of matters to be withheld

(d) Trade secrets and commercial or financial information obtained from a person and privileged or confidential

(e) Interagency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the agency

(f) Personnel and medical files and similar files the disclosure of which would consititute a clearly unwarranted invasion of personal privacy

(g) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information

(1) Could reasonably be expected to interfere with enforcement proceedings,

(2) Would deprive a person of a right to a fair trial or an impartial adjudication,

(3) Could reasonably be expected to constitute an unwarranted invasion of personal privacy,

(4) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source,

(5) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or

(6) Could reasonably be expected to endanger the life or physical safety of any individual

(h) Records contained in or related to examinations, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions

(i) Records of geological and geophysical information and data, including maps, concerning wells

[42 FR 10490, Feb 22 1977, as amended at 52 FR 44597, Nov 20, 1987]

§ 1015.17 Internal Commission procedure for withholding exempt records.

Paragraphs (a) and (b) of this section describe the internal Commission procedure to be followed for requesting that a record exempt from disclosure under the inter- intra-agency memorandum exemption 5 U S C 552(b)(5) or the investigatory file exemption, 5 U S C 552(b)(7), not be disclosed

(a) If a bureau or office director believes that it is against the public interest to disclose a Commission record

prepared by his/her bureau or office, he/she may request in writing that the Secretary withhold the document The request must specify why the release would be against the public interest

(1) If the Secretary agrees to withhold the document, the requester shall be notified in writing of the denial and of his/her right to appeal in accordance with § 1015 6(b)

(2) If the Secretary decides to release the document, the bureau or office director shall be notified and given two working days within which to appeal to the Commissioners An appeal by a bureau or office director shall be in writing addressed to the Chairman If an appeal is taken by a bureau or office director, the Secretary will not disclose the document. The Commissioner's action on appeal shall be in accordance with § 1015 7(d)

(b) If a Commissioner believes that it is not in the public interest to disclose a Commission record prepared by himself/herself or by his/her office personnel, the Commissioner shall so inform the Secretary and shall specify in writing why the release would be against the public interest. The Secretary shall notify the requester in writing of the denial in accordance with § 1015 6(b) Any appeal by a requester shall be in accordance with § 1015 7 except the provisions for reconsideration by the Secretary is not applicable On appeal, the Commissioner who withheld the document shall not participate in the decision

[42 FR 10490 Feb 22, 1977 as amended at 45 FR 22023 Apr 3, 1980]

§ 1015.18 Information submitted to the Commission; request for treatment as exempt material.

(a) A person who is submitting information to the Commission, after being notified by the Commission of his/her opportunity to request confidential treatment for information, must accompany the submission with a request that the information be considered exempt from disclosure or indicate that a request will be submitted within 10 working days of the submission The failure to make a request within the prescribed time limit will be considered an acknowledgment that the submitter does not wish to claim exempt status

(b) A person who has previously submitted information to the Commission, that is now the subject of a Freedom of Information request, after being notified by the Commission of his/her opportunity to request confidential treatment for the information, must submit a request that the information be considered exempt from disclosure within 5 working days from receipt of notification The failure to make a request within the prescribed time limit will be considered an acknowledgment that the submitter does not wish to claim exempt status

(c) Each request for exemption from disclosure under 5 U S.C. 552(b)(4) as a trade secret or privileged or confidential commercial or financial information must

(1) Specifically identify the exact portion(s) of the document claimed to be confidential,

(2) State whether the information claimed to be confidential has ever been released in any manner to a person who was not an employee or in a confidential relationship with the company,

(3) State whether the information so specified is commonly known within the industry or is readily ascertainable by outside persons with a minimum of time and effort,

(4) State how release of the information so specified would be likely to cause substantial harm to the company's competitive position; and

(5) State whether the submitter is authorized to make claims of confidentiality on behalf of the person or organization concerned

(d) Material received with a request that it be considered exempt shall not be maintained in a public file If, in complying with a request for the disclosure of records, it is determined that some or all of the material relative to the request has been claimed to be exempt from disclosure, the requester will be supplied with a list of this material and informed that those portions found not to be exempt will be made available as soon as possible

(e) No request for exemption from disclosure under 5 U S C 552(b)(4) should be made by any person who does

not intend in good faith to assist the Commission in the defense of any judicial proceeding that might thereafter be brought to compel the disclosure of information which the Commission has determined to be a trade secret or privileged or confidential commercial or financial information

§ 1015 19 Decisions on requests for exemption from disclosure under 5 U S.C. 552(b)(4)

(a) The Commission generally will not decide whether material received with a request for exemption from disclosure under 5 U S C. 552(b)(4) is entitled to be withheld until a request for production or disclosure is made for that information The determination will be based on the most authoritative judicial interpretations available at the time a request for disclosure or production is considered Any reasonably segregable portion of a record will be disclosed to any person requesting such record after deletion of any portions determined to be exempt under 5 U S C. 552(b)(4) The requester will be given a brief description of any information found to be exempt.

(b) If material received with a request for exemption from disclosure under 5 U S C 552(b)(4) is found to be disclosable, in whole or in part, the person submitting the material will be notified in writing and given 10 calendar days from the receipt of the letter to seek judicial relief In no event, however, will the material be returned to the person submitting it

Subpart C—Disclosure of Commission Accident or Investigation Reports Under 15 U.S.C. 2074(c)

§ 1015 20 Public availability of accident or investigation reports.

(a) Accident or investigation reports made by an officer, employee, or agent of the Commission are available to the public under the procedures set forth in subpart A of this part 1015 No portion of such report are subject to the investigatory file exemption contained in the Freedom of Information Act (as restated in § 1015 16) except that portions identifying any injured person or any person treating such injured person will be deleted in accordance with section 25(c)(1) of the CPSA Where disclosure of an accident or investigation report is requested by supplying the name of the person injured or other details of a specific accident (other than cases where the report is requested by the injured person or the injured person's legal representative), the Commission will offer to obtain the written consent of the injured party or the injured party's representative to the disclosure of the report without deleting the party's identity. No deletion of identifying portions of such reports or refusal to disclose without the Commission having first obtained written consent shall be considered as a denial by the Commission of disclosure of Commission records

(b) Research reports, demonstration reports, and reports of other related activities of the Commission are available to the public under the procedures set forth in subpart A of this part 1015.

PART 1016—POLICIES AND PROCEDURES FOR INFORMATION DISCLOSURE AND COMMISSION EMPLOYEE TESTIMONY IN PRIVATE LITIGATION

Sec

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1016 4 Testimony of Commission employees in private litigation

AUTHORITY 15 U S C 2051–81 15 U S C 1261–74, 15 U S C 1191–1204 15 U S C 1471–76 15 U S C 1211–14 5 U S C 552, and 5 U S C 552a.

SOURCE 53 FR 6594, Mar 2, 1988, unless otherwise noted

§ 1016.1 Purpose and policy.

(a) The Commission's policy is to make official records available to private litigants, to the fullest extent possible

(b) The Commission s policy and responsibility is to conserve the time of its employees for work on Commission projects and activities Participation of Commission employees in private litigation in their official capacities, is generally contrary to this policy and

B. ATTACHMENT -

Title 16, Code of Federal Regulations: Part 1101 – Information Disclosure under Section 6(b) of the Consumer Product Safety Act

SUBCHAPTER B—CONSUMER PRODUCT SAFETY ACT REGULATIONS

PART 1101—INFORMATION DISCLOSURE UNDER SECTION 6(b) OF THE CONSUMER PRODUCT SAFETY ACT

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AUTHORITY Sec 6(b) of Pub L. 92-573, 86 Stat 1212 as amended by Pub L. No 97-35, 95 Stat 703-25 (15 U S C 2055(b)), 5 U S C 553.

SOURCE 48 FR 57430, Dec. 29, 1983 unless otherwise noted

Subpart A—Background

§ 1101.1 General background.

(a) *Basic purpose* This rule sets forth the Consumer Product Safety Commission's policy and procedure under sections 6(b)(1)-(5) of the Consumer Product Safety Act (CPSA) (15 U S C. 2055(b)(1)-(5)) which relate to public disclosure of information from which the identity of a manufacturer or private labeler of a product can be readily ascertained In addition, these rules provide for retraction of inaccurate or misleading information the Commission has disclosed that reflects adversely on the safety of a consumer product or class of products or on the practices of any manufacturer, private labeler, distributor or retailer of consumer products as required by section 6(b)(7) of the CPSA (15 U S C. 2055(b)(7))

(b) *Statutory requirements.* Section 6(b) establishes procedures that the Commission must follow when it releases certain firm specific information

to the public and when it retracts certain information it has released

(1) Generally, section 6(b)(1) requires the Commission to provide manufacturers or private labelers with advance notice and opportunity to comment on information the Commission proposes to release, if the public can readily ascertain the identity of the firm from the information Section 6(b)(1) also requires the Commission to take reasonable steps to assure that the information is accurate and that disclosure is fair in the circumstances and reasonably related to effectuating the purposes of the Acts administered by the Commission Disclosure of information may not occur in fewer than 30 days after notice to the manufacturer or private labeler unless the Commission finds the public health and safety requires a lesser period of notice Exceptions to these requirements are established in section 6(b)(4) Additional limitations on the disclosure of information reported to the Commission under section 15(b) of the CPSA are established in section 6(b)(5)

(2) Section 6(b)(2) requires the Commission to provide further notice to manufacturers or private labelers where the Commission proposes to disclose product-specific information the firms have claimed to be inaccurate

(3) Section 6(b)(3) authorizes manufacturers and private labelers to bring lawsuits against the Commission to prevent disclosure of product-specific information after the firms have received the notice specified

(c) *Internal clearance procedures* Section 6(b)(6) requires the Commission to establish internal clearance procedures for Commission initiated disclosures of information that reflect on the safety of a consumer product or class of products, even if the information is not product specific This rule does not address section 6(b)(6) because the Commission has internal clearance procedures in its directives system (Directive 1450 2 "Clearance Procedures for Commission Staff to Use in Providing Information to the Public" April 27, 1983

§ 1101.2 Scope.

Section 6(b) and these rules apply to information concerning products subject to the CPSA (15 U.S C. 2051-2085), and to the four other acts the Commission administers (transferred acts). These transferred acts are the Flammable Fabrics Act, 15 U S C 1191-1204 (FFA), the Poison Prevention Packaging Act of 1970, 15 U S C 1471-1476 (PPPA), the Federal Hazardous Substances Act, 15 U S C 1261-1276 (FHSA), and the Refrigerator Safety Act, 15 U S C 1211-1214 (RSA) See section 6(b)(1) of the CPSA, 15 U S.C 2055(d)(1)

Subpart B—Information Subject to Notice and Analysis Provisions of Section 6(b)(1)

§ 1101 11 General application of provisions of section 6(b)(1).

(a) *Information subject to section 6(b)(1)* To be subject to the notice and analysis provisions of section 6(b)(1), information must meet all the following criteria

(1) The information must pertain to a specific product which is either designated or described in a manner which permits its identity to be ascertained readily by the public.

(2) The information must be obtained, generated or received by the Commission as an entity or by individual members, employees, agents, contractors or representatives of the Commission acting in their official capacities

(3) The Commission or its members, employees, agents or representatives must propose to disclose the information to the public (see § 1101.12).

(4) The manner in which the product is designated or described in the information must permit the public to ascertain readily the identity of the manufacturer or private labeler [See § 1101 13]

(b) *Information not subject to section 6(b)(1)* The requirements of section 6(b)(1) do not apply to

(1) Information described in the exclusions contained in section 6(b)(4) of the CPSA (see subpart E of this rule).

(2) Information the Commission is required by law to make publicly available This information includes, for example, Commission notifications to foreign governments regarding certain products to be exported, as required by section 18(b) of the CPSA, 15 U S C.

2068(b), section 14(d) of the FHSA, 15 U S C 1273(d), and section 15(c) of the FFA, 15 U S C 1202(c) (See the Commission's Export Policy Statement, 16 CFR part 1017)

(3) Information required to be disclosed to the President and Congress pursuant to section 27(j) of the CPSA, 15 U S C 2076(j)

(4) Press releases issued by firms

(5) Information filed or presented in administrative proceedings or litigation to which the Commission is a party and which is not expressly subject to the section 6(b)(4) exceptions.

§ 1101 12 Commission must disclose information to the public

Public For the purposes of section 6(b)(1), the public includes any person except

(a) Members, employees, agents, representatives and contractors of the Commission, in their official capacity

(b) State officials who are commissioned officers under section 29(a)(2) of the CPSA, 15 U S.C 2078(a)(2), to the extent that the Commission furnishes them information necessary for them to perform their duties under that section Such officials may not release to the public copies of such information unless the Commission has complied with section 6(b) or the information falls within an exception to section 6(b)

(c) Members of a Commission Chronic Hazard Advisory Panel established under section 28 of the CPSA (15 U S C 2077) However, disclosures of information by such a Panel are subject to section 6(b)

(d) The persons or firms to whom the information to be disclosed pertains, or their legal representatives

(e) The persons or firms who provided the information to the Commission or their legal representatives

(f) Other Federal agencies or state or local governments to whom accident and investigation reports are provided pursuant to section 29(e) of the CPSA (15 U S C 2078(e)) However, as required by that section, employees of Federal agencies or state or local governments may not release to the public copies of any accident or investigation report made under the CPSA by an officer, employee or agent of the Commission unless CPSC has complied with the applicable requirements of section 6(b)

(g) The Chairman or ranking minority member of a committee or subcommittee of Congress acting pursuant to committee business and having jurisdiction over the matter which is the subject of the information requested

§ 1101 13 Public ability to ascertain readily identity of manufacturer or private labeler

The advance notice and analysis provisions of section 6(b)(1) apply only when a reasonable person receiving the information in the form in which it is to be disclosed and lacking specialized expertise can readily ascertain from the information itself the identity of the manufacturer or private labeler of a particular product The Commission will provide the advance notice and opportunity to comment if there is a question whether the public could readily ascertain the identity of a manufacturer or private labeler

Subpart C—Procedure for Providing Notice and Opportunity To Comment Under Section 6(b)(1)

§ 1101 21 Form of notice and opportunity to comment.

(a) *Notice may be oral or written* The Commission will generally provide to manufacturers or private labelers written notice and opportunity to comment on information subject to section 6(b)(1) However, when the Commission makes a public health and safety finding pursuant to section 6(b)(1) of the CPSA, the Commission may determine that it is necessary to provide the notice and opportunity to comment orally either in person or by telephone

(b) *Content of notice* The Commission will provide the manufacturer or private labeler with.

(1) Either the actual text of the information to be disclosed or, if appropriate, a summary of the information.

(2) A general description of the manner in which the Commission will disclose the information, including any other relevant information the Commission intends to include with the disclosure. If the Commission advises that the form of disclosure will be by press

release, for example, the Commission need not provide further notice to disclose a summary of the press release.

(3) A request for comment with respect to the information, including a request for explanatory data or other relevant information for the Commission's consideration

(4) A statement that, in the absence of a specific request by a firm that its comments be withheld from disclosure, the Commission will release to the public the firm s comments (or a summary thereof prepared by the firm or, if the firm declines to do so, by the Commission)

(5) A statement that a request that comments be withheld from disclosure will be honored

(6) Notice that the firm may request confidential treatment for the information, in accordance with section 6(a)(3) of the Consumer Product Safety Act, 15 U S C 2055(a)(3) (*see* § 1101 24(b))

(7) A statement that no further request for comment will be sought by the Commission if it intends to disclose the identical information in the same format, unless the firm specifically requests the opportunity to comment on subsequent information disclosures

(8) The name, address, and telephone number of the person to whom comments should be sent and the time when any comments are due (*see* § 1101 22)

§ 1101.22 Timing: request for time extensions.

(a) *Time for comment.* (1) Generally firms will receive a minimum of twenty (20) calendar days from the date of the letter in which the Commission transmits the notice to furnish comments to the Commission Firms that receive requests for comments by mail will receive an additional three (3) days to comment to account for time in the mail

(2) Upon his or her own initiative or upon request, the Freedom of Information Officer may provide a different amount of time for comment, particularly for firms that receive voluminous or complex material. In addition, the Commission may find that the public health and safety requires a lesser period of notice and may require a response in a shorter period of time (*see* § 1101 24)

(b) *No response submitted* (1) If the Commission has not received a response within the time specified and if it has received no request for extension of time, the Commission will analyze the information as provided in subpart D If no comments are submitted the Commission will not give the further notice provided in section 6(b)(2)

(2) Unless the Commission finds that the public health and safety requires a lesser period of notice (see § 1101 23), the Commission will not disclose the information in fewer than 30 days after providing a manufacturer or private labeler notice and opportunity to comment.

(c) *Requests for time extension* (1) Requests for extension of time to comment on information to be disclosed must be made to the person who provided the Commission's notice and opportunity to comment. The request for time extension may be either oral or written An oral request for a time extension must be promptly confirmed in writing

(2) Requests for extension of time must explain with specificity why the extension is needed and how much additional time is required.

(3) The Commission will promptly respond to requests for extension of time

§ 1101.23 Providing less than 30 days notice before disclosing information.

There are two circumstances in which the Commission may disclose to the public information subject to section 6(b)(1) in a time less than 30 days after providing notice to the manufacturer or private labeler

(a) *Firm agrees to lesser period or does not object to disclosure* The Commission may disclose to the public information subject to section 6(b)(1) before the 30-day period expires when, after receiving the Commission's notice and opportunity to comment, the firm involved agrees to the earlier disclosure; notifies the Commission that it has no comment, or notifies the Commission that it does not object to disclosure.

(b) *Commission finding a lesser period is required* Section 6(b)(1) provides that

the Commission may find that the public health and safety requires a lesser period of notice than the 30 days advance notice that section 6(b)(1) generally requires The Commission may determine that the public health and safety requires less than 30 days advance notice, for example, to warn the public quickly because individuals may be in danger from a product hazard or a potential hazard, or to correct product safety information released by third persons, which mischaracterizes statements made by the Commission about the product or which attributes to the Commission statements about the product which the Commission did not make

(c) *Notice of finding.* The Commission will inform a manufacturer or private labeler of a product which is the subject of a public health and safety finding that the public health and safety requires less than 30 days advance notice either orally or in writing, depending on the immediacy of the need for quick action, and the Commission will publish the finding in the FEDERAL REGISTER Disclosure may be made concurrently with the filing of the FEDERAL REGISTER notice and need not await its publication However, where applicable, before releasing information, the Commission will comply with the requirements of section 6(b) (1) and (2) by giving the firm the opportunity to comment on the information, either orally or in writing depending on the immediacy of the need for quick action, and by giving the firm advance notice before disclosing information claimed by a manufacturer or private labeler to be inaccurate (see § 1101 25)

§ 1101 24 Scope of comments Commission seeks.

(a) *Comment in regard to the information.* The section 6(b) opportunity to comment on information is intended to permit firms to furnish information and data to the Commission to assist the agency in its evaluation of the accuracy of the information A firm's submission, therefore must be specific and should be accompanied by documentation, where available, if the comments are to assist the Commission in its evaluation of the information Comments of a general nature, such as general suggestions or allegations that a document is inaccurate or that the Commission has not taken reasonable steps to assure accuracy, are not sufficient to assist the Commission in its evaluation of the information or to justify a claim of inaccuracy The weight accorded a firm's comments on the accuracy of information and the degree of scrutiny which the Commission will exercise in evaluating the information will depend on the specificity and completeness of the firm's comments and of the accompanying documentation. In general, specific comments which are accompanied by documentation will be given more weight than those which are undocumented and general in nature

(b) *Claims of confidentiality* If the manufacturer or private labeler believes the information involved cannot be disclosed because of section 6(a)(2) of the CPSA (15 U S C 2055(a)(2)), which pertains to trade secret or other confidential material, the firm may make claims of confidentiality at the time it submits its comments to the Commission under this section. Such claims must identify the specific information which the firm believes to be confidential or trade secret material and must state with specificity the grounds on which the firm bases it claims (See Commission s Freedom of Information Act regulation, 16 CFR part 1015, particularly 16 CFR 1015 18)

(c) *Requests for nondisclosure of comments* If a firm objects to disclosure of its comments or a portion thereof, it must notify the Commission at the time it submits its comments If the firm objects to the disclosure of a portion of its comments, it must identify those portions which should be withheld

§ 1101.25 Notice of intent to disclose.

(a) *Notice to manufacturer or private labeler* In accordance with section 6(b)(2) of the CPSA, if the Commission, after following the notice provisions of section 6(b)(1), determines that information claimed to be inaccurate by a manufacturer or private labeler in comments submitted under section 6(b)(1) should be disclosed because the Commission believes it has complied with section 6(b)(1), the Commission

shall notify the manufacturer or private labeler that it intends to disclose the information not less than 10 working days after the date of the receipt of notification by the firm The notice of intent to disclose will include an explanation of the reason for the Commission's decision, copies of any additional materials, such as explanatory statements and letters to Freedom of Information Act requesters, which were not previously sent to the firm

(b) *Commission finding a lesser period is required* The Commission may determine that the public health and safety requires less than 10 working days advance notice of its intent to disclose information claimed to be inaccurate For example, the Commission may determine it is necessary to warn the public quickly because individuals may be in danger from a product hazard or a potential hazard, or to correct product safety information released by third persons, which mischaracterized statements made by the Commission about the product or which attributes to the Commission statements about the product which the Commission did not make

(c) *Notice of findings* The Commission will inform a manufacturer or private labeler of a product which is the subject of a public health and safety finding that the public health and safety requires less than 10 days advance notice either orally or in writing, depending on the immediacy of the need for quick action, and the Commission will publish the finding in the FEDERAL REGISTER. Firms will be notified in advance of the date and time, if possible, at which the Commission intends to disclose the information Disclosure may be concurrently with the filing of the FEDERAL REGISTER notice and need not await its publication. The FEDERAL REGISTER notice prepared under section 6(b)(2) may be submitted simultaneously with or after a FEDERAL REGISTER notice prepared under section 6(b)(1) (*see* § 1101 23(c))

§ 1101.26 Circumstances when the Commission does not provide notice and opportunity to comment.

(a) *Notice to the extent practicable* Section 6(b)(1) requires that "to the extent practicable the Commission must provide manufacturers and private labelers notice and opportunity to comment before disclosing information from which the public can ascertain readily their identity

(b) *Circumstances when notice and opportunity to comment is not practicable.* The Commission has determined that there are various circumstances when notice and opportunity to comment is *not* practicable Examples include the following:

(1) When the Commission has taken reasonable steps to assure that the company to which the information pertains is out of business and has no identifiable successor.

(2) When the information is disclosed in testimony in response to an order of the court during litigation to which the Commission is not a party.

Subpart D—Reasonable Steps Commission Will Take To Assure Information It Discloses Is Accurate, and That Disclosure Is Fair in the Circumstances and Reasonably Related to Effectuating the Purposes of the Acts it Administers

§ 1101 31 General requirements.

(a) *Timing of decisions* The Commission will attempt to make its decision on disclosure so that it can disclose information in accordance with section 6(b) as soon as is reasonably possible after expiration of the statutory thirty day moratorium on disclosure.

(b) *Inclusion of comments* In disclosing any information under this section, the Commission will include any comments or other information submitted by the manufacturer or private labeler unless the manufacturer or private labeler at the time it submits its section 6(b) comments specifically requests the Commission not to include the comments or to include only a designated portion of the comments and disclosure of the comments on such a designated portion is not necessary to assure that the disclosure of the information which is the subject of the comments is fair in the circumstances

(c) *Explanatory statements* Where appropriate, the Commission will accompany the disclosure of information subject to this subpart with an explanatory statement that makes the nature of the information disclosed clear to the public Inclusion of an explanatory statement is in addition to, and not a substitute for, taking reasonable steps to assure the accuracy of information To the extent it is practical the Commission will also accompany the disclosure with any other relevant information in its possession that places the released information in context

(d) *Information previously disclosed* If the Commission has previously disclosed, in accordance with section 6(b)(1), the identical information it intends to disclose again in the same format, it will not customarily take any additional steps to assure accuracy unless the Commission has some reason to question its accuracy or unless the firm, in its comments responding to the Commission's initial section 6(b) notice, specifically requests the opportunity to comment on subsequent disclosures, or unless the Commission determines that sufficient time has passed to warrant seeking section 6(b) comment again Before disclosing the information the Commission will again review the information to see if accuracy is called into question and will further look to whether disclosure is fair in the circumstances and reasonably related to effectuating the purposes of the Acts the Commission administers

§ 1101 32 Reasonable steps to assure information is accurate.

(a) The Commission considers that the following types of actions are reasonable steps to assure the accuracy of information it proposes to release to the public

(1) The Commission staff or a qualified person or entity outside the Commission (e g , someone with requisite training or experience, such as a fire marshal, a fire investigator, an electrical engineer, or an attending physician) conducts an investigation or an inspection which yields or corroborates the product information to be disclosed, or

(2) The Commission staff conducts a technical, scientific, or other evaluation which yields or corroborates the product information to be disclosed or the staff obtains a copy of such an evaluation conducted by a qualified person or entity, or

(3) The Commission staff provides the information to be disclosed to the person who submitted it to the Commission for review and, if necessary, correction, and the submitter confirms the information as accurate to the best of the submitter's knowledge and belief, provided that·

(i) The confirmation is made by the person injured or nearly injured in an incident involving the product, or

(ii) The confirmation is made by a person who, on the basis of his or her own observation or experience, identifies an alleged safety-related defect in or problem with such a product even though no incident or injury associated with the defect or problem may have occurred; or

(iii) The confirmation is made by an eyewitness to an injury or safety-related incident involving such a product; or

(iv) The confirmation is made by an individual with requisite training or experience who has investigated and/or determined the cause of deaths, injuries or safety-related incidents involving such a product Such persons would include, for example, a fire marshal, a fire investigator, an electrical engineer, an ambulance attendant, or an attending physician, or

(v) The confirmation is made by a parent or guardian of a child involved in an incident involving such a product, or by a person to whom a child is entrusted on a temporary basis

(b) The steps set forth below are the steps the Commission will take to analyze the accuracy of information which it proposes to release to the public.

(1) The Commission will review each proposed disclosure of information which is susceptible of factual verification to assure that reasonable steps have been taken to assure accuracy in accordance with § 1101 32(a).

(2) As described in subpart C, the Commission will provide a manufacturer or private labeler with a summary or text of the information the

Commission proposes to disclose and will invite comment with respect to that information

(3) If the Commission receives no comments or only general, undocumented comments claiming inaccuracy, the Commission will review the information in accordance with §1101.32(a) and release it, generally without further investigating its accuracy if there is nothing on the face of the information that calls its accuracy into question

(4) If a firm comments on the accuracy of the information the Commission proposes to disclose, the Commission will review the information in light of the comments. The degree of review by the Commission and the weight accorded a firm's comments will be directly related to the specificity and completeness of the firm's comments on accuracy and the accompanying documentation. Documented comments will be given more weight than undocumented comments. Specific comments will be given more weight than general comments. Further steps may be taken to determine the accuracy of the information if the Commission determines such action appropriate.

§1101.33 Reasonable steps to assure information release is fair in the circumstances.

(a) The steps set forth below are the steps the Commission has determined are reasonable to take to assure disclosure of information to the public is fair in the circumstances.

(1) The Commission will accompany information disclosed to the public with the manufacturer's or private labeler's comments unless the manufacturer or private labeler asks in its section 6(b) comments that its comments or a designated portion thereof not accompany the information.

(2) The Commission generally will accompany the disclosure of information with an explanatory statement that makes the nature of the information disclosed clear to the public. The Commission will also take reasonable steps to disclose any other relevant information in its possession that will assure disclosure is fair in the circumstances.

(3) The Commission will limit the form of disclosure to that which it considers appropriate in the circumstances. For example, the Commission may determine it is not appropriate to issue a nationwide press release in a particular situation and rather will issue a press release directed at certain localities, regions, or user populations.

(4) The Commission may delay disclosure of information in some circumstances. For example, the Commission may elect to postpone an information release until an investigation, analysis or test of a product is complete, rather than releasing information piecemeal.

(b) The Commission will not disclose information when it determines that disclosure would not be fair in the circumstances. The following are examples of disclosures which generally would not be fair in the circumstances.

(1) Disclosure of information furnished by a firm to facilitate prompt remedial action or settlement of a case when the firm has a reasonable expectation that the information will be maintained by the Commission in concidence.

(2) Disclosure of notes or minutes of meetings to discuss or negotiate settlement agreements and of drafts of documents prepared during settlement negotiations, where the firm has a reasonable expectation that such written materials will be maintained by the Commission in confidence.

(3) Disclosure of the work-product of attorneys employed by a firm and information subject to an attorney/client privilege, if the Commission has obtained the information from the client or the attorney, the attorney or client advises the Commission of the confidential nature of the information at the time it is submitted to the Commission, and the information has been maintained in confidence by the client and the attorney.

(4) Disclosure of a firm's comments (or a portion thereof) submitted under section 6(b)(1) over the firm's objection.

§1101.34 Reasonable steps to assure information release is "reasonably related to effectuating the purposes of the Acts" the Commission administers.

(a) The steps set forth below are the steps the Commission has determined are reasonable to take to assure that the disclosure of information to the public effectuates the purposes of the Acts it administers

(1) *Purposes of the CPSA* The Commission will review information to determine whether disclosure would be reasonably related to effectuating one or more of the specific purposes of the CPSA, as set forth in sections 2(b) and 5, 15 U S C 2051(b) and 2054

(2) *Purposes of the FHSA, FFA, PPPA and RSA* The Commission will also review information concerning products subject to the transferred acts it administers and to the Commission's specific functions under those acts to determine whether disclosure of information would be reasonably related to effectuating the purposes of those acts

(3) *Purposes of the FOIA* FOIA requests will be reviewed to determine whether disclosure of the information is reasonably related to effectuating one or more of the purposes of the acts administered by the Commission In the event of a close question on this issue, the Commission will defer to the purposes of the FOIA. The FOIA establishes a general right of the public to have access to information in the Commission's possession, particularly information that reveals whether the Commission is meeting its statutory responsibilities or information upon which the Commission bases a decision that affects the public health and safety

(b) In reviewing proposed information disclosures, the Commission will consider disclosing the material on the basis of whether release of the information, when taken as a whole, was prepared or is maintained in the course of or to support an activity of the Commission designed to accomplish one or more of the statutory purposes

Subpart E—Statutory Exceptions of Section 6(b)(4)

§1101 41 Generally.

(a) *Scope* This subpart describes and interprets the exceptions to the requirements of section 6 (b)(1)–(b)(3) that are set forth in section 6(b)(4). These exceptions apply to (1) information about a product reasonably related to the subject matter of an imminent hazard action in federal court, (2) information about a product which the Commission has reasonable cause to believe violates the prohibited act section of one of the acts the Commission administers and the information is reasonably related to the alleged violations, (3) information in the course of or concerning a rulemaking proceeding, or (4) information in the course of or concerning an adjudicatory, administrative or judicial proceeding

(b) *Application to transferred act.* The Commission will apply the exceptions contained in section 6(b)(4) to those provisions in the transferred acts, comparable to the specific provisions in the CPSA to which section 6(b)(4) applies.

§1101.42 Imminent hazard exception.

(a) *Statutory provision.* Section 6(b)(4)(A) provides that the requirements of section 6(b)(1) do not apply to public disclosure of ' information about any consumer product with respect to which product the Commission has filed an action under section 12 (relating to imminently hazardous products) '

(b) *Scope of exception.* This exception applies once the Commission has filed an action under section 12 of the CPSA (15 U S C 2061), in a United States district court Once the exception applies, information may be disclosed to the public while the proceeding is pending without following the requirements of section 6(b)(1) if the information concerns or relates to the product alleged to be imminently hazardous Upon termination of the proceeding, information filed with the court or otherwise made public is not subject to section 6(b) Information in the Commission's

possession which has not been made public is subject to section 6(b)

§1101 43 Prohibited acts exception.

(a) *Statutory provision.* Section (6)(b)(4)(A) provides that the requirements of section 6(b)(1) do not apply to public disclosure of information about any consumer product which the Commission has reasonable cause to believe is in violation of a "prohibited act' section under any of the statutes administered by the Commission.

(b) *Scope of exception* This exception applies once the Commission has "reason to believe" there has occurred a violation of sections 19(a) (1), (2), and (5) or (10) of the CPSA which pertains to a consumer product This exception also applies once the Commission has "reasonable cause to believe there has occurred a 'prohibited act" pertaining to a product regulated under the transferred acts Once the exception applies, the Commission may disclose information to the public without following the requirements of section 6(b)(1) if the information concerning the product is reasonably related to the violative practice or condition

§1101 44 Rulemaking proceeding exception.

(a) *Statutory provision* Section 6(b)(4)(B) provides that the requirements of section 6(b)(1) do not apply to public disclosure of information "in the course of or concerning a rulemaking proceeding (which shall commence upon the publication of an advance notice of proposed rulemaking or a notice of proposed rulemaking) * * * under this Act."

(b) *Scope of exception* This exception applies upon publication in the FEDERAL REGISTER of an advance notice of proposed rulemaking or, if no advance notice of proposed rulemaking is issued, upon publication in the FEDERAL REGISTER of a notice of proposed rulemaking, under any of the acts the Commission administers Once the exception applies, the Commission may publicly disclose information in the course of the rulemaking proceeding which is presented during the proceeding or which is contained or referenced in the public record of the proceeding and or which concerns the proceeding without following the requirements of section 6(b)(1). Documentation supporting the public record is also excepted from section 6(b) A rulemaking proceeding includes a proceeding either to issue, to amend, or to revoke a rule.

(c) The phrase "in the course of" refers to information disclosed as part of the proceeding and may, therefore, include information generated before the proceeding began and later presented as part of the proceeding A rulemaking proceeding ends once the Commission has published the final rule or a notice of termination of the rulemaking in the FEDERAL REGISTER.

(d) The phrase "concerning" refers to information about the proceeding itself both after the proceeding has begun and indefinitely thereafter Therefore, the Commission may publicly disclose information that describes the substance, process and outcome of the proceeding By issuing opinions and public statements, the Commissioners, and the presiding official, who act as decisionmakers, may also publicly explain their individual votes and any decision rendered

§1101.45 Adjudicatory proceeding exception.

(a) *Statutory provision.* Section 6(b)(4)(B) provides that the requirements of section 6(b)(1) do not apply to public disclosure of "information in the course of or concerning * * * [an] adjudicatory proceeding * * * under this Act"

(b) *Scope of exception* This exception applies once the Commission begins an administrative adjudication under the CPSA The Commission will also apply the exception to any administrative adjudicatory proceeding under FHSA, FAA, or PPPA. An adjudicatory proceeding begins with the filing of a complaint under section 15(c) or (d), 17(a)(1) or (3), or 20 of the CPSA (15 U S C. 2064(c) or (d), 2066(a)(1), or (3), or 2069); section 15 of the FHSA (15 U.S.C 1274); section 5(b) of the FFA, (15 U S C. 1194(b)), or section 4(c) of the PPPA (15 U S.C 1473(c)) An adjudicatory proceeding ends when the Commission issues a final order, 16 CFR 1025.51–1025 58

(c) The phrase "in the course of" refers to information disclosed as part of

the adjudication, whether in documents filed or exchanged during discovery, or in testimony given in such proceedings, and may therefore, include information generated before the adjudication began

(d) The phrase "concerning" refers to information about the administrative adjudication itself, both once it begins and indefinitely thereafter Therefore, the Commission may publicly disclose information that describes the substance, process and outcome of the proceeding including, for example, the effectiveness of any corrective action such as information on the number of products corrected as a result of a remedial action By issuing opinions and public statements, the Commissioners and the presiding official, who act as decisionmakers, may publicly explain their individual votes and any decision rendered.

[48 FR 57430, Dec 29, 1983, as amended at 49 FR 8428 Mar 7 1984]

§ 1101.46 Other administrative or judicial proceeding exception.

(a) *Statutory provision* Section 6(b)(4)(B) provides that the requirements of section 6(b)(1) do not apply to public disclosure of "information in the course of or concerning any * * * other administrative or judicial proceeding under this Act "

(b) *Scope of exception.* This exception applies to an administrative or judicial proceeding, other than a rulemaking or administrative adjudicatory proceeding, under the CPSA, FHSA, FFA, or PPPA Proceedings within this exception include

(1) A proceeding to act on a petition to start a rulemaking proceeding This proceeding begins with the filing of a petition and ends when the petition is denied or, if granted, when the rulemaking proceeding begins Information subject to the exception for petition proceedings is the petition itself and the supporting documentation, and information subsequently compiled by the staff and incorporated or referenced in the staff briefing papers for and recommendation to the Commission

(2) A proceeding to act on a request for exemption from a rule or regulation. This proceeding begins with the filing of a request for exemption and ends when the request is denied or, if granted, when the Commission takes the first step to implement the exemption, e g , when an amendment to the rule or regulation is proposed

(3) A proceeding to issue a subpoena or general or special order This proceeding begins with a staff request to the Commission to issue a subpoena or general or special order and ends once the request is granted or denied.

(4) A proceeding to act on a motion to quash or to limit a subpoena or general or special order This proceeding begins with the filing with the Commission of a motion to quash or to limit and ends when the motion is granted or denied.

(5) Any judicial proceeding to which the Commission is a party This proceeding begins when a complaint is filed and ends when a final decision (including appeal) is rendered with respect to the Commission.

(6) Any administrative proceeding to which the Commission is a party, such as an administrative proceeding before the Merit Systems Protection Board or the Federal Labor Relations Authority. This proceeding begins and ends in accordance with the applicable regulations or procedures of the administrative body before which the proceeding is heard

(7) A proceeding to obtain a retraction from the Commission pursuant to subpart F of these rules This proceeding begins with the filing with the Secretary of the Commission of a request for retraction and ends when the request is denied or, if granted, when the information is retracted

(c) *In the course of or concerning* The phrase "in the course of or concerning shall have the same meaning as set forth in either § 1101 44 (c) and (d) or § 1101 45 (c) and (d), whichever is applicable

Subpart F—Retraction

§ 1101 51 Commission interpretation.

(a) *Statutory provisions.* Section 6(b)(7) of the CPSA provides: If the Commission finds that, in the administration of this Act it has made public disclosure of inaccurate or misleading information which reflects adversely upon

the safety of any consumer product or class of consumer products or the practices of any manufacturer, private labeler, distributor, or retailer of consumer products, it shall, in a manner equivalent to that in which such disclosure was made, take reasonable steps to publish a retraction of such inaccurate or misleading information

(b) *Scope* Section 6(b)(7) applies to inaccurate or misleading information only if it is *adverse—i e*, if it reflects adversely either on the safety of a consumer product or on the practices of a manufacturer, private labeler, distributor or retailer In addition, the Commission will apply section 6(b)(7) to information about products, and about manufacturers and private labelers of products, the Commission may regulate under any of the statutes it administers Section 6(b)(7) applies to information already disclosed by the Commission, members of the Commission, or the Commission employees, agents, contractors or representatives in their official capacities.

§ 1101.52 Procedure for retraction.

(a) *Initiative* The Commission may retract information under section 6(b)(7) on the initiative of the Commission, upon the request of a manufacturer, private labeler, distributor, or retailer of a consumer product, or upon the request of any other person in accordance with the procedures provided in this section

(b) *Request for retraction.* Any manufacturer, private labeler, distributor or retailer of a consumer product or any other person may request a retraction if he/she believes the Commission or an individual member, employee, agent, contractor or representative of the Commission has made public disclosure of inaccurate or misleading information, which reflects adversely either on the safety of a product with which the firm deals or on the practices of the firm. The request must be in writing and addressed to the Secretary, CPSC Washington, D C 20207

(c) *Content of request.* A request for retraction must include the following information to the extent it is reasonably available

(1) The information disclosed for which retraction is requested, the date on which the information was disclosed, the manner in which it was disclosed, who disclosed it, the type of document (e g., letter, memorandum, news release) and any other relevant information the firm has to assist the Commission in identifying the information. A photocopy of the disclosure should accompany the request.

(2) A statement of the specific aspects of the information the firm believes are inaccurate or misleading and reflect adversely either on the safety of a consumer product with which the firm deals or on the firm's practices.

(3) A statement of the reasons the firm believes the information is inaccurate or misleading and reflects adversely either on the safety of a consumer product with which the firm deals or on the firm's practices.

(4) A statement of the action the firm requests the Commission to take in publishing a retraction in a manner equivalent to that in which disclosure was made

(5) Any additional data or information the firm believes is relevant.

(d) *Commission action on request* The Commission will act expeditiously on any request for retraction within 30 working days unless the Commission determines, for good cause, that a longer time period is appropriate If the Commission finds that the Commission or any individual member, employee, agent contractor or representative of the Commission has made public disclosure of inaccurate or misleading information that reflects adversely either on the safety of the firm's product or the practices of the firm, the Commission will publish a retraction of information in a manner equivalent to that in which the disclosure was made If the Commission finds that fuller disclosure is necessary, it will publish a retraction in the manner it determines appropriate under the circumstances

(e) *Notification to requester.* The Commission will promptly notify the requester in writing of its decision on request for retraction Notification shall set forth the reasons for the Commission's decision

Subpart G—Information Submitted Pursuant to Section 15(b) of the CPSA

§ 1101.61 Generally.

(a) *Generally* In addition to the requirements of section 6(b)(1), section 6(b)(5) of the CPSA imposes further limitations on the disclosure of information submitted to the Commission pursuant to section 15(b) of the CPSA, 15 U S C 2064(b)

(b) *Criteria for disclosure* Under section 6(b)(5) the Commission shall not disclose to the public information which is identified as being submitted pursuant to section 15(b) or which is treated by the Commission staff as being submitted pursuant to section 15(b) Section 6(b)(5) also applies to information voluntarily submitted after a firm's initial report to assist the Commission in its evaluation of the section 15 report However, the Commission may disclose information submitted pursuant to section 15(b) in accordance with section 6(b)(1)–(3) if

(1) The Commission has issued a complaint under section 15 (c) or (d) of the CPSA alleging that such product presents a substantial product hazard; or

(2) In lieu of proceeding against such product under section 15 (c) or (d), the Commission has accepted in writing a remedial settlement agreement dealing with such product, or

(3) The person who submitted the information under section 15(b) agrees to its public disclosure.

§ 1101 62 Statutory exceptions to section 6(b)(5) requirements.

(a) *Scope* The limitations established by section 6(b)(5) do not apply to the public disclosure of

(1) Information with respect to a consumer product which is the subject of an action brought under section 12 (*see* § 1101 42),

(2) Information about a consumer product which the Commission has reasonable cause to believe is in violation of a "prohibited act" section under any of the statutes administered by the Commission (*see* § 1101 43), or

(3) Information in the course of or concerning a judicial proceeding (*see* § 1101 45)

§ 1101 63 Information submitted pursuant to section 15(b) of the CPSA.

(a) Section 6(b)(5) applies only to information provided to the Commission by a manufacturer, distributor, or retailer which is identified by the manufacturer, distributor or retailer, or treated by the Commission staff as being submitted pursuant to section 15(b)

(b) Section 6(b)(5) s limitation also applies to the portions of staff generated documents that contain, summarize or analyze such information submitted pursuant to section 15(b).

(c) Section 6(b)(5) does not apply to information independently obtained or prepared by the Commission staff

Subpart H—Delegation of Authority to Information Group

§ 1101 71 Delegation of authority.

(a) *Delegation* Pursuant to section 27(b)(9) of the CPSA 15 U S.C. 2076(b)(9) the Commission delegates to the General Counsel or his or her senior staff designees, the authority to render all decisions under this part concerning the release of information subject to section 6(b) when firms have furnished section 6(b) comment except as provided in paragraph (b) The Commission also delegates to the Secretary of the Commission, or his or her senior staff designee, authority to make all decisions under this part concerning the release of information under section 6(b) when firms have failed to furnish section 6(b) comment or have consented to disclosure except as provided in paragraph (b) of this section The General Counsel shall have authority to establish an Information Group composed of the General Counsel and the Secretary of the Commission or their designees who shall be senior staff members

(b) *Findings not deleted* The Commission does not delegate its authority—

(1) To find, pursuant to section 6(b)(1) and § 1101 23(b) of this part, that the public health and safety requires less than 30 days advance notice of proposed disclosures of information.

(2) To find, pursuant to section 6(b)(2) and § 1101 25(b) of this part that the public health and safety requires less

than ten (10) days advance notice of its intent to disclose information claimed to be inaccurate,

(3) To decide whether it should take reasonable steps to publish a retraction of information in accordance with section 6(b)(7) and §1101 52 of this part

(c) *Final agency action; Commission decision* A decision of the General Counsel or the Secretary or their designees shall be a final agency decision and shall not be appealable as of right to the Commission However, the General Counsel or the Secretary may in his or her discretion refer an issue to the Commission for decision

PART 1105—CONTRIBUTIONS TO COSTS OF PARTICIPANTS IN DEVELOPMENT OF CONSUMER PRODUCT SAFETY STANDARDS

Sec.

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AUTHORITY Sec 7(c), Pub L. 97-35 95 Stat 704 (15 U S C 2056(c))

SOURCE 48 FR 57121, Dec 28 1983 unless otherwise noted

§1105 1 Purpose

The purpose of this part is to describe the factors the Commission considers when determining whether or not to contribute to the cost of an individual, a group of individuals, a public or private organization or association, partnership or corporation (hereinafter "participant') who participates with the Commission in developing standards The provisions of this part do not apply to and do not affect the Commission s ability and authority to contract with persons or groups outside the Commission to aid the Commission in developing proposed standards

§1105 2 Factors.

The Commission may agree to contribute to the cost of a participant who participates with the Commission in developing a standard in any case in which the Commission determines

(a) That a contribution is likely to result in a more satisfactory standard than would be developed without a contribution, and

(b) That the participant to whom a contribution is made is financially responsible.

§1105 3 A more satisfactory standard.

In considering whether a contribution is likely to result in a more satisfactory standard, the Commission shall consider·

(a) The need for representation of one or more particular interests, expertise, or points of view in the development proceeding, and

(b) The extent to which particular interests, points of view, or expertise can reasonably be expected to be represented if the Commission does not provide any financial contribution.

§1105 4 Eligibility.

In order to be eligible to receive a financial contribution, a participant must request in advance a specific contribution with an explanation as to why the contribution is likely to result in a more satisfactory standard than would be developed without a contribution. The request for a contribution shall contain, to the fullest extent possible and appropriate, the following information

(a) A description of the point of view, interest and/or expertise that the participant intends to bring to the proceeding,

(b) The reason(s) that representation of the participant's interest, point of view, or expertise can reasonably be expected to contribute substantially to a full and fair determination of the issues involved in the proceeding;

(c) An explanation of the economic interest, if any that the participant has (and individuals or groups comprising the participant have) in any Commission determination related to the proceeding,