



**UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
BETHESDA, MD 20814**

This document has been electronically
approved and signed.

DATE: July 26, 2017

TO: The Commission
Todd A. Stevenson, Secretariat

THROUGH: Mary T. Boyle, General Counsel
Patricia H. Adkins, Executive Director

FROM: Melissa V. Hampshire, Assistant General Counsel
Renee McCune, Attorney, OGC

SUBJECT: Final Rule: Amendment to FOIA Regulations

BALLOT VOTE DUE Tuesday, August 1, 2017

The Office of the General Counsel is providing for Commission consideration the attached draft final rule for publication in the *Federal Register*. The final rule would amend the Commission's Freedom of Information Act regulations in 16 C.F.R. part 1015 based on the FOIA Improvement Act of 2016 and required changes. A Notice of Proposed Rulemaking was published in the *Federal Register* on January 3, 2017.

Please indicate your vote on the following options:

- I. Approve publication of the attached document in the *Federal Register*, as drafted.

(Signature)

(Date)

II. Approve publication of the attached document in the *Federal Register*, with changes.
(Please specify.)

(Signature)

(Date)

III. Do not approve publication of the attached document in the *Federal Register*.

(Signature)

(Date)

IV. Take other action. (Please specify.)

(Signature)

(Date)

Attachment: Draft *Federal Register* Final Rule to Amend FOIA Regulations.

[Billing Code 6355-01-P]

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1015

[Docket No. CPSC-2016-0030]

Procedures for Disclosure or Production of Information under the Freedom of Information Act; Amendments

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Consumer Product Safety Commission (Commission, CPSC, or we) is issuing a final rule to update its Freedom of Information Act (FOIA) rule. The final rule revises the rule to conform to the amendments of the FOIA Improvement Act of 2016 (the 2016 FOIA) to the FOIA. The final rule is also updated to reflect changes in Commission procedures; updates Commission contact information, including current methods of submitting requests for records to the Commission; revises employee titles; and makes various technical changes and corrections.

DATES: The rule is effective on [INSERT DATE THAT IS 30 DAYS AFTER FINAL RULE IS PUBLISHED IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Renee McCune, Office of the General Counsel, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504-7673; or Todd A. Stevenson, Chief Freedom of Information Officer, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504-6836.

SUPPLEMENTARY INFORMATION: The Commission amends the agency's procedures for disclosure or production of information under the Freedom of Information Act. 16 CFR part 1015.

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I. Background Information

On June 30, 2016, the President signed into law the 2016 FOIA, Public Law No. 114-185 (2016). The 2016 FOIA amends the Freedom of Information Act, 5 U.S.C. 552, requiring an agency to review its FOIA regulations and issue regulations on procedures for the disclosure of records under the new amendments. Specifically, the 2016 FOIA requires: certain records be available for public inspection in an electronic format; agencies to make available for public inspection in an electronic format records that have been requested three or more times; that an agency not withhold information under FOIA unless the agency reasonably foresees that disclosure would harm an interest protected by a FOIA Exemption or disclosure is prohibited by law; extending the number of days for an administrative appeal of an adverse determination from 30 to 90 days; the assessment of fees be limited in certain circumstances; and requesters be

notified of available dispute resolution services from the FOIA Public Liaison of the agency or the Office of Government Information Services.

The Commission amends its regulations to implement the 2016 FOIA, 16 CFR part 1015, by incorporating these new statutory requirements. The amendments revise the Commission's FOIA regulations to comply with the FOIA, as amended by the 2016 FOIA, and update Commission procedures, contact information, and methods of submitting requests for records to the Commission, in addition to other conforming and technical revisions. Updating Commission procedures and Commission contact information provides clarity for requesters seeking records from the Commission.

II. Response to Comments

On January 3, 2017, the Commission published a Notice of Proposed Rulemaking (NPR) in the Federal Register. 82 FR 59. CPSC received two comments in response to the NPR. The comments addressed seven separate issues. Comments submitted in response to the NPR are available at: www.regulations.gov, by searching under the docket number of the rulemaking, CPSC-2016-0030.

A. Purpose and scope (§ 1015.1)

Based on informal input from the Office of Information Policy ("OIP") within the U.S. Department of Justice ~~input on this section~~, we clarified the Privacy Act discussion in § 1015.1(a) to reflect current practices and provided further guidance to first and third party requesters. With respect to an individual's request for records about himself or herself, we clarified that we would process such a request under the Privacy Act and then under the FOIA. Thus, if a request is denied under the Privacy Act, the records will be processed under the

FOIA. This change is consistent with the FOIA and allows a requester access to the greatest number of records.

Additionally, with respect to a request by a third party for records under the Privacy Act, we removed the sentence on third party requests (not including a request on behalf of a first party for Privacy Act records) because such requests are only processed under the FOIA. Therefore the reference to third party requests being processed under the Privacy Act is not required.

One commenter asserted that the Commission's policy regarding requests for records in § 1015.1(b) should not characterize disclosure as a "rule" and withholding as an "exception." The commenter stated that "disclosure" and "withholding" are "prescribed equally by rules" and suggested that the Commission's policy should indicate that the Commission will apply a presumption of disclosure when processing responsive records.

We believe that a presumption of disclosure is already reflected in the Commission's policy statement in § 1015.1(b), which states that the Commission's policy regarding requests for records is that disclosure is the rule and withholding is the exception. The Commission's policy is further clarified by the next two sentences in the rule, which incorporate a presumption of disclosure in explaining the limited circumstances under which records that are exempted from disclosure will not be made available. Accordingly, we decline to revise the sentence.

B. Time limitation on responses to requests for records and requests for expedited processing (§ 1015.5)

One commenter observed that the time limitations as written in §§ 1015.5(a) and 1015.7(b) of the NPR could result in unintended consequences. The commenter suggested that, under this formulation, a request or an appeal submitted at, for example, 7:59 a.m., would begin

running the next work day, instead of one minute later, at 8 a.m. Additionally, the commenter noted that the phrase “to requests for records” should be added after the word “responses” at the end of the sentence and a comma should be added after the word “received.”

We agree with the commenter. If an electronic submission occurs during non-working hours, we intend for time limitations to begin to run when working hours resume. Accordingly, we have revised the sentence, which also takes into account the grammatical concerns the commenter raised. For example, if a request is submitted electronically at 7:59 a.m. EST on a working day, the time limitations will begin to run at 8 a.m. EST on that day when working hours resume. In response to the comment addressing § 1015.7(b) we made the same conforming changes to § 1015.7(b).

One commenter stated that, to be consistent with other provisions in the rule that expressly state whether time periods are measured in calendar days or working days, the Commission should clarify § 1015.5(g)(3) to reflect that the Secretariat or delegate of the Secretariat will determine whether to grant a request for expedited processing within 10 *calendar* days of receipt of the request.

The rule does not indicate whether the 10 days are calendar days or working days. For clarity and consistency with other provisions in the rule that specify “calendar days” or “working days” we have amended the sentence to refer to “ten (10) calendar days.” This amendment is consistent with the Commission’s current practice of treating the 10 day time period as calendar days. It is also consistent with the FOIA, which does not specify “working days.” 5 U.S.C. 552(a)(6)(E)(ii)(I).

C. Responses: Form and content (§ 1015.6)

One commenter remarked that neither party may be able to definitively prove the date of receipt of the Commission's denial of a request for records under § 1015.6(b)(4) if the Commission sends the denial by regular mail. The rule states that the requester has 90 calendar days from the receipt of the denial or partial denial to make an appeal. To avoid this problem, the commenter suggested that the Commission calculate the 90-day deadline from the date the Commission issues its denial.

In response to the comment, we have revised §§ 1015.6(b)(4) and 1015.7(a) to state that an appeal must be made within 90 calendar days of the Commission's response. The Commission's practice is to send certified letters of denial, which allow the Commission to determine the date that the requester received the letter. This revision simplifies the process, eliminates any ambiguity, and allows the Commission flexibility to implement future changes electronically where feasible. This change also tracks the FOIA, which provides that, in the case of an adverse determination, there is a right to appeal "within a period determined by the head of the agency that is not less than 90 days after the date of such adverse determination." 5 U.S.C. 552(a)(6)(A)(i)(III)(aa). The revisions also revise §§ 1015.6(b), (b)(4), and 1015.7(a) to state that denials include partial denials, for consistency with the current language in § 1015.7(a), which refers to denials of requests for records "in whole or in part." The Commission's practice is to include a date on denial letters, but we have amended § 1015.6(b) to explicitly require that a denial letter be dated.

D. Appeals from initial denials; reconsideration by the Secretariat (§ 1015.7)

As noted above, one commenter identified that proposed § 1015.7(b), which sets forth time limits for responding to appeals, would add an extra day for responding to an appeal received just before the start of a working day.

As stated in our above response, we agree that the sentence should be revised. Accordingly, for the same reasons we noted above, we have similarly revised the sentence, except that we refer to “appeals” instead of “requests” (an error in the NPR). For that same reason, we also revised the preceding sentence to correct “request” to state “appeal.” Finally, we updated a parenthetical citation at the end of § 1015.7.

E. Fees for production of records (§ 1015.9)

One commenter asserted that the definition of a “representative of the news media” at § 1015.9(c)(8) should be amended because it is outdated and conflicts with the FOIA, as amended, and to conform to judicial authorities, citing *Cause of Action v. Federal Trade Commission*, 799 F.3d 1108 (D.C. Cir. 2015). Additionally, the commenter suggested that we consider other elements of the *Cause of Action* decision with respect to the news media requester fee category. Specifically, the commenter stated that the news media requester fee category should focus on the nature of the requester, not its request. With respect to the requirement that a news media requester use “editorial skills” to turn “raw materials” into a “distinct work,” the commenter asserted that even a simple press release commenting on records satisfies this criterion. Finally, the commenter stated that the *Cause of Action* court indicated that the statutory definition of a “representative of the news media” includes “alternative media” and evolving news media formats, and therefore, we should state that any examples of news media entities we may include in the rule are non-exhaustive.

We agree with the commenter that the definition of “representative of the news media,” which is used to determine fee waivers in § 1015.9, is outdated and should be amended to track the definition in the FOIA at 5 U.S.C. 552(a)(4)(A)(ii). Therefore, we have revised the first sentence of the definition to follow the FOIA definition. Additionally, to provide further

clarification and guidance for this definition, we have incorporated some additional language from the FOIA definition and the template guidelines for agency FOIA regulations provided by the OIP.

This additional language encompasses the OIP guidance and addresses the commenter's suggestions. First, the additional language added to the definition of news media focuses on the nature of the requester as opposed to the content of the request. Second, the commenter's observation that a press release should meet the distinct work standard would be permissible under the revised definition as long as it meets the requirement that it is about current events or of current interest to the public. Finally, we explain that the revised definition uses examples of news media entities that are not all-inclusive.

One commenter suggested clarifying that the "10 additional days" in § 1015.9(f)(6)(i) are working days. We agree with the commenter and for clarity have amended § 1015.9(f)(6)(i) accordingly. This section is an exception to the requirement that the Commission waive certain fees if it fails to meet certain time limits. Although the "10 additional days" language we proposed in the NPR tracks the language used in the 2016 FOIA at 5 U.S.C. 552(a)(4)(A)(viii)(II), the 10 days are in addition to the 20 *working days* that the Commission has to respond to the request for records per 5 U.S.C. 552(a)(6)(A)(i) and therefore also are calculated as working days. This revision is consistent with 5 U.S.C. 552(a)(6)(B)(i), which refers to the extension for unusual circumstances as no more than 10 *working days*, and the revision is also consistent with the Commission's current practices.

Additionally, on our own initiative, we made some clarifications and corrections to § 1015.9(f)(6). Specifically, we added or corrected citations to other sections in the rule and made other conforming changes to the 2016 FOIA. First, we added or corrected some references to

sections in the rule that had previously been omitted or needed to be revised. Second, we revised the first sentence to remove “and notice” to track the language of the 2016 FOIA at 5 U.S.C. 552(a)(4)(A)(viii), which only refers to “any time limits.” The notice portion is instead a requirement of the exceptions at § 1015.9(f)(6)(i) and (ii), as stated in the 2016 FOIA at 5 U.S.C. 552(a)(4)(A)(viii)(II)(aa) and (bb). Finally, we corrected two citation errors in § 1015.9(f)(6)(iii).

F. Commission report of actions to Congress (§ 1015.10)

Based on informal OIP input on this section we removed § 1015.10 because it unnecessarily repeats the requirements stated in the FOIA at 5 U.S.C. 552(e)(1), and, at the same time, is incomplete and lacks various other requirements listed in the FOIA. *See* 5 U.S.C. 552(e)(1)(B)(2), (C), and (F)-(M). Amending this section to restate all of the requirements from the FOIA would make the rule unnecessarily dense and provides no additional guidance about the requirement.

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

Also based on informal OIP input on this section, we removed § 1015.16 for similar reasons. Because the requirements are already specified in the FOIA at 5 U.S.C. § 552(b), it is unnecessary to repeat them in the rule. Moreover, § 1015.16(c) is incomplete. *See* 5 U.S.C. 552(b)(3). In making this revision, we revised § 1015.15(d) and § 1015.20 to reference the exemptions contained in the FOIA at 5 U.S.C. 552(b) instead of the exemptions contained in § 1015.16.

III. Environmental Considerations

The Commission’s regulations address whether the Commission is required to prepare an environmental assessment or an environmental impact statement. 16 CFR part 1021. These

regulations provide a categorical exclusion for certain CPSC actions that normally have “little or no potential for affecting the human environment.” 16 CFR 1021.5(c)(1). This final rule falls within the categorical exclusion.

IV. Regulatory Flexibility Act

Under section 603 of the Regulatory Flexibility Act (RFA), when the Administrative Procedure Act (APA) or another law requires an agency to publish a general notice of proposed rulemaking, the agency must prepare an initial regulatory flexibility analysis and a final regulatory flexibility analysis assessing the economic impact of the rule on small entities or certify that the rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 603(a), 604(a), and 605. As noted in the NPR, the Commission chose to provide notice and comment for this rulemaking. However, because this is a “rule of agency organization, procedure, or practice,” the APA does not require an NPR. 5 U.S.C. 553. Thus, the RFA requirement does not apply to this rulemaking. We further noted in the NPR that the rule would merely set out in a regulation the procedural requirements stated in the FOIA of 2016, update Commission procedures, and make other technical changes and corrections. We expect that the final rule will not have a significant economic impact on a substantial number of small entities.

V. Paperwork Reduction Act

The Paperwork Reduction Act (PRA) establishes certain requirements when an agency conducts or sponsors a “collection of information.” 44 U.S.C. 3501–3520. The final rule amends the Commission’s rule to conform to the 2016 FOIA, to update Commission procedures, and make other technical changes and corrections. The final rule would not impose any information collection requirements. The existing rule and the amendment do not require or

request information from firms, but rather, explain the Commission's FOIA procedures. Thus, this rulemaking does not implicate the PRA.

VI. Executive Order 12988 (Preemption)

According to Executive Order 12988 (February 5, 1996), agencies must state in clear language the preemptive effect, if any, of new regulations. Section 26 of the Consumer Product Safety Act (CPSA) explains the preemptive effect of consumer product safety standards issued under the CPSA. 15 U.S.C. 2075. The final rule is not a consumer product safety standard. The final rule revises a rule of agency practice and procedure by implementing the FOIA of 2016 and making technical revisions or corrections. Therefore, section 26 of the CPSA would not apply to this rule.

VII. Effective Date

The Commission proposed that the final rule would become effective 30 days after the final rule is published in the Federal Register in accordance with the APA's general requirement that the effective date of a rule be at least 30 days after publication of the final rule. 5 U.S.C. 553(d). We received no comments regarding the effective date. Therefore, the final rule will become effective 30 days after the final rule is published in the Federal Register.

List of Subjects in 16 CFR 1015

Administrative practice and procedure; Consumer protection; Disclosure of information; Freedom of information.

Accordingly, the Commission amends 16 CFR part 1015 as follows:

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

1. The authority citation for part 1015 is revised to read, as follows:

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; 15 U.S.C. 8001-8008; 110 P.L. 278, 122 Stat. 2602; 5 U.S.C. 552.

2. Revise § 1015.1 to read as follows:

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, the Poison Prevention Packaging Act of 1970, the Refrigerator Safety Act, the Flammable Fabrics Act, the Children's Gasoline Burn Prevention Act, the Virginia Graeme Baker Pool and Spa Safety Act, and the Child Nicotine Poisoning Prevention 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 and the FOIA. 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 or portions of records not exempt from disclosure will be made available. Records which may be exempted from disclosure will be made available unless: (1) disclosure is prohibited by law; (2) the Commission reasonably foresees that disclosure would harm an interest protected by an exemption described in 5 U.S.C. 552(b); or (3) disclosure is exempted under 5 U.S.C. 552(b)(3). 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; Section 6(b) and Section 25(c) of the CPSA. The Commission will consider the record's age, content, and character in assessing whether it reasonably foresees that disclosure of the document would harm an interest protected by an exemption. Additionally, the Commission will consider whether partial disclosure of information is possible whenever the Commission determines that a full disclosure of a requested record is not possible and will take reasonable steps necessary to segregate and release nonexempt information.

(c) The Secretariat of the Commission is the designated Chief Freedom of Information Officer who, subject to the authority of the Chairman, is responsible for compliance with and implementation of 5 U.S.C. 552(j).

3. Amend § 1015.2 by:

- a. Revising the section heading;
- b. Revising paragraphs (a), (b) and (c); and
- c. Adding paragraph (d).

The revisions read, as follows:

§ 1015.2 Public inspection.

(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 in an electronic format. The principal location will be in the Office of the Secretariat of the Commission. The address of this office is:

Office of the Secretariat, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814.

(b) This public reference facility will maintain and make available for public inspection in an electronic format 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 at <https://www.cpsc.gov> for those records that are required by 5 U.S.C. 552(a)(2) to be available by “computer telecommunications.” Records that the FOIA

requires the Commission to make available for public inspection in an electronic format may be accessed through the e-FOIA Public Access Link at <https://www.cpsc.gov>.

(d) Subject to the requirements of Section 6 of the CPSA, the Commission will make available for public inspection in an electronic format copies of all records, regardless of form or format, that (1) have been released to any person under 5 U.S.C. 552(a)(3) and (2) that because of the nature of their subject matter, the Commission determines have become or are likely to become the subject of subsequent requests for substantially the same records or that have been requested three or more times.

4. Amend § 1015.3 by:

- a. Revising the section heading;
- b. Revising the first sentence of paragraph (a);
- c. Adding a sentence at the end of paragraph (b); and
- d. Removing the word “Secretary” from paragraphs (d) and (e), wherever it appears, and adding, in its place, the word “Secretariat”.

The revisions read, as follows:

§ 1015.3 Requests for records.

(a) A request for access to records of the Commission shall be in writing addressed to the Secretariat and shall be submitted through any of the following methods: the e-FOIA Public Access Link at <https://www.cpsc.gov>; e-mail to cpsc-foia@cpsc.gov; mail to Consumer Product Safety Commission, 4330 East West Highway, Room 820, Bethesda, MD 20814; or facsimile to 301-504-0127. * * *

(b) * * * Before submitting their requests, requesters may contact the Commission's FOIA contact or FOIA Public Liaison to discuss the records they seek and to receive assistance in describing 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 Secretariat or delegate of the Secretariat.

(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 Secretariat or delegate of the Secretariat will determine which track is appropriate for the request. The Secretariat or delegate of the Secretariat 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 Secretariat or delegate of the Secretariat disagrees may so indicate in the request and, where appropriate and feasible, will also be given an opportunity to limit their requests.

§ 1015.4 [Amended]

5. Amend § 1015.4 by removing the word "Secretary" wherever it appears, and adding, in its place, the word "Secretariat".

6. Amend § 1015.5 by:

- a. Revising paragraph (a);
- b. Removing the word “Secretary” in paragraphs (b), (b)(1), (d), and (d)(2) wherever it appears, and adding, in its place, the word “Secretariat”;
- c. Redesignating paragraphs (e) through (g), as paragraphs (f) through (h), respectively;
- d. Adding new paragraph (e);
- e. Removing the word “Secretary” in redesignated paragraphs (f), (g), (g)(3), (g)(5), and (h) wherever it appears, and adding, in its place, the word “Secretariat”; and
- f. Revising redesignated paragraphs (g)(2) and g(3).

The revisions read, as follows:

§ 1015.5 Time limitation on responses to requests for records and requests for expedited processing.

(a) The Secretariat or delegate of the Secretariat 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 submitted by mail shall begin to run at the time a request for records is received and date stamped by the Office of the Secretariat. The Office of the Secretariat shall date stamp the request the same day that it receives the request. The time limitations on responses to requests for records submitted electronically during working hours (8 a.m. to 4:30 p.m. EST) shall begin to run at the time the request was electronically received, and the time limitations on responses to requests for records submitted electronically during non-working hours will begin to run when working hours resume.

(b) The time for responding to requests for records may be extended by the Secretariat 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 Secretariat.

* * * * *

(d) If the Secretariat 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 Secretariat or the General Counsel shall so notify the requester and give the requester the opportunity to:

(1) * * *

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

(e) If an extension of time greater than ten (10) working days is necessary, the Commission shall make available its FOIA Public Liaison for this purpose. A list of the Commission FOIA Public Liaisons is available at <https://www.cpsc.gov/Newsroom/FOIA>. The Commission will also notify requesters in writing to the availability of the Office of Government Information Services of the National Archives and Records Administration to provide dispute resolution services.

(f) The Secretariat or delegate of the Secretariat may aggregate and process as a single request requests by the same requester, or a group of requesters acting in concert, if the Secretariat 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.

(g) The Secretariat or delegate of the Secretariat will provide expedited processing of requests in cases where the requester demonstrates a compelling need for such processing.

(1) * * *

(2) Requesters for expedited processing must include in their requests, which may be submitted through any of the methods described in § 1015.3(a) of this part, 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 Secretariat or delegate of the Secretariat will determine whether to grant a request for expedited processing and will notify the requester of such determination within ten (10) calendar days of receipt of the request.

(4) * * *

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

(h) The Secretariat 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 Secretariat or delegate of the Secretariat will notify requesters whose requests will be delayed for this reason.

7. Revise § 1015.6 by:

- a. Revising paragraphs (a), (b), and (b)(4);
- b. Removing the word “Secretary” from paragraphs (b), and (c) wherever it appears, and adding, in its place, the word “Secretariat;” and
- c. Adding paragraph (b)(5).

The revisions read, as follows:

§ 1015.6 Responses: Form and content.

(a) When a requested record has been identified and is available for disclosure, the requester shall be supplied with a copy or notified as to where and when the record will be made available for public inspection in an electronic format. If the payment of fees is required the requester shall be advised by the Secretariat in writing of any applicable fees under § 1015.9 hereof. The requester will be notified of the right to seek assistance from the Commission’s FOIA Public Liaison.

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

* * * * *

(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 90 calendar days after the date of the denial or partial denial of the Commission’s response to a request for records.

(5) A statement that the requester has the right to seek dispute resolution services from the Commission's FOIA Public Liaison or the Office of Government Information Services.

(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 Secretariat or delegate of the Secretariat may ask the requester to forego judicial relief until a response can be made. The Secretariat or delegate of the Secretariat 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).

8. Amend § 1015.7 by:

- a. Revising the section heading;
- b. Revising paragraphs (a) and (b);
- c. Removing the word "Secretary" in paragraphs (c) and (g) wherever it appears, and adding, in its place, the word "Secretariat";
- d. Revising paragraph (e); and
- e. Revising the last citation in the series of parenthetical citations following paragraph (g).

The revisions read, as follows:

§ 1015.7 Appeals from initial denials; reconsideration by the Secretariat.

(a) When the Secretariat or delegate of the Secretariat has denied a request for records in whole or in part, the requester may, within 90 calendar days after the date of the denial or partial denial, appeal the denial to the General Counsel of the Consumer Product Safety Commission, attention of the Secretariat. Appeals may be submitted through any of the following methods: the e-FOIA Public Access Link at <https://www.cpsc.gov>; e-mail to cpSC-foia@cpSC.gov; mail to 4330 East West Highway, Room 820, Bethesda, MD 20814; or facsimile to 301-504-0127.

(b) The General Counsel, or the Secretariat upon reconsideration, will act upon an appeal within 20 working days of its receipt. The time limitations on an appeal submitted by mail shall begin to run at the time an appeal is received and date stamped by the Office of the Secretariat. The Office of the Secretariat will date stamp the appeal the same day that it receives the appeal. The time limitations on an appeal submitted electronically during working hours (8 a.m. to 4:30 p.m. EST) shall begin to run at the time the appeal was electronically received, and the time limitations on appeals submitted electronically during non-working hours will begin to run when working hours resume.

(c) After reviewing the appeal, the Secretariat will reconsider his/her initial denial. If the Secretariat 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 Secretariat will so inform the requester and submitter of the information in accordance with §§ 1015.6(a) and 1015.18(b). If the Secretariat 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.

* * * * *

(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. The decision will inform the requester of the right to seek dispute resolution services from the Commission's FOIA Liaison or the Office of Government Information Services. 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).

* * * * *

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

(5 U.S.C. 552(a)(6)(A); 5 U.S.C. 553; 15 U.S.C. 2076(b)(10))

9. Amend § 1015.9 by:

- a. Removing the word "Secretary" in paragraphs (a), (e)(9), (f)(4), (5) and (7), and adding, in its place, the word "Secretariat";
- b. Revising paragraphs (b); (c)(2), (3), and (8);
- c. Adding a sentence at the end of paragraph (e)(1);
- d. Adding paragraph (f)(6); and
- e. Redesignating paragraph (f)(6) as paragraph (f)(7).

The revisions read, as follows:

§ 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 Secretariat shall determine and levy fees for duplication, search, review, and other services, in accordance with this section.

(b) Fees shall be paid to the Treasury of the United States according to the directions provided by the Commission.

* * * * *

(c)(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 and the reasonable efforts expended to locate and retrieve information from electronic records.

(3) *Duplication* refers to the process of making a copy of a document, including electronically, necessary to respond to a FOIA request. The Commission will honor the requester's preference for receiving a record in a particular format when it can readily reproduce it in the form or format requested.

* * * * *

(8) *Representative of the news media* refers to any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations that broadcast "news" to the public at large and publishers of periodicals that disseminate "news" and make

their products available through a variety of means to the general public, including news organizations that disseminate solely on the Internet. A request for records supporting the news-dissemination function of the requester will not be considered to be for a commercial use. "Freelance" journalists who demonstrate a solid basis for expecting publication through a news media entity will be considered as a representative of the news media. A publishing contract would provide the clearest evidence that publication is expected; however, the Commission can also consider a requester's past publication record in making this determination. These examples are not all-inclusive.

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(e)(1) * * * Where paper documents must be scanned in order to comply with a requester's preference to receive records in an electronic format, the requester must also pay the direct costs associated with scanning those materials.

* * * * *

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

* * * * *

(f)(4) The Secretariat 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 Secretariat 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) Search fees shall be waived for all requests and duplication fees shall be waived for requests from educational institutions, non-commercial scientific institutions, and representatives of the news media if the Commission fails to comply with any time limit under

§§ 1015.5(a), (g)(3), 1015.7(b), and 5 U.S.C. 552(a)(6) other than those exceptions stated in 5 U.S.C. 552 (a)(4)(A)(viii)(II). Those exceptions include:

(i) if the Commission has determined that unusual circumstances as defined in § 1015.5(b) apply and the Commission provided timely written notice to the requester as required by § 1015.5(c) or § 1015.7(f), then failure to comply with the time limit in §§ 1015.5(a), (g)(3), 1015.7(b), and 5 U.S.C. 552(a)(6) is excused for 10 additional working days; or

(ii) if the Commission has determined that unusual circumstances as defined in § 1015.5(b) apply and more than 5,000 pages are necessary to respond to the request, and the Commission has provided timely written notice in accordance with §§ 1015.5(c) and (e) and the Commission has discussed with the requester via written mail, e-mail, or telephone (or made not less than three good-faith efforts to do so) how the requester could effectively limit the scope of the request; or

(iii) if a court has determined that exceptional circumstances exist as defined in 5 U.S.C. 552(a)(6)(C), then failure to comply with §§ 1015.5(a), (g)(3), 1015.7(b), and 5 U.S.C. 552(a)(6) shall be excused for the length of time provided by the court order.

(7) Any determination made by the Secretariat concerning fee waivers may be appealed by the requester to the Commission's General Counsel in the manner described at § 1015.7.

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§ 1015.10 [Reserved]

10. Remove and reserve § 1015.10.

11. Revise § 1015.11 to read as follows:

§ 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 or other matter referred to 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 or other matter referred to 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 except when permitted by the provisions of section 29(f) of the CPSA.

12. Revise § 1015.15 to read as follows:

§ 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. 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 reasonably foresees that disclosure would harm an interest protected by the exemption or disclosure is prohibited by law or otherwise exempted from disclosure under 5 U.S.C. 552(b)(3). 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 Secretariat 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 Secretariat upon the advice of the Office of the General Counsel has determined would be released upon request in accordance with this regulation, will be made available for public inspection in an electronic format through the Commission's website at <https://www.cpsc.gov> promptly after the briefing package has been transmitted to the Commissioners by the Office of the Secretariat. Such packages will be marked to indicate that they have not been acted upon by the Commission.

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

§ 1015.16 [Reserved]

13. Remove and reserve § 1015.16.

§ 1015.17 [Reserved]

14. Remove and reserve § 1015.17.

§ 1015.20 Public availability of accident or investigation reports.

15. Amend § 1015.20, by revising the first and second sentences of paragraph (a) to read as follows:

(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 unless such reports are subject to the investigatory file exemption contained in the Freedom of Information Act (5 U.S.C. 552(b)) 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. * * *

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Dated _____

Todd A. Stevenson,
Secretariat, Consumer Product Safety Commission.