U.S. CONSUMER PRODUCT SAFETY COMMISSION
441 G Street NW
Washington, DC 20548

CPSA Section 6(b) FACT SHEET

The Consumer Product Safety Commission (Commission) has unique restrictions that govern its public disclosure of information. This fact sheet summarizes these unique restrictions. Our rules, which you can find at 16 C.F.R. § 1101 or § 1015, provide more information. If you have questions about these restrictions, call (301) 504-7923, or facsimile (301) 504-0127.

1. What are the restrictions on the disclosure of information by the Commission?

Section 6(b), 15 U.S.C. § 2055(b), a provision of the Consumer Product Safety Act (CPSA), establishes procedures for and restrictions on the Commission's public disclosure of information. The Commission rule interpreting the requirements of section 6(b) is published in Title 16 of the Code of Federal Regulations in Part 1101 (16 C.F.R. § 1101). In addition, Section 6(a) of the CPSA prohibits the Commission from disclosing confidential business information.

2. To what information does Section 6(b) apply?

Section 6(b) applies to <u>any information</u> from which the public can readily ascertain the identity of a manufacturer or private labeler of a consumer product.

3. What are the requirements and prohibitions of Section 6(b)?

Section 6(b) prohibits the Commission from disclosing information about a consumer product that identifies a manufacturer or private labeler unless the Commission has taken "reasonable steps" to assure 1) that the information is accurate, 2) that disclosure of the information is fair in the circumstances, and 3) that disclosure of the information is reasonably related to effectuating the purposes of the CPSA and of the other laws administered by the Commission. Before disclosure of such information, the Commission must provide the manufacturer or private labeler with an opportunity to comment on the accuracy of the information. The Commission may not disclose such information for at least 15 days after sending it to the company for comment.

4. What happens when a firm submits comments on information that the Commission proposes to disclose?

The Commission must review and analyze the information in light of the comments received. The weight given to the comments and the degree of review by the Commission depends on the specificity, completeness, and credibility of the comments and any supporting documentation. Based on the comments, the Commission will decide whether to release the information.

5. If a firm submits comments, will I be able to obtain them when I receive a response to my Freedom of Information Act ("FOIA") request?

Unless the firm expressly objects to disclosure of its comments, the Commission provides those comments to the FOIA requester.

6. What happens if a firm fails to comment on information that the Commission proposes to disclose?

The Commission staff must nevertheless review the information. The degree of review, however, generally is less stringent than when a firm has submitted substantive comments.

7. What happens if the Commission decides to release information over a firm's objections?

Section 6(b) requires the Commission to notify the firm of its decision and to wait another five days before disclosing the information. During this time, the firm could file a lawsuit seeking to block disclosure of the information.

8. How long can the processing of my request take?

The initial process of giving notice to a firm and providing it an opportunity to comment on information usually takes 30 to 60 days, depending on the amount of material that is responsive to an FOIA request, the nature of the material, and the number of firms that must be notified. (Some FOIA requests involve multiple manufacturers or private labelers.) Depending on the availability of the requested records, the initial processing may take longer. If the Commission receives detailed, complex comments, the Commission's legal and technical staff must review the information closely and this can extend the processing time. On the other hand, if the firm fails to comment, the information is reviewed and released shortly after the 15 days given to the firm for comment.

9. What can I do to speed up the process?

Other than simply asking for less information, you may consult with the Commission's FOI Officer to see if you can redefine your request in a manner that will allow the release of the information without identifying a manufacturer or private labeler. Call (301) 504-7923 or facsimile (301) 504-0127.

10. Are there any other steps that I can take to get the information I requested?

Not unless you are in litigation and thus have available to you various discovery devices. Discussion of litigation discovery devices is beyond the scope of this fact sheet.

11. Are there any specific types of information that I cannot obtain?

Yes. Section 6(b)(5), 15 U.S.C. § 2055(b)(5), prohibits the disclosure of any information that a firm has reported to the Commission under Section 15 of the CPSA, 15 U.S.C. § 2064(b), unless the Commission has sued the manufacturer, has accepted a voluntary corrective action plan from the firm, has the firm's permission to release the information or the Commission publishes a finding that public health and safety requires public disclosure. (CPSA section 15(b) requires manufacturers to report to the Commission and provide information regarding their products and potential substantial product hazards.) In addition, in most cases, unconfirmed complaints are not released. The Commission requests consumers who have submitted complaints to the Commission to confirm the accuracy of the information in their complaints. If the consumer has not done so, the Commission will not release it unless the information in the complaint is corroborated by other information in the Commission's possession. Finally, as noted earlier, you cannot obtain confidential business information or trade secrets.