U.S. CONSUMER PRODUCT SAFETY COMMISSION

WASHINGTON, D.C. 20207

REPORT for CALENDAR YEAR 1997
(January through September 1997)

THE ADMINISTRATION OF
THE FREEDOM OF INFORMATION ACT

MARCH 1, 1998

Transmitted in Accordance with Section 552(e)
of the Freedom of Information Act to:

The President of the Senate
Speaker of the House of Representatives

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This document reports on the activities of the Consumer Product Safety Commission in administering the Freedom of Information Act (FOIA), 5 U.S.C. § 552 et seq., during the nine-month reporting period of January through September 1997. This report is submitted in accordance with the provisions of section 552(e) of the FOIA.

I. TOTAL NUMBER OF INITIAL DENIALS OF REQUESTS FOR RECORDS

During January through September 1997, the Consumer Product Safety Commission responded to 10,622 formal requests made pursuant to the Freedom of Information Act. There were 401 initial determinations not to comply in whole or in part with requests for Commission records, invoking the FOIA Exemptions from disclosure a total of 697 times.

II. AUTHORITY FOR EACH SUCH DETERMINATION

A. Exemptions from Disclosure in the FOIA

(1) Section 552(b)(3) - matters that are specifically exempted from disclosure by statute, provided that the statute 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.

Exemption 3 was cited in 294 partial denials and 30 full denials invoking sections of the Consumer Product Safety Act (CPSA), as explained in Part II. B. of this report.

(2) Section 552(b)(4) - matters that are trade secrets and commercial or financial information obtained from a person and privileged or confidential.

Exemption 4 was cited in 79 partial denials and 9 full denials. 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. Substantial portions of the materials requested were disclosed. Deletions were made of information 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, and technical and engineering specifications. (FOIA Exemption 3 was also cited in all responses, Exemption 5 in 56 responses, Exemption 7(A) in 25, Exemption 7(D) in 9, and Exemption 7(E) in 34 responses.)

(3) Section 552(b)(5) - matters that are inter-agency or intra-agency memoranda or letters and privileged.

Exemption 5 was the basis for 125 partial denials and 16 full denials. The denials involved staff advice to the Commission on specific enforcement, regulatory and policy matters or staff analysis and attorney-work product related to enforcement matters or staff and attorney opinions and advice to the Commission relating to the administrative decision-making process prior to agency action. In the partial denials, requested records concerning the matters were released after deleting portions or entire documents containing legal analyses, enforcement strategies, recommendations and predecisional advice. (Of these denials, FOIA Exemption 3 was also cited in 76 responses, Exemption 4 in 63, Exemption 6 in 1, Exemption 7(A) in 52, Exemption 7(D) in 10 and Exemption 7(E) in 62.)

(4) Section 552(b)(6) - matters pertaining to a clearly unwarranted invasion of personal privacy.

Twelve partial denials and two full denials were based on Exemption 6. The denials involved requests for investigation reports of incidents involving deaths or other personal information about injured persons contained in the reports. The persons involved or their families had requested either confidentiality for their identities or consent had not

otherwise been obtained. Other denials involved requests seeking the scheduling calendars that contained personal and personnel information or involved third party requests for employees' personnel files. (Exemption 3 was also cited in 7 responses, Exemption 5 in 1 response, Exemption 7(A) in 2 and Exemption 7(D) in 1 response.)

(5) Section 552(b)(7)(A) - pertaining to law enforcement investigatory records, the disclosure of which could reasonably be expected to interfere with enforcement proceedings.

Exemption 7(A) was the basis for 39 partial denials and 18 full denials. All of the denials involved requests for investigatory files on active enforcement matters, on-going corrective actions or product hazard investigations regarding specific firms. In instances where partial denials occurred, substantial portions of the files were released after deleting portions and documents constituting enforcement strategies and legal analyses and advice. (Exemption 3 was also cited in 36 responses, Exemption 4 in 25, Exemption 5 in 52, Exemption 6 in 2, Exemption 7(D) in 4 and Exemption 7(E) in 9 responses.)

(6) Section 552(b)(7)(D) - pertaining to law enforcement investigatory records and confidential sources.

Twelve partial denials were based in part on Exemption 7(D). The denials involved requests for the identities of the sources of trade complaints against specific firms and confidential statements made during investigations. (Exemption 3 was also cited in 9 responses, Exemption 4 in 9, Exemption 5 in 10, Exemption 6 in 1, Exemption 7(A) in 4 and Exemption 7(E) in 4 responses.)

(7) Section 552(b)(7)(E) - pertaining to law enforcement investigatory records and investigative techniques, procedures and guidelines.

Exemption 7(E) was the basis for 58 partial denials and 3 full denials. The denials involved materials from investigatory files, the disclosure of which would reveal investigative techniques and procedures, as well as enforcement strategies and guidelines, and would also interfere with on-going enforcement proceedings. In most cases, substantial portions of the files were released. (FOIA Exemption 3 was also cited in 35 instances, Exemption 4 in 34, Exemption 5 in 62, Exemption 7(A) in 9 and Exemption 7(D) in 4 instances.)

B. Statutes Invoked Pursuant to Section 552(b)(3)

(1) Section 6(a)(2) of the CPSA, 15 U.S.C. § 2055(a)(2), prohibits the disclosure of all information containing or relating to trade secrets or other matters referred to in I8 U.S.C. § 1905 or subject to FOIA Exemption 4. This statutory prohibition on release of information was invoked in 79 partial denials and 14 full denials of requests for records. The denials were also based on FOIA Exemption 4.

(2) Section 6(b)(l) of the CPSA, 15 U.S.C. § 2055(b)(l), prohibits the disclosure of information from which the identity of a manufacturer or private labeler of a consumer product can be readily ascertained, less than 30 days after providing, to the extent practicable, the firms an opportunity to comment. The Commission must then take reasonable steps to assure that the information is accurate, that disclosure is fair in the circumstances, and that disclosure is reasonably related to effectuating the purposes of the statutes that the Commission administers. This statutory prohibition on release of information was invoked in 260 partial denials and 21 full denials. This exemption was applied after extensive review and examination of the responsive 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.

(3) Section 6(b)(5) of the CPSA, 15 USC. § 2055(b)(5), prohibits the disclosure of information submitted under section 15(b) of the CPSA[1] unless the Commission has issued a complaint, the Commission has accepted in writing a remedial settlement agreement, or the firm agrees to the disclosure. This prohibition on release of information was invoked in 24 partial denials and 6 full denials of records submitted by firms pursuant to section 15(b) of the CPSA.

(4) Section 25(c) of the CPSA, 15 U.S.C. § 2074(c), prohibits the disclosure of information contained in Commission accident reports and investigations identifying injured parties and persons treating the injured parties without their consent. This statutory prohibition on release of information was invoked in 196 partial denials of requests seeking the identities of injured persons.

[1] Section 15(b) of the CPSA, 15 U.S.C. § 2064(b), requires manufacturers, distributors and retailers of consumer products to notify the Commission of certain hazardous products.

C. Other Authority for Denials

In calendar year 1997 (January through September), there were no denials on the basis of any authority other than the Freedom of Information Act and the Consumer Product Safety Act.

III. PERSONS RESPONSIBLE FOR INITIAL DENIALS AND THE NUMBER OF INSTANCES OF PARTICIPATION OF EACH

Todd A. Stevenson, Freedom of Information Officer, was responsible for 401 initial denials.

Iv. TOTAL NUMBER OF ADMINISTRATIVE APPEALS FROM ADVERSE INITIAL DECISIONS MADE PURSUANT TO SECTION 552(a)(6)

In calendar year 1997 (January through September), there were 22 appeals of initial denials of requests for records. Two appeals were considered moot when, in one case, it was determined that the records being processed were not responsive to the requests and, in the other case, the requester withdrew the request. In one appeal the Commission reconsidered the initial denial and processed the requested records for release.

After full consideration by the Commission's delegate, the General Counsel, the initial determinations in the remaining 19 appeals were decided as follows:

In nine appeals, the Commission affirmed the initial denials of requests seeking product complaints or reported incidents where the Commission has not taken any steps to confirm or corroborate the accuracy of the information in the documents. Exemption 3 was cited in both denials, applying section 6(b)(l) of the CPSA, to withhold the uncorroborated incident data. In one case section 25(c) was also cited to withhold the identities of injured persons.

In 10 appeals, the Commission affirmed the initial denials of requests seeking records from the Commission's law enforcement investigatory files that included submissions from manufacturers made pursuant to section 15(b) of the CPSA. In two cases the Commission reconsidered the withholding of portions of the requested materials and processed thoseportions for release. Exemption 3 was cited in six instances, applying one or more of the following sections of the CPSA: section 6(a)(2) to protect trade secret and confidential

business information; section 6(b)(1) to deny uncorroborated complaint information; and section 6(b)(5) to protect information involving submissions from manufacturers. Exemption 4 was cited in five instances involving trade secret and confidential business information. Exemption 5 was cited in five cases to protect predecisional advice materials, including internal memoranda and staff notes. Exemption 7(A) was cited in one case where disclosure of documents could have interfered with the active investigations before the Commission. Exemption 7(D) was cited in one case where disclosure would reveal the source of a trade complaint. Exemption 7(E) was cited in three cases where disclosure would have revealed law enforcement investigatory records and investigative techniques, procedures and guidelines.

V. STATUTORY AUTHORITY AND NUMBER OF INSTANCES EACH WAS RELIED UPON FOR DENIALS OF APPEALS

FOIA Exemptions	Number of Instances
Section 552(b)(3)	15
Section 552(b)(4)	5
Section 5 52(b)(5)	7
Section 552(b)(7)(A)	1
Section 552(b)(7)(D)	1
Section 552(b)(7)(E)	4

In eight of the denials of appeals, more than one FOIA Exemption was cited.

VI. PERSONS RESPONSIBLE FOR DENIALS OF APPEALS

Eric A. Rubel, General Counsel through March 21, 1997, was responsible for ~~seven~~ denials of appeals.

Jeffrey S. Bromme, General Counsel from March 24, 1997, to the present, was responsible for twelve denials of appeals.

VII. PROCEEDINGS CONDUCTED PURSUANT TO SECTION 5 52(a)(4)(F)

There were no proceedings conducted pursuant to section 552(a)(4)(F) of the FOIA during January through September 1997.

VIII. AGENCY RULES AND REGULATIONS IMPLEMENTING THE FREEDOM OF INFORMATION ACT

A copy of the Commission's Freedom of Information Act regulations, 16 C.F.R. § 1015, is provided as an attachment to this report. The regulations were published at 42 Fed. Reg. 10490 (1977) and amendments were published at 45 Fed. Rep. 22021 (1980), 50 Fed. Reg. 7753 (1985), 52 Fed. Reg. 28977 (1987), 52 Fed. Reg. 44596 (1987), 52 Fed. Reg. 45631 (1987), and 62 Fed. Reg. 46192 (1997).

Ix. FEE SCHEDULE AND TOTAL DOLLAR AMOUNT OF FEES COLLECTED IN CALENDAR YEAR 1997 (January through September)

In calendar year 1997 (January through September), the Commission assessed $22.130 in fees for providing records in response to Freedom of Information Act requests and collected $14.63 1. The disparity between assessed and collected fees is the result of fees assessed late in one calendar year that are not collected until the following calendar year and delinquent billings. The Commission conducts an on-going project to collect delinquent fees. The Commission, according to its regulated fee waiver policies, waived over $127,000 in fees. The Commission's fee schedule is set forth below.

The Commission's regulations permit certain routine information to be provided to the public at no charge. For other responses to information requests, fees charged and any fees to be waived depend on the type of requester or the requester's need for the information. A commercial use request may incur charges for duplication, search and review,, and no automatic fee waiver shall apply to such requests. A request from an educational institution or a non-commercial scientific institution for records, not sought for commercial use, or from a representative of the news media may incur charges only for duplication, and the first $10.00 of duplication costs shall be waived. Any other request may incur charges for duplication and search, and the first $10.00 of duplication costs and the first $40.00 of search costs shall be waived.

The Commission's fee schedule is as follows:

(1) Reproduction of Documents: $0.10 per page;

(2) File Searches Conducted by Clerical Personnel:
$3.00 per one-quarter hour;

(3) File Searches Conducted by Professional Personnel:
$4.90 per one-quarter hour;

(4) Review of Records: $4.90 per one-quarter hour;

(5) Computerized Records:
$0.10 per page of computer printout or for Central Processing $0.32 per second of central processing unit time;

(6) Postage: Direct-cost basis;

(7) Microfiche: $0.35 for each frame;

(8) Materials requiring special reproducing or handling, such as photographs, slides, blueprints, video and audio tape recordings, or other unusual items or services: Direct-cost basis.

X. ADDITIONAL INFORMATION INDICATIVE OF EFFORTS TO FULLY ADMINISTER THE ACT

A. Availability of Records

The Commission's Freedom of Information Act regulations affirm the policy behind congressional enactment of the FOIA: disclosure is the rule and withholding is the exception. The regulations specifically provide that the Commission will make available, as a matter of discretion, records that are authorized to be withheld under exemption provisions of the Freedom of Information Act unless disclosure is prohibited by law or the Commission determines that disclosure is contrary to the public interest.

As discussed at page 4 of this annual report, the CPSA contains the following provisions that either require withholding or establish certain criteria for withholding within the meaning of Exemption 3 of the FOIA:

Section 6(a)(2) of the CPSA, 15 U.S.C. § 2055(a)(2), prohibits the disclosure of trade secrets or other matters referred to in 18 U.S.C. § 1905 or the FOIA Exemption 4. Sections 6(a)(3) and 6(a)(5) also require notification to submitters of information prior to disclosure of any potential confidential information. During January through September 1997, the Commission made 305 notices under section 6(a)(3). Notices are reported below.

Section 6(b)(l) of the CPSA, 15 U.S.C. § 2055(b)(l), 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, less than 30 days after notification of the manufacturer or private labeler. To fulfill this requirement the Commission made 720 such notices during January through September 1997.

Section 6(b)(l) also 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. Section 6(b)(2) 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)(l). Upon completion of notifications and other requirements of sections 6(b)(l) and 6(b)(2), the Commission disclosed materials in 1.075 instances where section 6(b)(1) applied to the requested materials. The Commission's rule, 16 C.F.R. Part 1101, interpreting section 6(b) of the CPSA is attached.

Section 25(c)(l) of the CPSA, 15 U.S.C. § 2074(c)(l), prohibits certain disclosures of information contained in Commission accident reports and investigations. The identities of injured parties or persons treating the injured parties may not be disclosed without their authorization.

Additionally, section 6(b)(5) of the CPSA, 15 U.S.C. § 2055(b)(5), prohibits the disclosure of certain information submitted by firms unless certain specific circumstances exist. Sections 6(a)(5) and 6(b)(2) of the CPSA, 15 U.S.C. §§ 2055(a)(5) and (b)(2), prohibit' the release of information designated as confidential or claimed to be inaccurate by identified firms for at least 10 days after the Commission has notified the firms of the intended release. During January through September 1997, the Commission made 206 such notifications to firms and subsequent releases to requesters.

The Commission's FOIA regulations provide that unrestricted staff brieffing packages and excised portions of restricted packages will be made available in the Commission's public reading room after transmittal to the Commissioners. The regulation also provides that the Commissioners may decide initially on the public availability of documents in order that full Commission consideration can be given to novel issues of law or policy and to public interest determinations.

Section 29(e) of the CPSA, 15 U.S.C. § 2078(e), permits the Commission to release to state and local safety, health and consumer agencies, after deleting any confidential information, copies of accident and investigation reports identifying injured parties and persons treating the injured parties and identifying manufacturers or private labelers on assurance that the identifying information will not be released by the receiving agency.

B. Costs

The principal incremental costs incurred by the Commission during January through September 1997 are as follows: (1) costs related to the volume of requests handled -- 6.628 formal requests responded to by the Division of Freedom of Information in the Office of the Secretary and 3.994 additional requests for injury data responded to by the Commission's National Injury Information Clearinghouse; (2) costs associated with applying the requirements of section 6(b) of the Consumer Product Safety Act; (3) costs associated with administering the fee regulations as amended in 1987 that resulted in increased charges to some requesters; and (4) costs associated with development and maintenance of the electronic Internet Website and the materials prepared for electronic viewing on the Website.

C. Compliance with the Time Limitations for Agency Determinations

In general, during the past year, the Commission has succeeded in providing prompt and thorough acknowledgments or responses to requests for records. The Commission responded fully to 78 percent of its FOIA requests within the ten working day period. In many instances, for which no reliable figures are available, the Freedom of Information staff has also filled requests immediately on a "walk-in, pick-up" basis.

The Freedom of Information staff maintains close telephone contact with requesters. Usually, when it becomes apparent that the Office of the Secretary will be unable to provide a timely determination on the public availability of requested records, the requester is contacted, informed of the reason for the anticipated delay, and advised of the date by which a determination on release or nonrelease of the records is anticipated. The requester is also informed that the failure to provide a timely response may be considered a denial and that the requester may appeal this denial to the Commission. In the staff's experience, requesters have generally agreed to reasonable delays and have reacted favorably to the relatively short delay in providing a response.

In instances where a timely determination was not made, the request involved one or more of the following: voluminous records or records which were not easily accessible and had 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 CPSA. Additionally, under Commission regulations, the evaluation of restricted documents is preceded by providing the affected parties within the agency the opportunity to communicate their position on the public availability of records.

The Commission's efforts to satisfy the statutory requirements in the CPSA have necessarily delayed many responses. 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 less 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. The FOIA, on the other hand, now provides for disclosure within 20 working days. The Commission's final rule containing its policies and procedures for processing of requests pursuant to section 6(b) is located at 16 C.F.R. Part 1101.

The Commission reviews all agency records which are responsive to FOIA requests in strict adherence to the requirements of section 6(b). The Commission made 926 notifications pursuant to sections 6(b)(l) and 6(b)(2) during January through September 1997. 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 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) caused delays in the processing of these requests.

D. Reading Room

To assist the public in locating Commission records, the Office of the Secretary maintains a public Reading Room in its headquarters Information Center, Room 419, 4330 East West Highway, Bethesda, Maryland 20814. Reading Room materials include a general index of advisory opinions, a summary record of Commission decisions, agency directives, nonrestricted briefing packages on matters before the Commission, documents filed in adjudicatory proceedings, and logs of meetings between Commission staff and outside parties on matters of substantial interest. A staff person is available to assist the public in locating information or in preparing an FOIA request for information.

During I997 the Commission developed an Internet Website (address: www.cpsc.gov) that contains information regarding its regulatory and compliance activities, Commission, decisions, press releases, safety alerts, the Public Calendar of meetings and briefings, publications, materials requested under the FOIA by more than one requester, contracting activities, job vacancies and many other matters. Based on this and other actions, the Commission is in full compliance with the Electronic FOI Amendments.

Attachments

CONSUMER PRODUCT SAFETY COMMISSION

Title 16, Code of Federal Regulations:

Part 10 15 - Procedures for Disclosure or Production of Information under the Freedom of Information Act

Part I 101 - Information Disclosure under Section 6(b) of the Consumer Product Safety 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.

[40 FR 53381, Nov. 18, 1975, as amended at 42 FR 9161, Feb. 15, 1977; 59 FR 32078, June 22, 1994]

PART 101 !&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.

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

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

AUTHORITY: 86 Stat. 1207: (15 U.S.C. 2051), 74 Stat. 372 as amended; (15 U.S.C. 1261). 84 Stat. 1670; (15 U.S.C. 1471). 70 Stat. 953: (15 U.S.C. 1211). 68 Stat. 11 as amended: (15 U.S.C. 1191). 81 Stat. 54 as amended (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 connection with its responsibilities and functions under the Consumer Product Safety Act. Commission records include records transferred to the Commission under the Federal Hazardous Substances Act, Poison Prevention Packaging Act of 1970. Refrigerator Safety Act, and Flammable Fabrics Act. as well as records 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.

§ 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 which 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. The address of this office is:

Office of the Secretary, Consumer Product Safety Commission, 1111 18th Street, MN.. Washington. DC 20207.

(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).

§ 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.

§ 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 ten working days, or any extension thereof, the requester and the Commission may take the action specified in § 1015.7(e).

§ 1015.5 Time limitations on responses to requests for records.

(a) The Secretary or delegate of the Secretary shall respond to all written requests for records within ten (IO) 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 Chairman 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.

§ 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 51015.9 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) 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 ten (10) working days or any extension thereof, the requester can consider his/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).

§ 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, t.he 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: SO.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 nonclerical 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: 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: SO.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 billing was sent. 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]

§ 1015.10 Commission report of actions to Congress.

On or before March 1. of each calendar year, the Commission shall submit a report of its activities with regard to freedom of information requests during the preceding calendar year to the Speaker of the House of Representatives and to the President of the Senate. 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) 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.

(c) The names and titles or positions of each person responsible for the denial of records requested under the provisions of this part and the number of instances of participation for each.

(d) The results of each proceeding conducted pursuant to subsection (a)(4)(f) of FOIA as amended November 21. 1974. including a report of the disciplinary action taken against the officer or employee who was primarily responsible for improperly withholding records or an explanation of why disciplinary action was not taken.

(e) A copy of every rule made by the Commission implementing the provisions of the FOIA. as amended November 21. 1974.

(f) A copy of the fee schedule and the total amount of fees collected by the agency for making records available under this section.

(g) Such other information as indicates efforts to administer fully the provisions of the FOIA. as amended.

§ 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 51015.16 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.

(I) 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)(l) 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.

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 responsibility. In addition, such participation could impair the effectiveness of Commission employees as witness in litigation in which the Commission is directly involved.

§ 1016.2 Definition.

Private litigation refers to any legal proceeding which does not involve the United States government, or any department or agency of the U.S. government, as a party.

§ 1016.3 Disclosure and certification of information and records.

(a) Identifiable information and records in the Commission's possession will be made available to private litigants in accordance with the Commission's Procedures for Disclosure or Production of Information under the Freedom of Information Act (16 CFR part 1015). the Freedom of Information Act (5 U.S.C. 552). sections 6 and 25(c) of the Consumer Product Safety Act (15 U.S.C. 2055 and 2074(c)), and any other applicable statutes or regulations.

(b) The Secretary of the Commission shall certify the authenticity of copies of Commission records. Requests must be in writing and must include the records to be certified. Requests should be sent to: Secretary, Consumer Product Safety Commission, Washington, DC 20207.

(c) Any subpoena duces tecum served on a Commission employee will be handied by the Office of the Secretary in conjunction with the Office of the General Counsel. Whenever necessary to prevent the improper disclosure of documents. the General Counsel will take steps, in conjunction with the Department of Justice, to quash such subpoenas or seek protective orders.

§ 1016.4 Testimony of Commission employees in private litigation.

(a) No Commission employee shall testify in his or her official capacity in any private litigation, without express authorization from the Commission's General Counsel. The Commission may, in its discretion, review a decision by the General *Counsel to* authorize such employee testimony. The General Counsel shall in such instances, where time permits, advise the Commission. on a no objection basis, of the authorization of such employee testimony.

(b) If any Commission employee is served with a subpoena seeking testimony in private litigation, he or she must immediately notify the Office of the General Counsel. The Office of the General Counsel, in conjunction with the Department of Justice, will (1) take

(2) If any cracking is detected, prior to further flight, accomplish the requirements of either paragraph (b) (2) (i) or (b) (2) (ii) of this AD.

(i) Replace the cracked fuse pin with a new straight fuse pin, P/N 31 1N5067-1, and prior to the accumulation of 2,500 total flight cycles on the newly installed straight fuse pin, perform an eddy current inspection to detect fatigue cracking in the new straight fuse pin, in accordance with the procedures described in the alert service bulletin. Repeat this inspection thereafter at intervals not to exceed 750 flight cycles on the newly installed straight fuse pin. Or

(ii) Replace the cracked fuse pin with a new 15-5PH fuse pin, P/N 31 1N5217-1, and prior to the accumulation of 14,000 total flight cycles on the newly installed 15-5PH fuse pin, perform an eddy current inspection to detect fatigue cracking in the fuse pin, in accordance with the procedures described in the alert service bulletin. Repeat the inspection thereafter at intervals not to exceed 3,500 flight cycles on the newly installed 15-5PH fuse pin.

(c) For airplanes equipped with bulkhead fuse pins, P/N 31 1N521 l-l: Within 3,000 flight cycles on the bulkhead fuse pins after April 10, 1996 (the effective date of AD 96-05-08, amendment 39-9534), replace the bulkhead fuse pin with a new 15-5PH fuse pin, P/N 31 1N5217-1, in accordance with Boeing Service Bulletin 757-54A0020, Revision 5. dated March 17. 1994, or Boeing Alert Service Bulletin 757-54A0020, Revision 6. dated July 18, 1997, and accomplish the requirements of paragraph (d) of this AD.

(d) For airplanes equipped with 15-5PH fuse pins: Prior to the accumulation of 14,000 total flight cycles on the 15-5PH fuse pins, perform an eddy current inspection to detect fatigue cracking in those fuse pins, in accordance with the procedures described in Boeing Alert Service Bulletin 757-54A0020, Revision 6. dated July 18, 1997.

(1) If no cracking is detected, repeat the inspection thereafter at intervals not to exceed 3.500 flight cycles on the 15-5PH fuse pin.

(2) If any cracking is detected, prior to further flight, replace the cracked 15-5PH fuse pin with a new 15-5PH fuse pin, P/N 311N5217-1, and prior to the accumulation of 14,000 total flight cycles on the newly installed 15-5PH fuse pin, perform an eddy current inspection to detect fatigue cracking in the newly installed 15-5PH fuse pin; in accordance with the procedures described in the alert service bulletin. Repeat the inspection thereafter at intervals not to exceed 3.500 flight cycles on the newly installed 15-5PH fuse pin.

(e) Fuse pins must be of the same type on the same strut. For example, a steel fuse pin having P/N 31 1N5067- 1 may not be installed on the same strut that has a 15-5PH fuse pin having P/N 3 11 N52 17- 1 installed on that strut. However, fuse pins on one strut may differ from those on another strut, provided the fuse pins are not of mixed types on the same strut.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO). FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(g) Special flight permits may be issued in accordance with sections 2 1.197 and 2 1.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(h) The inspections and replacements shall be done in accordance with Boeing Service Bulletin 757-54A0020, Revision 5, dated March 17, 1994, or Boeing Alert Service Bulletin 757-54A0020, Revision 6, dated July 18, 1997.

(1) The incorporation by reference of Boeing Alert Service Bulletin 757-54A0020, Revision 6, dated July 18, 1997, was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Boeing Service Bulletin 757-54A0020, Revision 5, dated March 17, 1994, was approved previously by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of April 10, 1996 (61 FR 9601, March 11, 1996).

(3) Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98 124-2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue. SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment becomes effective on September 17, 1997.

Issued in Renton, Washington, on August 21. 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97-23175 Filed 8-29-97; 8:45 am]

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CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1015

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

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Electronic Freedom of Information Act Amendments of 1996. which amend the Freedom of Information Act, are designed to make government documents more accessible to the public in electronic form. The amendments are also intended to expedite and streamline the process by which agencies disclose information generally. In this notice, the Commission amends its Freedom of Information Act regulations to comply with the requirements of the new statute.

DATES: The amendments become effective on October 2, 1997.

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SUPPLEMENTARY INFORMATION:

Background Information

On October 2, 1996, the President signed into law the Electronic Freedom of Information Ac:t Amendments of 1996 ("EFOIA"), Public Law 231, 110 Stat. 3048 (1996). EFOIA includes provisions authorizing or requiring agencies to promulgate regulations implementing certain of its requirements. including the tracking of Freedom of Information Act ("FOIA") requests, the aggregation of FOIA requests, and the expedited processing of FOIA requests. In addition, EFOIA changes the time limit for responding to a FOIA request from ten to twenty days, the requirements for reporting on FOIA activities to Congress, and the cases in which an agency may extend the time for responding to a FOIA request. EFOIA also includes provisions regarding the availability of documents in electronic form, the treatment of electronic records, and the establishment of "electronic reading rooms."

On May 6, 1997 the Consumer Product Safety Commission ("Commission") proposed amendments to its regulations implementing the Freedom of Information Act, 16 CFR Part 1015. See 62 FR 24614, May 6, 1997. The proposed amendments were intended to revise the Commission's FOIA regulations to comply with EFOIA. The Commission received three comments in response to the proposed amendments. The comments are discussed below. The Commission now issues the amendments in final form. They are identical to the proposed amendments, except for a few changed words in §§ 101.5.2 and 1015.5(f) that clarify the meaning of those provisions.

New Provisions

A. Electronic Records

Section 3 of EFOIA amends 5 U.S.C. 552(f) to define "record" for purposes of FOIA as including "any information that would be an agency record subject to the requirements of [5 U.S.C. section 552] when maintained by an agency in any format, including an electronic format." Section 552(f) thus clarifies that the term "agency record" includes information stored on or by computers as well as traditional paper documents. The regulations amend 16 CFR 1015.1 (a) by adding language to reflect this definition of "record" and to clarify that the Commission produces all releasable records responsive to a FOIA request, whether in traditional paper or electronic form.

B. Electronic Reading Room

FOIA section 552(a) (2) requires agencies to make available for inspection and copying the following: (1) Final opinions and orders made in adjudicated cases; (2) statements of policy and interpretations not published in the Federal Register; and (3) administrative staff manuals and instructions to staff that affect the public. 5 U.S.C. 552(a) (2). As stated in the Commission's FOIA regulations, the Commission maintains these materials in its Public Information Center. 16 CFR 10152(a). EFOIA adds a fourth category to the materials that agencies must place in their reading rooms:

> copies of all records * * * which have been released to any person under [FOIA] and which, because of the nature of their subject matter, the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records.

EFOIA sec. 4; 5 U.S.C. 552(a)(2)(D).

EFOIA further requires agencies to make available by "computer telecommunications'* all reading room materials that are created on or after November 1, 1996. The statute envisions that each agency will ultimately have both a traditional reading room and a new "electronic reading room" on the World-Wide Web.

Section 1015.2(c) states that the Commission will post the requisite materials on its Website. Where appropriate and feasible, and as resources permit, the Commission may also place additional reading room materials on the Website.

C. Multitrack Processing of Requests

EFOIA authorizes agencies to promulgate regulations providing for multitrack processing of requests for records based on the amount of work and/or time involved in processing requests. EFOIA sec. 7(a); 5 U.S.C. 552(a)(6)(D)(i). This would expedite the production of records where little work or time is required. The statute states that an agency's regulations may include a provision granting a FOIA requester whose request does not qualify for the fastest multitrack processing an opportunity to limit the scope of the request in order to qualify for faster processing. 5 U.S.C. 552(6)(D)(ii).

The Commission believes that multitrack processing is the most efficient and fair way to process FOIA requests. If requests were processed on a strict first in, first out basis, easily filled requests-for example for a press release or Commission brochure—would be processed only after earlier-received, complex requests for dozens of documents located in offices throughout the Commission. The Commission currently intends to process FOIA requests on five tracks, as follows:

Track 1: Responsive documents are available in the Office of the Secretary in releasable form. Examples include press releases, Commission brochures, and cleared Commission briefing packages.

Track 2: Responsive documents are filed in one easily identifiable location, but must be located and copied, and require internal clearance. Examples include meeting logs, technical reports and contractor reports.

Track 3: Responsive documents are located in various Commission offices and require internal clearance.

Track 4: Responsive documents require both internal clearance and review by identified manufacturers pursuant to sections 6 (a) and/or (b) of the Consumer Product Safety Act, 15 U.S.C. 2055 (a) and (b). Examples include requests for information regarding Commission investigations of specific products and/or companies.

Track 5: Responsive documents are voluminous or are located in various Commission offices, and require section 6(a) and/or (b) review.

In general, when a request is received, the Freedom of Information Office will review it and categorize it for tracking purposes. Requests within each "track" will then be processed according to the date of receipt within each category. This should help further expedite responses to FOIA requests that are easier to fill. Of course, many requests are unique and will not easily fit one of the above descriptions. Others may appear to qualify for a fast track but prove complex once the search for the responsive documents is underway. As the Office of the Secretary implements and gains experience with the multitrack system, adjustments will almost certainly be required.

Pursuant to section 1015.3(e), the Office 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 they qualify for a faster track. Such notification will be at the discretion of the Office of the Secretary and will depend largely on whether that Office believes that a narrowing of the request could put the request on a faster track. The regulation further provides that requesters who believe that their requests qualify for the fastest tracks and who wish to be notified if the Office of the Secretary disagrees may so indicate in the request. If practicable, the Office of the Secretary may also work with such requesters to limit their requests to qualify for a faster track.

D. Time Limit for Responding to Requests

1. General: EFOIA lengthened the time within which agencies must respond to FOIA requests from ten to twenty working days. EFOIA sec. 8(b); 5 U.S.C. 552(a)(6)(A)(i). The regulations amend the Commission's current regulations to conform to the new time limit. See 16 CFR 1015.4, 1015.5(a), 1015.6(c).

2. Extension of time in unusual circumstances: Under FOIA section 552(a) (6) (B), agencies are permitted to extend the time limit for responding to a request or deciding an appeal of a denial of a request in "unusual circumstances," as defined in that section, for no more than ten working days, upon written notice to the requester. 5 U.S.C. 552(a) (6) (B). EFOIA amends this provision to permit agencies to extend the response time by notifying the requesters and providing them with an opportunity to: (1) Limit the scope of the request so that it may be timely answered; or (2) arrange with the agency an alternative time frame for processing the request. EFOIA sec. 7(b); 5 U.S.C. 552(a)(6)(B)(ii). EFOIA also provides that a requester's refusal to modify a request or arrange an alternative response time shall be considered a factor in the judicial review of an agency's failure to comply with the applicable time limits. EFOIA does not alter the definition of "unusual circumstances."

The regulations add a new paragraph (d) to 16 CFR 1015.5 to implement the amended provision.

3. Aggregation of related requests: EFOIA authorizes agencies to promulgate regulations providing for the aggregation of related requests by the same requester or a group of requesters acting in concert when the requests would, if treated as a single request, present "unusual circumstances" as

defined in 5 U.S.C. 552(a)(6) (B). EFOIA sec. 7(b); 5 U.S.C. 552(a)(6)(B)(iv). Section 10 15.5 (e) implements this provision. As EFOIA specifies, the regulation provides that requests will be aggregated only when the Commission "reasonably believes that such requests actually constitute a single request" and the requests "involve clearly related matters." ***Id.;*** 16 CFR 1015.5(e).

4. Requests for expedited processing: EFOIA requires each agency to promulgate regulations providing for the expedited processing of FOIA requests in cases of *'compelling need" and in other cases determined by the agency. EFOIA sec. 8(a); 5 U.S.C. 552(a)(6)(E)(i). The statute specifies two categories of "compelling need":

> (1) That a failure to obtain requested records on an expedited basis under this paragraph could reasonably be expected to pose an imminent threat to the life or physical safety of an individual: or
>
> (2) With respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity.

5 U.S.C. 552(a) (6) (E) (v). Additionally. the statute sets forth requirements for the handling of requests for expedited processing and for the judicial review of agency denials of such requests. 5 U.S.C. 552(a) (6)(E) (ii)–(iv).

Section 1015.5(f) implements the expedited processing requirements of EFOIA. The Commission emphasizes that it intends to strictly adhere to Congress* express intent that the specified criteria for compelling need "be narrowly applied." Expedited processing will be granted only in those cases meeting the specific statutory requirements. H.R. Rep. 795. 104th Cong.. 2d Sess. 26 (1996) (hereafter "House Report"). We expect that such cases will be rare. As the legislative history states, "the expedited process procedure is intended to be limited to circumstances in which a delay in obtaining information can reasonably be foreseen to cause a significant adverse consequence to a recognized interest." ***Id.***

A requester seeking expedited processing under the "imminent threat" category of the "compelling need" definition must show that: (1) The failure to obtain the information expeditiously threatens the life or safety of an individual; and (2) the threat is "imminent." That an individual or his or her attorney needs information for an approaching litigation deadline is not a "compelling need" under this provision.

A requester seeking expedited processing under the second, "urgency to inform," category must show that: (1) he or she is "primarily engaged in disseminating information;" (2) there is an "urgency to inform the public" about the information requested: and (3) the information relates to an "actual or alleged Federal government activity."

To meet the first "urgency to inform" criterion. the requester must show that his or her principal occupation is disseminating information to the public. As the legislative history makes clear, "[a] requestor who only incidentally engages in information dissemination, besides other activities, would not satisfy this requirement." ***Id.***

To meet the second "urgency to inform" criterion, the requester must show more than a general interest in the "public's right to know." See ***id.*** Rather, as explained in the legislative history, a requester must show that a delay in the release of the requested information would "compromise a significant ***recognized*** interest," and that the requested information "pertain[s] to a matter of ***current*** exigency to the American public." ***Id.*** (emphasis added). A reporter seeking expedited access to information would have to show, for example, that processing the requested information under the regular time limits would harm the public's ability to assess the subject governmental activity. (See also the discussion of the comments, below, for a further explanation of this criterion.)

The final "urgency to inform" criterion makes clear that the information must relate to the activities of the Commission and its staff. A request for expedited processing could thus be considered for information relating, for example, to a Commission decision. The Office of the Secretary generally would not, however, grant a request for expedited processing of information the Commission has collected regarding incidents involving specific consumer products.

EFOIA also authorizes agencies to expand the categories of requests qualifying for expedited processing beyond the two specified in the statute. EFOIA sec. 8(a); 5 U.S.C. 552 (a) (6) Q(i) (II). The Commission has determined that no further categories are currently necessary or appropriate. As the legislative history explains, "Given the finite resources generally available for fulfilling FOIA requests, unduly generous use of the expedited processing procedure would unfairly disadvantage other requestors who do not qualify for its treatment." House Report at 26.

Section 10 15.5 (f) (5) states that the Secretary will process requests granted expedited processing "as soon as practicable." See EFOIA sec. 8(a); 5 U.S.C. 552(a) (6) (E) (iii). Pursuant to this requirement, the Office of the Secretary will give priority to such requests.

5. Time limits and section 6(b) of the Consumer Product Safety Act: Pursuant to section 6(b) of the Consumer Product Safety Act (15 U.S.C. 2055(b)). prior to the release of information that identifies a manufacturer or private labeler, the Commission must "take reasonable steps to assure * * * that [the information] is accurate, and that [its] disclosure is fair in the circumstances and reasonably related to effectuating the purposes of the [Consumer Product Safety Act]." Section 6(b) requires that the Commission notify identified manufacturers and private labelers that it intends to disclose information at least 30 days prior to the disclosure. 15 U.S.C. 2055(b)(l). The manufacturer or private labeler may then submit comments regarding the disclosure of the information to the Commission. ***Id.*** If the Commission, after reviewing the comments, decides to release the information over the accuracy objections of the manufacturer or private labeler, it must so notify the firm at least 10 days prior to the release. 15 U.S.C. 2055(b)(2).

The Supreme Court, in ***Consumer Product Safety Commission v. GTE Sylvania, Inc., 447*** U.S. 102 (1980). ruled that the Commission must follow the requirements of section 6(b) prior to the release of information in response to a FOIA request. As a result, it is frequently impossible for the Commission to comply with FOIA time limits when information responsive to a request identifies a manufacturer or private labeler. When the Office of the Secretary receives a request for information that requires section 6(b) review, it routinely notifies the requester that the response will be delayed. Section 1015.5(g) is intended to assure that requesters are aware of the requirements of section 6(b) and of the Commission's section 6(b) regulations at 16 CFR Part 11011.

E. Estimates of the Volume of Materials Denied

EFOIA requires that agency responses denying information include an estimate of the volume of any responsive documents the agency is. withholding. EFOIA sec. 8(c); 5 U.S.C. 552(a) (6) (F) . Additionally, EFOIA requires that when an agency withholds only a portion of a record, the response shall indicate the amount of information deleted on the released record, where possible at the place of the deletion. EFOIA sec. 9; 5 U.S.C. 552(b)(9). Section 1015.6 includes a new subparagraph

(b) (3) to implement these new requirements.

F. Fees

Sections 1015.9 (e)(5) and (g)(l) amend the current regulation on fees the agency charges for the production of documents to reflect current Commission practices. Current section 1015.9(e)(5) sets forth the amount charged for computerized records that the Commission retrieves from an offsite central processing system. Currently. the majority of computer printouts are made at the Commission's offices, and the specified calculation is inapplicable. Section 10 15.9 (e) (5) amends the regulation to specify a charge of ten cents per page for computer printouts generated at the Commission.

Section 10 15.9(g) (1) currently states that interest will be charged on fees owed "on the 31st day following the day on which the billing was *sent."* (Emphasis added.) Section 1015.9(g)(1) amends the regulation to provide that interest will instead be calculated based on the day the requester receives the bill, as is the current Commission practice.

G. Annual Report to Congress

The current Commission regulations describe the information the Commission submits to Congress annually regarding the Commission's processing of FOIA requests. 16 CFR 1015.10. EFOIA amended the FOIA provisions regarding reporting in several ways, including the timing of reports and the information to be reported. EFOIA sec. 10; 5 U.S.C. 552(e). The regulations amend section 1015.10 to conform to the EFOIA reporting requirements.

Comments

The Commission received three comments in response to the proposed rule. two from trade associations of appliance manufacturers-the Association of Home Appliance Manufacturers (AHAM) and the Gas Appliance Manufacturers Association (GAMA)-and one from a journalists' trade association-The Reporters Committee for Freedom of the Press ("Reporters Committee"). The appliance manufacturers commented about the effect of the EFOIA amendments on the Commission's regulations interpreting section 6(b) of the CPSA. The Reporters Committee objected to certain of the provisions for expedited processing in section 10 15.5 (f). The Reporters Committee also objected to the absence of a discussion in the regulations of access to electronic records.

A. EFOIA and the Commission's Section 6(b) Regulations

Section 10 15.2(c) states: "The [Commission] will maintain an 'electronic reading room' on the World-Wide Web for those records which are required by 5 U.S.C. 552(a)(2) to be available by 'computer telecommunications.* " The preamble to the proposed rule explained that. pursuant to 5 U.S.C. 552(a)(2)(D). those records would include records that the Commission releases under FOIA and become, or are likely to become, the subject of subsequent FOIA requests. 62 FR at 24615. Neither the regulation nor the preamble further explained what records the Commission would make available on the Web.

AHAM and GAMA urged that the new regulations include a provision specifically addressing the effect of the EFOIA electronic reading room requirement on documents that are subject to review under section 6(b) of the CPSA. 15 U.S.C. 2055(b). As stated above, section 6(b) provides manufacturers the opportunity to comment on the disclosure of documents that identify them. AHAM and GAMA noted that pursuant to 16 CFR 110 1.3 1 (d) , the Commission provides manufacturers the opportunity to request renotification each time the Commission receives a FOIA request for the documents. AHAM and GAMA asked that the regulations state that those documents for which manufacturers request renotification will not be placed in the electronic reading room.

The Commission does not currently intend to place in either the traditional or electronic reading rooms records that are described in 5 U.S.C. 552(a) (2) (D), if the identified manufacturer has requested renotification. We do intend to make available in the reading rooms a list of those files that would be in the reading rooms pursuant to 5 U.S.C. 552 (a) (2) (D), but for the manufacturer's request for renotification.

We do not, however, agree that the regulation should be changed in the final rule to make this policy explicit. Section 1015.2(c) simply states that the Commission will comply with the electronic reading room provision of EFOIA. It does not-and we believe need not-interpret the application of EFOIA to specific Commission records.

B. Expedited Processing

As explained above, EFOIA requires agencies to promulgate regulations providing for the expedited processing of requests when the requester demonstrates a "compelling need" for the information. 5 U.S.C. 552(a) (6)(E). "Compelling need" is defined to include two categories of requests: (1) Where information is necessary to prevent an "imminent threat;" and (2) where the requester shows an "urgency to inform the public" about the information. 5 U.S.C. 552(a) (6) (E) (v).

Section 1015.5(f) sets forth the criteria and process for expedited processing. It repeats, without interpretation, the requirements of 5 U.S.C. 552(a) (6) (E). The preamble to the proposed rule elaborated upon the definition of "compelling need" with respect to the "urgency to inform" prong. 62 FR at 24,6 16. The Reporters Committee objected to certain of these statements and to the certification requirement of 16 CFR 1015.5(f)(2). As explained below, we decline to modify the regulation in response to these comments.

1. Expedited Processing and "Compelling Need"

The Reporters Committee argues that the statement in the preamble to the proposed rule that expedited processing will be granted only in "truly extraordinary circumstances" is too restrictive. 62 FR at 24616. We do not believe that this statement mischaracterized Congress' intent that expedited review be "narrowly applied." H.R. Rep. 795, 104th Cong., 2d Sess. 26 (1996). However, we have modified the preamble and do not now employ the phrase to which objection was made. The Commission will grant expedited review to all requests that meet the strict statutory requirements for "compelling need."

2. The "Urgency to Inform" Criteria

The Reporters Committee objects to the preamble descriptions of the showing necessary to support each of the three criterion necessary to meet the "urgency to inform" prong of the "compelling need" definition:

a. ***"Primarily engaged in disseminating information".*** The preamble noted that the first "urgency to inform" criterion-that the requester is "primarily engaged in disseminating information"-requires a showing that the requester's principal occupation is disseminating information to the public. 62 FR at 24616. The Reporters Committee argues that this provision requires only that the requester be primarily engaged in disseminating the information responsive to the particular request, not that the requester be so engaged generally.

We do not believe that this is a reasonable interpretation of the statute, as elaborated by the legislative history

quoted in the preamble. Although the Commission does not intend, as the Reporters Committee states, to "spend time deciding what percentage of a requester's occupational workload is devoted to the dissemination of information." we do intend to limit expedited review to requests from media representatives and others whose "main activity*' is to disseminate information. See H.R. Rep. 795. 104th Cong.. 2d Sess. 26 (1996) ("The standard of 'primarily engaged' requires that information dissemination be the main activity of the requester, although it need not be their sole occupation.").

b. ***"Urgency to inform the public".*** The Reporters Committee objects that the preamble interpreted the term "urgency to inform" too narrowly, to include only information "currently of significant interest to the public." See 62 FR at 24616. It argues that there may be an *'urgency to inform" the public about information not yet publicly known. We agree that there could be information not yet publicly known that is. in the words of the House Report, of "current exigency to the American public.'' in that failure to disseminate the information would "compromise a significant recognized interest." See H.R. Rep. at 26. Accordingly, we have modified the discussion of the "urgency to inform" criterion in the preamble to this final rule. (See section D.4 of the discussion of the New Provisions, above.) We emphasize, however, that a generalized interest in the public's right to know would be an insufficient showing of "compelling need."

c. "'Actual or alleged Federal Government activity". The preamble to the proposed rule explained that only information that relates to the activities of the Commission and its staff would meet the third of the "urgency to inform" criteria. 62 FR at 24616. The preamble noted that the Office of the Secretary generally would not grant **a** request for expedited processing of information the Commission has collected regarding incidents involving specific consumer products. ***Id.*** The Reporters Committee objects, arguing that because it is the mission of the Commission to collect such information, it cannot be excluded from expedited review.

The preamble stated that such information generally would not qualify for expedited processing, a position to which we adhere. The Commission's files include thousands of consumer complaints and investigation reports regarding incidents involving consumer products that the Commission staff has not analyzed or otherwise pursued. Although the collection of such information is a Commission activity, we do not believe that the collection alone makes the reports subject to expedited processing as information "concerning actual or alleged Federal Government activity." This is not to suggest that the Office of the Secretary would never grant expedited processing of a request for this information.

3. The Certification Requirement

Finally, the Reporters Committee argues that the requirement of section 1015.5(f)(2) that requesters submit a certified statement demonstrating "compelling need" is "absurd," "completely unexpected," and designed solely to "serve the bureaucratic interests of the agency.*' However, this requirement is in **the statute.** Section 8(a) of EFOIA (codified at 5 U.S.C. 552(a) (6) (E) (vi)) states:

> A demonstration of compelling need by a person making a request for expedited processing shall be made by a statement certified by such person to be true and correct to the best of such person's knowledge and belief.

C. Access to Records in Electronic Format

The Reporters Committee objects to the absence in the proposed regulations of discussion of compliance with the EFOIA provisions regarding access to records in electronic format. Although the Commission intends to comply with the provisions of EFOIA. the proposed regulations amend the Commission's current FOIA regulations only where the statute specifically required or authorized new regulations (for example, the regulations regarding expedited processing and the aggregation of requests) or where the current regulations conflict with EFOIA (for example, the time limit for responding to requests). The Commission does not believe it is either necessary or advisable to further amend the FOIA regulations at this time.

Effective Date

The amendments become effective October 2, 1997.

Impact on Small Business

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Commission certifies that these amendments will not have a significant economic impact upon a substantial number of small entities.

Environmental Considerations

These amendments do not fall within any of the categories of Commission activities described in 16 CFR 1021.5(b) that have the potential for producing environmental effects and which, therefore, require environmental assessments, and, in some cases, environmental impact statements. The Commission does not believe that the amendments contain any unusual aspects that may produce effects on the human environment, nor can the Commission foresee any circumstances in which the amendments may produce such effects. For this reason, neither an environmental assessment nor an environmental impact statement is required.

Preemption

In accordance with Executive Order 12988 (February 5, 1996), the Commission states that these amendments have no preemptive effect.

Federalism Assessment

These amendments have been evaluated for federalism implications in accordance with Executive Order 12612. and they raise no substantial federalism concerns.

List of Subjects in 16 CFR Part 1015

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

In accordance with the provisions of 5 U.S.C. 553 and under the authority of the Consumer Product Safety Act, 15 U.S.C. 2051 ***et*** seq., the Commission amends Part 1015 of Title 16. Chapter II. of the Code of Federal Regulations 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. 121 l-1214; 15 U.S.C. 1191-1204; 5 U.S.C. 552.

2. Section 1015.1 is amended by revising the second and third sentences of paragraph (a) as follows:

§ 1015.1 Purpose and scope.

(a) * * * 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 * * *

* * * * *

3. Section 1015.2 is amended by revising paragraph (a) and adding paragraph (c) as follows:

§ 10152 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.

* * * * *

(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."

4. Section 1015.3 is amended by adding a new paragraph (e) as follows:

§ 1015.3 Requests for records and copies.

* * * * *

(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.

5. Section 1015.4 is amended by revising the last sentence to read as follows:

§ 1015.4 Responses to requests for records; responsibility.

* * * 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).

6. Section 1015.5 is amended by revising the heading and the first sentence of paragraph (a), changing the phrase "Chairman of the Commission" to "General Counsel of the Commission" in paragraph (b). and adding new paragraphs (d), (e). (f), and (g) as follows:

§ 1015.5 lime 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). * * *

* * * * *

(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 vvill 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.

7. Section 1015.6 is amended by redesignating paragraph (b) (3) as (b) (4), adding a new paragraph (b) (3), and revising the first sentence of paragraph (c) as follows:

§ 1015.6 Responses: Form and content.

* * * * *

(b) * * *

(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.

* * * * *

(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). * * *

8. Section 1015.9 is amended by revising paragraphs (e) (5) and (g) (1) to read as follows:

§ 1015.9 Fees for production of records.

* * * * *

(e) * * *

(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.

* * * * *

(g) * * *

(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.

* * * * *

9. Section 1015.10 is amended by revising the introductory text and paragraphs (b) through (g) as follows:

§ 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:

* * * * *

(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.

Dated: August 26, 1997.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 97-23242 Filed 8-29-97; 8:45 am]

BILLING CODE 6356-61-U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 50, 56, 312, 314, 601, 812, and 814

[Docket No. 97N-0342]

Implementation of Emergency Research Informed Consent Waiver Rule; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification of a public meeting.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting on the implementation of a final rule that defined conditions for an exception to the normal requirements for obtaining informed consent from persons participating as subjects in research. FDA is holding the public meeting because some parties interested in research conducted under the final rule have expressed to FDA a need for additional information on acceptable implementation procedures. The purpose of this public meeting is to provide an open discussion of the issues involved in implementing the requirements of the rule.

DATES: The public meeting will be held on September 29 and 30. 1997. On September 29. 1997. the meeting will be from 9:30 a.m. to approximately 5:30 p.m. On September 30, 1997. the meeting will be from 8 a.m. to approximately 11:45 a.m. Registration is recommended by September 19, 1997. Opportunity for public participation will be provided during both days of the meeting. Written comments will be accepted until October 31. 1997.

ADDRESSES: The public meeting will be held at the Bethesda Holiday Inn. 8120 Wisconsin Ave., Bethesda, MD. Written information and comments related to the meeting should be sent to the Dockets Management Branch (HFA-305). Food and Drug Administration, 12420 Parklawn Dr., rm. l-23, Rockville. MD 20857. Two copies of any comments are to be submitted, except that individuals may submit one copy.

FOR FURTHER INFORMATION CONTACT: Glen D. Drew, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, rm. 15-22. Rockville. MD 20857, 301-443-1382, FAX 301-443-0232.

SUPPLEMENTARY INFORMATION: The purpose of this public meeting is to provide an open discussion of the issues involved in implementing the requirements of the final rule. Participants will be encouraged to discuss their perspectives on implementation of the final rule. Members of the public are encouraged to attend and provide comments during periods of open discussion and to provide written comments to the docket. Written comments by interested parties are encouraged, whether or not they are able to attend the public meeting.

The requirement for obtaining the informed consent of persons participating in clinical research as research subjects has long been recognized, and has been included in FDA's regulations since the early 1960's. The current regulations on informed consent part 50 (21 CFR part 50) and institutional review boards (IRB's) (2 1 CFR part 56) were finalized in 1981. Those regulations require that clinical researchers obtain informed consent from all subjects, with narrowly limited exceptions.

As the field of emergency medicine evolved, treatments were developed for conditions such as head trauma, stroke, and heart attack that were previously considered hopeless. The need for the development of treatment methods where only unsatisfactory methods existed and to determine the effectiveness of new treatments was recognized in the medical community. The importance of obtaining informed consent as an integral part of the protection of human subjects was also recognized. The Subcommittee on Regulation, Business Opportunities, and Technology of the House Committee on Small Business, held a hearing on May 23, 1994, that addressed problems encountered in securing informed consent of subjects in clinical trails of investigational drugs and medical devices. A coalition of acute resuscitation and critical care researchers held an October 1994

SUBCHAPTER B-CONSUMER PRODUCT SAFETY ACT REGULATIONS

PART 11 OI-INFORMATION DISCLOSURE UNDER SECTION 6(b) OF THE CONSUMER PRODUCT SAFETY ACT

Subpart **A-Background**

Subpart B-Information Subject to Notice and Analysis Provisions of Section 6(b)(l)

Subpart C-Procedure for Providing Notice and Opportunity to Comment Under Section 6(b)(l)

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

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

Subpart F-Retraction

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

Subpart H-Delegation of Authority to Information Group

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)(l)-(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)(l) 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)(l) of the CPSA. 15 U.S.C. 2055(d)(l).

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 §1 IO 1.12).

(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)(l) 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)(l). 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)(l) 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)(l). 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 tlhe 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 tlne 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 tlhe 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)(l) 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)(l) 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)(l) 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)(l) should be disclosed because the Commission believes it has complied with section 6(b)(l), 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)(l) (*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)(l) requires that "to the extent practicable" the Commission must provide manufacturers and private labelers notice and opportunity to comment before disclosing information frorn 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 t.he 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)(l), 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 ciricumstances.

(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 it 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)(l)-(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)(l) 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)(l) 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)(l) 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)(l) 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)(l). 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)(l) 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) (I), 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)(l) 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)(l)-(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.

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 t.o 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;