information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

(h) Special Flight Permit

We are allowing special flight permits with the following limitations:

(1) Essential crew only;

(2) Minimum weight;

(3) Limit ''G'' loading to minimum; and

(4) Most direct flight to repair center.

(i) Related Information

Refer to MCAI Japan Civil Aviation Bureau (JCAB) AD No. TCD–8231–2013, dated August 6, 2013, for related information. You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2014–0108. For service information related to this AD, contact Mitsubishi Heavy Industries America, Inc. c/o Turbine Aircraft Services, Inc., 4550 Jimmy Doolittle Drive, Addison, Texas 75001; telephone: (972) 248–3108, ext. 209; fax: (972) 248–3321; Internet: *http://mu-2aircraft.com.* You may review this referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Issued in Kansas City, Missouri, on February 20, 2014.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–04146 Filed 2–25–14; 8:45 am]

BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1101

[CPSC Docket No. CPSC–2014–0005]

Information Disclosure Under Section 6(b) of the Consumer Product Safety Act

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Consumer Product Safety Commission (Commission, CPSC, or we) is issuing this notice of proposed rulemaking (NPR) to update the regulation that interprets section 6(b) of the Consumer Product Safety Act (CPSA). In 1983, the Commission issued a regulation interpreting the provisions of section 6(b) of the CPSA, and we are proposing to modernize that regulation to account for the significant improvements in information technology that have occurred since the regulation's adoption. We are also proposing to streamline the regulation to be as closely aligned with section 6(b) as possible, while maintaining our compliance with the statutory requirements and the protections of section 6(b)(5) for information filed in accordance with the requirements of section 15(b) of the CPSA. This NPR seeks comments on the proposed changes to the regulation.

DATES: Written comments must be received by April 28, 2014.

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2014–0005, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

The Commission is no longer accepting comments submitted by electronic mail (email), except through: *http://www.regulations.gov.*

Written Submissions

Submit written submissions in the following way:

Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions), preferably in five copies, to: Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814–4408; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and docket number for this proposed rule. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided to: *http://www.regulations.gov.* Do not submit confidential business information, trade secret information, or other sensitive or protected information electronically. Such information should be submitted in writing, with the sensitive portions clearly identified.

Docket: For access to the docket to read background documents or comments received, go to: *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Todd A. Stevenson, Secretariat, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814–4408; telephone (301) 504–6836; *tstevenson@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 6(b) of the CPSA governs information disclosure by the Commission to the public. When disclosing information, the Commission, to the extent practicable, shall notify each manufacturer or private labeler of information to be disclosed that ''pertains'' to a consumer product, if the information ''will permit the public to ascertain readily the identity of [the] manufacturer or private labeler'' of the product. 15 U.S.C. 2055(b). Section 6(b)(1) also requires the Commission to ''take reasonable steps to assure'' that the information to be disclosed ''is accurate, and that [its] disclosure is fair in the circumstances and reasonably related to effectuating the purposes of [the CPSA].'' *Id.* In 1980, the U.S. Supreme Court ruled that disclosures under the Freedom of Information Act (FOIA) are covered by the section 6(b)(1) restrictions. *Consumer Product Safety Commission* v. *GTE Sylvania, Inc.,* 447 U.S. 102 (1980).

On December 29, 1983, we published a final rule interpreting section 6(b) of the CPSA. 48 FR 57430. The rule, 16 CFR part 1101, describes our procedures for providing manufacturers and private labelers with advance notice and ''a reasonable opportunity to submit comments'' to the Commission on proposed disclosures of product-specific information. The rule also explains the ''reasonable steps'' we will take pursuant to section 6(b) to assure, prior to public disclosure of product-specific information, that (1) the information is accurate; (2) disclosure of the information is fair in the circumstances; and (3) disclosure of the information is reasonably related to effectuating the purposes of the statutes the Commission administers.

The Consumer Product Safety Improvement Act of 2008 (CPSIA), Public Law 110–314, 122 Stat. 3016, enacted on August 14, 2008, amended section 6 of the CPSA. The amendments shortened the time periods from 30 to 15 days for manufacturers and private labelers to receive advance notice and have an opportunity to comment on any disclosure to the public of product-specific information. In addition, the amendments eliminated the requirement that the Commission publish a **Federal Register** notice when the Commission makes a finding that the public health and safety necessitates

public disclosure within a lesser period of notice than required by section 6(b)(1). The amendments also broadened the statutory exceptions to section 6(b). For example, the amendments excluded from section 6(b) the public disclosure of information with respect to a consumer product which the Commission has reasonable cause to believe is in violation of any consumer product safety rule or provision under the CPSA or similar rule or provision of any other Act enforced by the Commission. On November 28, 2008, we published a final rule to reflect these statutory amendments. 73 FR 72335.

On May 3, 2013, the Commission voted (2–1) to approve, with changes, the Fiscal Year 2013 Midyear Review and Operating Plan Adjustments (FY 2013 Midyear Adjustments), which directed staff to present for Commission consideration, an NPR updating the rule in accordance with the following guiding principles:

1. Modernize the rule to account for the significant advancements in information technology that have taken place since its initial adoption in 1983;

2. streamline the rule to be as closely aligned with 15 U.S.C. 2055(b) as possible, with the objectives of (a) eliminating unnecessary administrative burdens to the agency, (b) removing extra-statutory requirements, (c) eliminating redundancies in providing notice, (d) minimizing Freedom of Information Act (FOIA) backlogs, and (e) maximizing transparency and openness in our disclosure of information;

3. maintain CPSC's compliance with the statutory requirements of 15 U.S.C. 2055(b) (*i.e.,* requirements related to notice, opportunity to submit comments, and taking reasonable steps to assure accuracy, fairness in the circumstances, and reasonable relation to effectuating the purposes of the CPSA outlined in 15 U.S.C. 2051(b)); and

4. maintain the protections of 15 U.S.C. 2055(b)(5) for information filed in accordance with the requirements of 15 U.S.C. 2064(b) (*e.g.,* Section 15(b) reports).

See http://www.cpsc.gov//Global/Newsroom/FOIA/Records-of-Commission-Action-and-Meeting-Minutes/RCAFY13MidyearReviewandOperatingPlanAdjustments%20050313.pdf. The Commission is proposing this amendment to update the rule in accordance with the principles specified in the FY 2013 Midyear Adjustments. This proposed amendment also contains technical revisions, including typographical and citation corrections, and changes to conform the rule to the statute.[1]

II. Description of the Proposed Rule

The proposal would amend Title 16 of the Code of Federal Regulations: Part 1101, titled ''Information Disclosure Under Section 6(b) of the Consumer Product Safety Act.'' We describe each proposed amendment in detail immediately below.

1. Proposed Changes to the Table of Contents

In § 1101.12, remove: ''Commission must disclose information to the public'' and in its place, add: ''Definition of ''public''.''

2. Proposed Changes to § 1101.1 (General background.)

Section 1101.1(b) sets forth the statutory requirements on which the regulation is based. Currently, the last sentence of § 1101.1(b)(1) states: ''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).'' Pursuant to section 6(b)(5), the Commission shall not disclose to the public information submitted to the Commission under section 15(b) of the CPSA. The section 6(b)(5) limitations, however, 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;

2. information with respect to a consumer product which the Commission has reasonable cause to believe is in violation of any consumer product safety rule or provision under the CPSA or similar rule or provision of any other Act enforced by the Commission; or

3. information in the course of or concerning a judicial proceeding.

Accordingly, we propose clarifying the last sentence of § 1101.1(b)(1) to state: ''Section 6(b)(5) creates additional limitations, as well as exceptions to these limitations, on the disclosure of information reported to the Commission under section 15(b) of the CPSA.''

In addition, we propose the following technical changes to § 1101.1:

A. In § 1101.1(b)(1), insert: ''calendar'' between ''15'' and ''days''.

B. In § 1101.1(b)(1), remove: ''Exceptions to these requirements are established in section 6(b)(4)'' and in its place, add: ''Section 6(b)(4) establishes exceptions to these requirements''.

C. In the last sentence of § 1101.1(c), remove: ''April 27, 1983'' and in its place, add: ''January 16, 2003.)''.

3. Proposed Changes to § 1101.2 (Scope.)

We propose the following technical changes to § 1101.2:

A. Remove the statutory citation: ''2085'' and in its place, add: ''2089''.

B. Remove the statutory citation: ''1476'' and in its place, add: ''1477''.

C. Remove the statutory citation: ''1276'' and in its place, add: ''1278a''.

D. Remove: ''These provisions are now applicable to the Virginia Graeme Baker Pool and Spa Safety Act, 15 U.S.C. 8003(a); and the Children's Gasoline Burn Prevention Act § 2(a), Public Law 110–278, 122 Stat. 2602 (July 17, 2008)'' and in its place, add: ''These provisions also apply to the Child Safety Protection Act 101 and 102, Public Law 103–267, 108 Stat. 722 (June 16, 1994) (CSPA); the Virginia Graeme Baker Pool and Spa Safety Act, 15 U.S.C. 8003(a) (VGBA); and the Children's Gasoline Burn Prevention Act 2(a), Public Law 110–278, 122 Stat. 2602 (July 17, 2008) (CGBPA)''.

4. Proposed Changes to § 1101.11 (General Application of Provisions of Section 6(b)(1).)

Section 1101.11(a) sets forth information subject to section 6(b)(1) of the CPSA. Section 6(b)(1) requires the Commission to provide notice and an opportunity to comment to each manufacturer or private labeler if the manner in which a consumer product is designated or described in the information proposed for disclosure ''will permit the public to ascertain readily the *identity of such manufacturer or private labeler''* (emphasis added). Currently, § 1101.11(a)(1) deviates from the statutory language, stating: ''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.'' We propose revising this provision to conform to the language contained in section 6(b)(1). Specifically, section 6(b)(1) requires notice and an opportunity to comment only if the identity of the manufacturer or private labeler can be ascertained readily by the public. Section 6(b)(1) does not require that the identity of the *product* be ascertained readily by the public. Therefore, to be as closely aligned with the statutory language as possible, we propose removing from § 1101.11(a)(1) the phrase: ''which is either designated or described in a manner which permits its identity to be

[1] The Commission voted 2–1 to approve the Proposed Rule as amended.

ascertained readily by the public''. Proposed § 1101.11(a) would state: ''(1) The information must pertain to a specific product.''

Currently, § 1101.11(a)(2) states: ''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.'' This statement differs from the language in section 6(b). Section 6(b) applies to the ''public disclosure of any information obtained under this Act, or to be disclosed to the public in connection therewith.'' 15 U.S.C. 2055(b). We propose revising § 1101.11(a)(2) to state: ''The information must be obtained under the acts the Commission administers, or be disclosed to the public in connection therewith.'' Although the Commission would be conforming our regulation to relevant statutory language with this change, there is no expectation that it would reduce the scope of information subject to 6(b) requirements.

Section 1101.11(b) sets forth information not subject to the requirements of section 6(b)(1). Currently, § 1101.11(b)(1) states: ''Information described in the exclusions contained in section 6(b)(4) of the CPSA (see subpart E of this rule).'' As discussed above, in § 1101.1, section 6(b)(5)'s limitations on the disclosure of information reported to the Commission under section 15(b) of the CPSA 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;

2. information with respect to a consumer product which the Commission has reasonable cause to believe is in violation of any consumer product safety rule or provision under the CPSA or similar rule or provision of any other act enforced by the Commission; or

3. information in the course of or concerning a judicial proceeding.

We propose revising § 1101.11(b)(1) to clarify that the requirements of section 6(b)(1) do not apply to these exceptions. Proposed § 1101.11(b)(1) would state: ''Information described in the exclusions contained in section 6(b)(4) or (b)(5) of the CPSA (see subpart E and G of this rule).''

In addition to specifying these exceptions in the rule, we are proposing to include three other categories of information not subject to the requirements of section 6(b). Not only will these additions conform to new statutory requirements established by the CPSIA, but the additions also will maximize transparency and openness in our disclosure of information. Therefore, we propose adding the following three categories to the list of information not subject to the notice and comment requirements of section 6(b)(1):

1. A report of harm posted on the publicly available consumer product safety information database.

2. information that is publicly available.

3. information that is substantially the same as information that the Commission previously disclosed in accordance with section 6(b)(1), except as specified in § 1101.31(d).

Section 6A(f)(1) of the CPSA specifically excludes reports of harm posted on the publicly available consumer product safety information database from the provisions of section 6(b). To reflect this statutory exclusion, we propose revising § 1101.11(b) to include the following category: ''(6) A report of harm posted on the publicly available consumer product safety information database pursuant to section 6A of the CPSA, 15 U.S.C. 2055a.''

Section 6(b) is intended to provide firms with a review process before the Commission discloses to the public information obtained by the Commission under the CPSA. Information already in the public domain has not been obtained by the Commission under the CPSA, nor would the section 6(b) process serve any purpose with respect to information already disclosed other than by the Commission. Neither the statute nor the legislative history suggests that information that is readily available to the public is, or should be, subject to section 6(b)(1). To increase transparency, we propose revising § 1101.11(b) to include the following category: ''(7) Information that is publicly available or that has been disseminated in a manner intended to reach the public in general, such as news reports; articles in academic and scientific journals; press releases distributed through news or wire services; or information that is available on the Internet.''

This revision in the proposed rule, however, does not change the Commission's obligations under both existing CPSC policy and federal law to assure that information disclosed by the CPSC to the public is accurate (CPSC Order 1450.2, Jan. 16 2003) and presented in an accurate, clear, complete, and unbiased manner. (Information Quality Act, Treasury and General Government Appropriations Act for Fiscal Year 2001 sec. 515, Pub. L. 106–554, 144 Stat. 2763 (2001) and OMB Guidelines 67 FR 8452 (Feb. 22, 2002)). The Commission also notes that other federal health and safety agencies that do not operate under section 6(b)'s legal restrictions still generally coordinate the release of information identifying specific manufacturers with those manufacturers. These agencies do this in the name of assuring accuracy and fairness—concepts that the Commission endorses even absent the restrictions contained in section 6(b).

We also propose adding to the list of information that is not subject to section 6(b)(1) information that is substantially the same as information that the Commission previously disclosed in accordance with section 6(b)(1). Section 6(b) does not require a new notice and comment process when the agency re-discloses information as to which appropriate notice already has been conveyed and applicable procedures followed.

Although renotification is not statutorily required, firms currently may request renotification, or the opportunity to comment on subsequent disclosures of identical information. *See* 16 CFR 1101.21(b)(7), 1101.31(d). The purpose of renotification was to provide firms with another occasion to submit substantive comments on information that the Commission previously released in accordance with the requirements of section 6(b).

Our review of the 6(b) process and firms' comments, however, reveals that few firms request renotification or provide substantive claims concerning accuracy, fairness, or reasonable relation to effectuating the purposes of the statutes the Commission administers for the staff to evaluate prior to releasing the information. For example, in calendar year 2012, approximately 25 percent of firms that received an initial notice requested renotification. During the same period, the Commission renotified firms on 40 separate occasions. In the majority of these cases, the firms never responded, responded but did not provide any comments on the information, or simply repeated the same claims that they submitted in response to the initial notice without providing any additional information for the staff to evaluate. Renotification thus generally has not resulted in new substantive input to staff [nor has the renotification process yielded re-disclosures that are handled differently from initial disclosures]. In short, renotification in practice duplicates the initial notification process and result. As a result, and in light of the absence of any statutory requirement for

renotification, we propose removing this provision from the regulation.

Of course, if a firm subsequently discovers new information that is relevant to information the Commission previously released, such as a reported incident, the firm may supplement its initial comments to the Commission. In addition, the requirements of section 6(b)(1) will apply if the Commission has reason to question the accuracy of the information proposed for a subsequent release, as specified in the proposed revision to § 1101.31(d). Therefore, we propose revising § 1101.11(b) to include the following category: ''(8) Information that is substantially the same as information that the Commission previously disclosed in accordance with section 6(b)(1), except as specified in § 1101.31(d).''

In addition, we propose the following technical and conforming changes to § 1101.11:

A. In § 1101.11(a)(3), remove: ''The Commission or its members, employees, agents or representatives must propose to disclose the information to the public (see § 1101.12)'' and in its place, add: ''The Commission, any member of the Commission, or any employee, agent, or representative, including contractor, of the Commission in an official capacity must propose to disclose the information to the public (see § 1101.12)''.

B. In § 1101.11(b)(2), remove the statutory citation: ''2068(b)'' and in its place, add: ''2067(b)''.

C. In § 1101.11(b)(2), remove the regulatory citation: ''16 CFR part 1017'' and in its place, add: ''16 CFR part 1019''.

5. Proposed Changes to § 1101.12 (Commission Must Disclose Information to the Public)

We propose the following technical and conforming changes to § 1101.12:

A. Remove the heading: ''Commission must disclose information to the public'' and in its place, add: ''Definition of ''public''.''

B. In § 1101.12(a), remove: ''Members, employees, agents, representatives and contractors of the Commission, in their official capacity'' and in its place, add: ''Any member of the Commission or any employee, agent, or representative, including contractor, of the Commission in an official capacity''.

C. In § 1101.12(d), remove: ''whom'' and in its place, add: ''which''.

D. In § 1101.12(f), remove: ''Federal'' and in its place, add: ''federal'' wherever ''Federal'' appears.

E. In § 1101.12(f), remove: ''whom'' and in its place, add: ''which''.

6. Proposed Changes to § 1101.13 (Public Ability to Ascertain Readily Identity of Manufacturer or Private Labeler)

Currently, § 1101.13 states: ''The advance notice and analysis provisions of section 6(b)(1) apply only when a reasonable person receiving the information in the form in which it is to be disclosed and lacking specialized expertise can readily ascertain from the information itself the identity of the manufacturer or private labeler of a particular product. The Commission will provide the advance notice and opportunity to comment if there is a question whether the public could readily ascertain the identity of a manufacturer or private labeler.''

We propose deleting from § 1101.13 the following sentence: ''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.'' The Commission adopted a ''reasonable person'' standard in § 1101.13 for determining whether the advance notice and analysis provisions of section 6(b)(1) would apply to information proposed for disclosure. Under this standard, if a reasonable person who lacks specialized expertise can readily ascertain the identity of the firm from the information proposed to be disclosed, the information will be forwarded to the firm for section 6(b) comment. The Commission included the sentence proposed for deletion when we adopted the final rule in 1983 in response to comments that we received. 48 FR 57409. Because we believe this sentence is vague and inconsistent with the reasonable person standard that the Commission adopted, we propose deleting the sentence from § 1101.13. The Commission believes that in practice the reasonable person standard as implemented in the context of interpreting proposed section 1101.13 errs in favor of providing notice to manufacturers and private labelers.

In addition, we propose the following technical change to § 1101.13:

A. Remove: ''it'' and in its place, add: ''the information''.

7. Proposed Changes to § 1101.21 (Form of Notice and Opportunity to Comment.)

Section 6(b) requires the Commission to ''notify'' manufacturers or private labelers of consumer products before public disclosure of product-related information covered by the statute. Section 6(b) does not prescribe the medium to be used for providing the notice. Similarly, § 1101.21 prescribes oral or written notice, but does not specify the medium to be used for written notice.

There have been significant advancements in information technology and communication since we adopted the rule in 1983. As a result, use of electronic means to provide notice is widely accepted by other federal departments and agencies and courts, among others.

Despite these advancements, the Commission continues to provide 6(b) notice to firms via U.S. mail, a more time-consuming practice that incurs unnecessary costs, particularly from printing and mailing the relevant documents. In addition, staff resources are dedicated to preparing these paper mailings.

To increase efficiency and limit unnecessary expenditures of staff resources, we propose revising the rule to permit electronic 6(b) notices, to direct the Commission to transmit requisite notices through an electronic medium whenever possible, and to encourage electronic communication with the Commission. To this end, the Commission proposes the following changes to § 1101.21:

A. Insert ''(1)'' before the sentence, ''The Commission will generally provide manufacturers or private labelers written notice and opportunity to comment on information subject to section 6(b)(1).''

B. Insert the following statements after the last sentence in § 1101.21(a): ''(2) Any notice required to be given under the provisions of this Part 1101 may be transmitted using electronic means of communication. Whenever possible, the Commission will transmit such notice electronically.''

C. In § 1101.21(b)(8), insert: ''applicable contact information for electronic communication,'' between ''address,'' and ''and telephone number''.

Section 1101.21(b) specifies the information that will appear in a section 6(b) notice. Currently, § 1101.21(b)(5) states: ''A statement that a request that comments be withheld from disclosure will be honored.'' As described below, in § 1101.31, we propose requiring a rationale, that seeks to achieve a reasonable balance between the public interest in transparency and the rights of identified firms to be assured that disclosure is fair under the circumstances. A firm's rationale may take various forms, such as a specific statutory or regulatory basis or provision or a description of why disclosure of the comment would be unfair in the totality of the circumstances.

Adopting these revisions, proposed § 1101.21(b)(5) would state: ''A statement that if the manufacturer or private labeler objects to disclosure of its comments or a portion thereof, the manufacturer or private labeler must notify the Commission of such objection at the time the manufacturer or private labeler submits its comments, provide a rationale, such as an applicable statutory or regulatory basis or provision, for why the comments should not be disclosed, and explain why disclosure of the comments is not fair in the circumstances or is not reasonably related to effectuating the purposes of the CPSA.''

Currently, § 1101.21(b)(7) states: ''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.'' In § 1101.31, the phrase, ''identical information in the same format,'' requires the Commission to provide 6(b) notice for subsequent disclosures of information that may differ only slightly, without any impact on accuracy, from the information the Commission initially released in accordance with section 6(b). The statute by its terms does not require 6(b) notice for changes in the appearance of the information or for minor editorial changes. Therefore, we propose revising the phrase to state: ''information that is substantially the same''. In addition, as discussed above, in § 1101.11, we propose removing renotification from the rule. The renotification process, which is not required under the statute, has not resulted in new substantive input to staff. For these reasons, the Commission proposes revising § 1101.21(b)(7) to state: ''A statement that no further request for comment will be sought by the Commission if the Commission intends to disclose information that is substantially the same as the information that the Commission previously disclosed.''

In addition, we propose the following technical and conforming changes to § 1101.21:

A. In § 1101.21(a)(1), remove: ''the Commission may determine that it is necessary to provide the notice and opportunity to comment orally, either in person or by telephone'' and in its place, add: ''the Commission may determine that notice and opportunity to comment orally is necessary''.

B. In § 1101.21(b), remove: ''The Commission will provide the manufacturer or private labeler with'' and in its place, add: ''The Commission shall, to the extent practicable, provide the manufacturer or private labeler with''.

8. Proposed Changes to § 1101.22 (Timing: Request for Time Extensions.)

Section 1101.22(a) explains the time for comment. Currently, § 1101.22(a)(1) states: ''Generally firms will receive ten (10) 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.'' As discussed above, in § 1101.21, to increase efficiency and limit unnecessary expenditures of staff resources, we propose revising the rule to encourage electronic communication with the Commission whenever possible. Proposed § 1101.22(a)(1) would state: ''In the interest of promoting timely notification, the Commission, whenever possible, will transmit electronically to the manufacturer or private labeler the notice to furnish comments to the Commission. Generally firms will receive ten (10) calendar days from the date of such notice. Firms that receive notice by mail will receive an additional three (3) calendar days to comment to account for time in the mail.''

Currently, the first sentence of § 1101.22(a)(2) reads: ''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.'' We propose deleting from this sentence the phrase: ''Upon his or her own initiative or''. As a matter of practice since the rule was enacted, the Freedom of Information Officer generally has not determined on his own initiative whether a firm would require additional time to comment on information proposed for disclosure. If a firm requires such additional time, the firm may submit an extension request to the Freedom of Information Officer for consideration. To account for actual practice, we propose revising the first sentence of § 1101.22(a)(2) to read: ''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.''

Section 1101.11(b) explains the Commission's process if a firm does not respond to the Commission's 6(b) notice. Currently, § 1101.22(b)(2) reads: ''Unless the Commission publishes a finding that the public health and safety requires a lesser period of notice (see § 1101.23), the Commission will not disclose the information in fewer than 15 days after providing a manufacturer or private labeler notice and opportunity to comment.'' As indicated in § 1101.23, in addition to publishing a finding that the public health and safety requires a lesser period of notice, the Commission may disclose information to the public in fewer than 15 days, if the firm agrees to a lesser period of notice, or does not object to the proposed disclosure. We propose revising § 1101.22(b)(2) to incorporate this provision. Proposed § 1101.22(b)(2) would state: ''The Commission will not disclose the information in fewer than 15 calendar days after providing a manufacturer or private labeler with notice and an opportunity to comment, unless (i) the firm agrees to a lesser period or does not object to disclosure, or (ii) the Commission publishes a finding that the public health and safety requires a lesser period of notice (see § 1101.23).''

In addition, we propose the following technical changes to § 1101.22:

A. In § 1101.22(a)(2), remove: ''§ 1101.24'' and in its place, add: ''§ 1101.23''.

B. In § 1101.22(b)(1), remove ''if it'' and insert a comma between ''submitted'' and ''the Commission.''

9. Proposed Changes to § 1101.23 (Providing Less Than 15 Days Notice Before Disclosing Information.)

As discussed above, in § 1101.21, the Commission, whenever possible, intends to communicate electronically with firms. Therefore, the Commission proposes inserting the following statement after the first sentence in § 1101.23(c): ''If written notice is provided, the Commission, whenever possible, will transmit such notice electronically.''

In addition, we propose the following technical and conforming changes to § 1101.23:

A. In § 1101.23, insert: ''calendar'' between ''15'' and ''days'' wherever ''15'' and ''days'' appear.

B. In § 1101.23(a), remove: ''it'' and in its place, add: ''the firm'' wherever ''it'' appears.

C. In the last sentence of § 1101.23(c), remove: ''Where applicable, before releasing information'' and in its place, add: ''Before releasing information''.

10. Proposed Changes to § 1101.24 (Scope of Comments Commission Seeks.)

Currently, § 1101.24(c) states: ''*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.'' As described more specifically below, in § 1101.31, we propose revising § 1101.24(c) to require a rationale to support withholding a firm's comments and an explanation of why disclosure of the comments is not necessary to assure that the disclosure of the information that is the subject of the comments is fair in the circumstances. A statement requesting that comments be withheld without the firm providing a rationale will not be sufficient to withhold comments. Therefore, we propose revising § 1101.24(c) to state: ''If a firm objects to disclosure of its comments or a portion thereof, the firm must notify the Commission of such objection at the time the firm submits its comments, provide a rationale, such as a statutory or regulatory basis or provision, for why the comments should not be disclosed, and explain why disclosure of the comments is not necessary to assure that the disclosure of the information that is the subject of the comments is fair in the circumstances. If the firm objects to the disclosure of a portion of its comments, the firm must specifically identify those portions that should be withheld. Conclusory statements that comments must be withheld with no supporting basis are not sufficient to justify a request for nondisclosure.''

In addition, we propose the following technical changes to § 1101.24(b):

A. In the first sentence, remove: ''which pertains to trade secret or other confidential material'' and in its place, add: ''which refers to trade secret or other confidential material and information subject to 5 U.S.C. 552(b)(4)''.

B. In the second sentence, remove: ''believes to be confidential or trade secret material and must state with specificity the grounds on which the firm bases it claims'' and in its place, add: ''believes to be confidential or trade secret material or subject to 5 U.S.C. 552(b)(4) and must state with specificity the grounds on which the firm bases its claims''.

11. Proposed Changes to § 1101.25 (Notice of Intent To Disclose.)

As discussed above, with respect to § 1101.21, the Commission is revising the rule in part to reflect the significant improvements in information technology since 1983. Therefore, we propose adding the following sentence to the end of § 1101.25(c): ''If written notice is provided, the Commission, whenever possible, will transmit such notice electronically.''

In addition, we propose the following technical changes to § 1101.25:

A. In § 1101.25, remove ''5 days'' and in its place, add: ''five (5) calendar days'' wherever ''5 days'' appears.

B. In the first sentence of § 1101.25(a), remove: ''that it intends'' and in its place, add: ''that the Commission intends''.

C. In the second sentence of § 1101.25(a), remove the comma between ''decision'' and ''copies'' and in its place, add: ''and''.

D. In the first sentence of § 1101.25(b), remove: ''its'' and in its place, add: ''the Commission's''.

E. In § 1101.25(b), remove the sentence: ''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'' and in its place, add: ''For example, the Commission may determine that the public must be warned more quickly than five (5) calendar days because of 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 inaccurately attributes to the Commission statements about the product''.

F. In the first sentence of § 1101.25(c), remove ''which'' and in its place, add: ''that''.

12. Proposed Changes to § 1101.31 (General Requirements.)

Currently, § 1101.31(b), which addresses the inclusion of a firm's comments, reads: ''In disclosing any information under this section, the Commission will include any comments or other information submitted by the manufacturer or private labeler unless the manufacturer or private labeler at the time it submits its section 6(b) comments specifically requests the Commission not to include the comments or to include only a designated portion of the comments and disclosure of the comments on such a designated portion is not necessary to assure that the disclosure of the information which is the subject of the comments is fair in the circumstances.'' We propose revising this sentence.

As an initial matter, the Commission must include with the disclosure, a firm's comments if the manufacturer or private labeler requests inclusion, and inclusion is permitted by and subject to the requirements of section 6(b)(1). 15 U.S.C. 2055(b)(1). In instances where the firm does not request disclosure, section 6(b)(1) grants the Commission discretion in releasing a firm's comments, stating that ''the Commission *may* . . . include with the disclosure any comments or other information or a summary thereof . . . to the extent permitted by and subject to the requirements of this section'' (emphasis added). *Id.*

When the Commission adopted the final rule in 1983 interpreting section 6(b)(1), we stated that we ''intend[] to follow the general policy of disclosing comments unless the manufacturer specifically requests they be withheld.'' 48 FR 57422. We recognized that a blanket policy always allowing a firm's comments to be withheld, even though the comments contained no confidential commercial or trade secret information, would not be a desirable outcome. 48 FR 57423. The Commission was concerned that such a policy ''would unnecessarily block the release of information, even though the Commission has taken the requisite reasonable steps to assure that the information is accurate and disclosure would be reasonably related to effectuating one or more purposes of the statutes the Commission administers.'' *Id.* We stated our belief that section 6(b) ''should not be construed to permit a firm to frustrate the disclosure of information simply by making a blanket claim of confidentiality for the information contained in its comments.'' *Id.* For firms that made blanket claims, the Commission stated in the preamble that we would notify the firm that disclosure of the firm's comments is necessary to assure that disclosure of the information was fair in the circumstances. In these instances, we would: (1) Ask a firm to summarize the firm's comments, or provide an edited version for public disclosure; (2) ask a firm to consent to the disclosure of information without the firm's comments; or (3) disclose the information ''with an explanatory statement that the manufacturer furnished data necessary to place the information in context but did not consent to its disclosure.'' *Id.*

Our review of how firms typically submit comments under section 6(b) and staff's subsequent processing of such comments, however, indicates that most comments are withheld. Most firms request that their comments be

maintained in confidence, even where the firms do not provide any specific comments on the disclosure, or do not object at all to disclosure of the information. For example, even when a firm's only comment is that the firm does not object to disclosure, the firm may request that this comment—that it has ''no objection to disclosure''—be withheld in confidence. Staff has withheld comments in this circumstance even though the comments state only that the firm has no objection to disclosure of the information. In effect, staff adopted a blanket policy of withholding where such a policy was never intended.

To obtain more substantive and useful information from firms who object to disclosure of comments, we are proposing to revise the regulation to require firms to provide a rationale for why comments should not be disclosed and an explanation of why disclosure of the comments is not necessary to assure that the disclosure of the information is fair in the circumstances. Conclusory assertions that comments be withheld without a rationale will not be sufficient to withhold comments. In addition, a firm's comment that it has no objection to disclosure, without any additional comments, will not be sufficient to justify withholding. Proposed § 1101.31(b) would state: ''In disclosing any information under this section, the Commission may, and upon the request of the manufacturer or private labeler shall, include any comments or other information or a summary thereof submitted by the manufacturer or private labeler to the extent permitted by and subject to the requirements of section 6(b). If the manufacturer or private labeler, at the time it submits its section 6(b) comments, specifically requests that the Commission not include the comments, or include only a designated portion of the comments, the manufacturer or private labeler must provide for evaluation by the Commission, a rationale, such as an applicable statutory or regulatory basis or provision, supporting such withholding and an explanation of why disclosure of the comments is not necessary to assure that the disclosure of the information that is the subject of the comments is fair in the circumstances.''

Currently, § 1101.31(d), which pertains to information the Commission previously disclosed, reads: ''If the Commission has previously disclosed, in accordance with section 6(b)(1), the identical information it intends to disclose again in the same format, it will not customarily take any additional steps to assure accuracy unless the Commission has some reason to question its accuracy or unless the firm, in its comments responding to the Commission's initial section 6(b) notice, specifically requests the opportunity to comment on subsequent disclosures, or unless the Commission determines that sufficient time has passed to warrant seeking section 6(b) comment again. Before disclosing the information the Commission will again review the information to see if accuracy is called into question and will further look to whether disclosure is fair in the circumstances and reasonably related to effectuating the purposes of the Acts the Commission administers.''

We propose two revisions to this provision. First, we propose removing: ''If the Commission has previously disclosed, in accordance with section 6(b)(1), the identical information it intends to disclose again in the same format, it will not customarily take any additional steps to assure accuracy unless the Commission has some reason to question its accuracy'' and in its place, adding: ''If the Commission intends to disclose information that is substantially the same as information that the Commission previously disclosed in accordance with section 6(b)(1), the Commission is not obligated to take any additional steps to assure accuracy unless the Commission has reason to question the accuracy of the information''. In its current form, the phrase, ''identical information it intends to disclose again in the same format,'' requires the Commission to provide 6(b) notice for subsequent disclosures of information that may differ only slightly, without any impact on accuracy, from the information the Commission initially released in accordance with section 6(b). When we adopted the final rule in 1983, the Commission specifically included ''same format'' in response to a comment that requested this addition. 48 FR 57414. The Commission agreed with the request, stating: ''the format of the disclosure (other than summaries of information previously released) or the intended audience may be of significant interest to the firm and may warrant comment.'' *Id.* Under a strict reading of the current provision, however, changes in the appearance of the information, such as the use of different fonts or layouts, and minor editorial changes, such as the insertion of a comma to the text, without any impact on the accuracy of the information, would require the Commission to provide subsequent 6(b) notice. We do not believe the statute requires subsequent 6(b) notice in these circumstances. In addition, we propose deleting the word, ''some,'' from the phrase, ''some reason.'' ''Reason'' provides the staff with a more definitive standard for when staff will take additional steps to assure accuracy.

Second, we propose deleting from § 1101.31(d) the following: ''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.''

Regarding the first sentence on renotification, as discussed above, in § 1101.11, the majority of firms that receive renotification fail to respond, respond but do not provide any comments on the information, or simply repeat the same claims that they submitted in response to the initial notice, without providing any additional information for the staff to evaluate. The Commission proposes deleting renotification from § 1101.31(d). Regarding the second sentence, the statute does not require the Commission to conduct another 6(b) review for information that the Commission already has released to the public. For these reasons, we propose deleting these sentences from the regulation.

Incorporating the changes discussed above, proposed § 1101.31(d) would state: ''*Information previously disclosed.* If the Commission intends to disclose information that is substantially the same as information that the Commission previously disclosed in accordance with section 6(b)(1), the Commission is not obligated to take any additional steps to assure accuracy unless the Commission has reason to question the accuracy of the information.''

We also propose the following technical and conforming changes to § 1101.31:

A. In § 1101.31(a), remove: ''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 fifteen day moratorium on disclosure'' and in its place, add: ''The Commission will attempt to make its decision on disclosure so that the Commission can

disclose information in accordance with section 6(b) after expiration of the statutory 15-day prohibition on disclosure''.

B. In § 1101.31(c), remove: ''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'' and in its place, add: ''The Commission also will accompany the disclosure, to the extent practicable, with any other relevant information in the Commission's possession that places the released information in context''.

13. Proposed Changes to § 1101.32 (Reasonable Steps To Assure Information Is Accurate.)

We propose the following technical changes to § 1101.32:

A. In § 1101.32(a), remove: ''it'' and in its place, add: ''that the Commission''.

B. In § 1101.32(a)(3), remove: ''it'' and in its place, add: ''the information''.

C. In § 1101.32(b), remove: ''it'' and in its place, add: ''the Commission''.

D. In § 1101.32(b)(3), remove: ''investigating its accuracy'' and in its place, add: ''investigating the accuracy of the information''.

E. In § 1101.32(b)(4), insert: ''that'' between ''accuracy of the information'' and ''the Commission proposes to disclose''.

14. Proposed Changes to § 1101.33 (Reasonable Steps To Assure Information Release Is Fair in the Circumstances.)

Currently, § 1101.33(a)(1), which provides an example of the reasonable steps the Commission will take to assure disclosure of information to the public is fair in the circumstances, states: ''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.''

We propose revising the first part of this section to conform to 15 U.S.C. 2055(b). As discussed above, in § 1101.31, the Commission must include with the disclosure a firm's comments if the manufacturer or private labeler requests inclusion and inclusion is permitted by and subject to the requirements of section 6(b)(1). 15 U.S.C. 2055(b)(1). In instances where the firm does not request disclosure, the Commission has discretion in releasing a firm's comments. *Id.* To reflect the statutory language, we propose revising the first part of § 1101.33(a)(1) to state: ''To the extent permitted by and subject to the requirements of section 6(b), the Commission may accompany information disclosed to the public with the manufacturer's or private labeler's comments or other information or a summary thereof.''

In addition, we propose revising § 1101.33(a)(1) to require firms to provide a rationale for why the comments should not be disclosed and an explanation of why disclosure of the comments is not necessary to assure that the disclosure of the information is fair in the circumstances. To encourage firms to provide useful information and clarifying comments, as discussed above, in § 1101.31, we propose revising the regulation to require specific information for the Commission to consider. The second part of § 1101.33(a)(1) would state: ''unless the manufacturer or private labeler asks in the firm's section 6(b) comments that the comments or a designated portion thereof not accompany the information, provides a rationale, such as an applicable statutory or regulatory basis or provision, for why the comments should not be disclosed, and explains why disclosure of the comments is not necessary to assure that the disclosure of the information that is the subject of the comments is fair in the circumstances. If the firm objects to the disclosure of a portion of the firm's comments, the firm must specifically identify those portions that should be withheld. Conclusory statements that comments must be withheld with no supporting basis are not sufficient to justify a request for nondisclosure.''

Incorporating the changes outlined above, proposed § 1101.33(a)(1) would state: ''To the extent permitted by and subject to the requirements of section 6(b), the Commission may accompany information disclosed to the public with the manufacturer's or private labeler's comments or other information or a summary thereof unless the manufacturer or private labeler asks in the firm's section 6(b) comments that the comments or a designated portion thereof not accompany the information, provides a rationale, such as an applicable statutory or regulatory basis or provision, for why the comments should not be disclosed, and explains why disclosure of the comments is not necessary to assure that the disclosure of the information that is the subject of the comments is fair in the circumstances. If the firm objects to the disclosure of a portion of the firm's comments, the firm must specifically identify those portions that should be withheld. Conclusory statements that comments must be withheld with no supporting basis are not sufficient to justify a request for nondisclosure.''

Currently, § 1101.33(b)(3), which provides an example of information that would not be disclosed because the information generally would not be considered fair in the circumstances, reads: ''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.''

In general, we believe that firms waive these protections when they submit information to the Commission that is attorney work-product or subject to the attorney/client privilege. Moreover, firms rarely claim in their comments to the Commission that the information proposed for disclosure contains information subject to the attorney/client privilege or the work-product doctrine. For example, in FY 2012, our FOIA office processed approximately 459 notices under section 6(b). Of those 459 notices, firms claimed attorney/client privilege and/or the work-product doctrine in only approximately 12 instances. The majority of firms that asserted this claim did not identify the specific information to which the claim pertained, but included the claim in a broad list of claims that included confidential business information and general fairness objections. For these reasons, we propose removing § 1101.33(b)(3) from the regulation.

Currently, § 1101.33(b)(4), which provides another example of information that would not be disclosed because the information generally would not be considered fair in the circumstances, reads: ''Disclosure of a firm's comments (or a portion thereof) submitted under section 6(b)(1) over the firm's objection.'' As discussed above, in § 1101.31, we propose revising the regulation to require that firms provide a rationale for why comments should not be disclosed and an explanation of why disclosure of the comments is not necessary to assure that the disclosure of the information is fair in the circumstances. In addition, because we propose removing § 1101.33(b)(3) from the regulation, we will renumber § 1101.33(b)(4) as § 1101.33(b)(3). Proposed § 1101.33(b)(3) would state: ''Disclosure of a firm's comments (or a portion thereof) submitted under section 6(b)(1) if the firm provides a rationale,

such as an applicable statutory or regulatory basis or provision, for why the comments should not be disclosed and explains why disclosure of the comments is not necessary to assure that the disclosure of the information that is the subject of the comments is fair in the circumstances.''

In addition, we propose the following technical corrections to § 1101.33:

A. In the second sentence of § 1101.33(a)(2), remove: ''information it its possession'' and in its place, add: ''information in its possession''.

B. In the first sentence of § 1101.33(a)(3), remove: ''it'' and in its place, add: ''the Commission''.

C. In § 1101.33(a)(3), remove: ''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'' and in its place, add: ''For example, the Commission may determine that issuance of a nationwide press release in a particular situation is not appropriate and rather will issue a press release directed at certain localities, regions or user populations''.

D. In the second sentence of § 1101.33(a)(4) add after ''information piecemeal'' the phrase: ''if such disclosure would be unfair''.

E. In § 1101.33(b)(1), remove: ''in concidence'' and in its place, add: ''in confidence''.

F. In § 1101.33(b)(2), insert: ''staff'' between ''Disclosure of'' and ''notes''.

15. Proposed Changes to § 1101.34 (Reasonable Steps To Assure Information Release Is ''Reasonably Related to Effectuating the Purposes of the Acts'' the Commission Administers.)

We propose the following technical changes to § 1101.34(a)(2):

A. Remove: ''Purposes of the FHSA, FFA, PPPA and RSA'' and in its place, add: ''Purposes of the FHSA, FFA, PPPA, RSA, CSPA, VGBA, and CGBPA''.

B. In the first sentence, insert: ''and other'' between ''transferred'' and ''acts''.

16. Proposed Changes to § 1101.41 (Generally.)

We propose the following technical changes to § 1101.41:

A. In § 1101.41(a)(4), capitalize ''information''.

B. In § 1101.41(b), remove: ''transferred act'' and in its place, add: ''transferred and other acts''.

C. In § 1101.41(b), remove: ''transferred acts'' and in its place, add: ''transferred and other acts''.

17. Proposed Changes to § 1101.42 (Imminent Hazard Exception.)

Currently, § 1101.42(b), which discusses the scope of the imminent hazard exception, reads: ''This exception applies once the Commission has filed an action under section 12 of the CPSA (15 U.S.C. 2061), in a United States district court. Once the exception applies, information may be disclosed to the public while the proceeding is pending without following the requirements of section 6(b)(1) if the information concerns or relates to the product alleged to be imminently hazardous. Upon termination of the proceeding, information filed with the court or otherwise made public is not subject to section 6(b). Information in the Commission's possession which has not been made public is subject to section 6(b).''

We propose the following revisions to § 1101.42(b):

1. In the second sentence, remove: ''while the proceeding is pending''.

2. Remove the third and fourth sentences.

We recognize that when the Commission adopted the final rule in 1983, we decided, in response to a comment, that ''documents in the Commission's possession that concern a product for which it has filed an imminent hazard action and that it has not made publicly available'' are subject to the 6(b) requirements. 48 FR 57425. We stated that ''these documents are more similar to documents prepared during the course of other Commission's activities which are routinely subject to section 6(b) and, therefore, will be treated accordingly.'' *Id.* We do not believe, however, that the statute imposes these restrictions on the Commission's release of information. Upon the Commission's filing of a section 12 action, we believe that information may be disclosed to the public during and after the proceeding, even if the information was not filed with the court or otherwise made public. Therefore, we propose deleting, ''while the proceeding is pending'', from the second sentence and removing the third and fourth sentences from § 1101.42(b).

18. Proposed Changes to § 1101.45 (Adjudicatory Proceeding Exception.)

We propose the following technical correction to § 1101.45(b):

A. Remove: ''FAA'' and in its place, add: ''FFA''.

19. Proposed Changes to § 1101.46 (Other Administrative or Judicial Proceeding Exception.)

We propose the following technical correction to § 1101.46(b)(7):

A. Remove: ''Secretary'' and in its place, add: ''Secretariat''.

20. Proposed Changes to § 1101.51 (Commission Interpretation.)

We propose the following technical corrections to § 1101.51(b):

A. In the first sentence, replace: ''it'' with ''the information'' wherever ''it'' appears.

21. Proposed Changes to § 1101.52 (Procedure for Retraction.)

We propose the following technical and conforming changes to § 1101.52:

A. In § 1101.52(a), remove the comma between ''distributor'' and ''or''.

B. In § 1101.52(b), remove: ''the Commission or an individual member, employee, agent, contractor or representative of the Commission'' and in its place, add: ''the Commission, any member of the Commission, or any employee, agent, or representative, including contractor, of the Commission in an official capacity''.

C. In § 1101.52(b), remove: ''The request must be in writing and addressed to the Secretary, CPSC. Washington, DC 20207'' and in its place, add: ''The request must be in writing and sent via either electronic mail to cpsc-os@cpsc.gov or first class mail to The Secretariat, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD, 20814–4408''.

D. In § 1101.52(c)(2), add: ''that'' between ''information'' and ''the firm''.

E. In § 1101.52(d), remove: ''the Commission or any individual member, employee, agent [sic] contractor or representative of the Commission'' and in its place, add: ''the Commission, any member of the Commission, or any employee, agent, or representative, including contractor, of the Commission in an official capacity''.

F. In § 1101.52(d), remove: ''If the Commission finds that fuller disclosure is necessary, it will publish a retraction in the manner it determines appropriate under the circumstances'' and in its place, add: ''If the Commission finds that fuller disclosure is necessary, the Commission will publish a retraction in the manner that the Commission determines appropriate under the circumstances''.

G. In § 1101.52(e), replace: ''its'' with ''the Commission's''.

22. Proposed Changes to § 1101.61 (Generally.)

We propose the following technical correction to § 1101.61(b)(3):

A. Remove the period and in its place, add: ''; or''.

23. Proposed Changes to § 1101.63 (Information Submitted Pursuant to Section 15(b) of the CPSA.)

Currently, § 1101.63(c) reads: ''Section 6(b)(5) does not apply to information independently obtained or prepared by the Commission staff.'' The legislative history indicates that in granting the Commission broad information-gathering powers, the Commission was intended to have access to section 15 information, such as trade secrets and other sensitive cost and competitive information, which would not otherwise be available to the public or to government. H.R. Rep. No. 92–1153, at 31 (1972). The apparent intent was not to protect information that the staff could identify or prepare independently from material in the public realm, but only to limit disclosure of confidential trade secret and competitive information not otherwise publicly available. *Id.*

Technological advances since enactment of the 1983 regulation merit further refinement of this exception. For example, Internet resources, which did not exist at the time of the enactment of the 1983 regulation, have significantly expanded the public availability of information about products; this public information may also be a part of a firm's section 15 report. Searching the name of a product in any Internet search engine may yield significant information about a product, including product reviews and Internet sites or retail locations where the product can be purchased. The Commission does not believe that the restriction on the disclosure of information contained in reports submitted to the Commission pursuant to section 15(b) was intended to apply to such publicly-available information. Indeed, inclusion of such information would frustrate the transparent disclosure of information if readily available information from the public domain could not be disclosed simply because a firm included such information in a section 15(b) report to the Commission. Therefore, information that a firm submits to the Commission pursuant to section 15(b) that is readily available to the public because, for example, the information appears in newspaper articles, on retailer Web sites, in product reviews, in the consumer product safety information database, or in other sources, constitutes information that is independently obtained under this provision and thus not subject to the requirements of section 6(b)(5).

Accordingly, we propose revising § 1101.63(c) to state: ''Section 6(b)(5) does not apply to information (1) independently obtained or prepared by the Commission staff or (2) identified by the Commission staff through publicly available sources. For example, information that is publicly available or that has been disseminated in a manner intended to reach the public in general, such as news reports; articles in academic and scientific journals; press releases distributed through news or wire services; information that is available on the Internet; or information appearing on the publicly available consumer product safety information database established pursuant to section 6A of the CPSA, 15 U.S.C. 2055a, does not fall within section 6(b)(5)'s disclosure limits.''

24. Proposed Changes to § 1101.71 (Delegation of Authority.)

We propose the following technical changes to § 1101.71:

A. In § 1101.71, remove: ''Secretary'' and in its place, add: ''Secretariat'' wherever ''Secretary'' appears.

B. In § 1101.71(a), remove: ''section 27(b)(9) of the CPSA 15 U.S.C. 2076(b)(9)'' and in its place, add: ''27(b)(10) of the CPSA, 15 U.S.C. 2076(b)(10),''.

C. In § 1101.71(b), remove: ''Findings not deleted'' and in its place, add: ''Findings not delegated''.

D. In § 1101.71(b)(1), insert: ''calendar'' between ''15'' and ''days''.

E. In § 1101.71(b)(2), insert: ''calendar'' between ''(5)'' and ''days''.

F. In § 1101.71(b)(2), remove the semicolon and in its place, add a period.

G. In § 1101.71(b)(3), remove: ''it'' and in its place, add: ''the Commission''.

III. Environmental Considerations

The Commission's regulations address whether the Commission is required to prepare an environmental assessment or an environmental impact statement. 16 CFR Part 1021. These regulations provide a categorical exclusion for certain CPSC actions that normally have ''little or no potential for affecting the human environment.'' 16 CFR 1021.5(c)(1). This proposed rule falls within the categorical exclusion.

IV. Regulatory Flexibility Analysis

Under section 603 of the Regulatory Flexibility Act (RFA), when the Administrative Procedure Act (APA) requires an agency to publish a general notice of proposed rulemaking, the agency must prepare an initial regulatory flexibility analysis (IFRA) assessing the economic impact of the proposed rule on small entities. 5 U.S.C. 603(a). As noted, the Commission is proposing to update the regulation that interprets section 6(b) of the CPSA. Although the Commission is choosing to issue the rule through notice and comment procedures, the APA does not require a proposed rule when an agency issues an interpretive rule. Therefore, no IRFA is required under the RFA. Moreover, the proposed rule would not establish any mandatory requirements and would not impose any obligations on small entities (or any other entity or party).

V. Paperwork Reduction Act

The Paperwork Reduction Act (PRA) establishes certain requirements when an agency conducts or sponsors a ''collection of information.'' 44 U.S.C. 3501–3520. The proposed rule would amend the Commission's rule that describes the agency's procedures for providing manufacturers and private labelers with advance notice and ''a reasonable opportunity to submit comments'' to the Commission on proposed disclosures of product-specific information. The proposed rule would not impose any information collection requirements. The existing rule and the proposed amendment do not require or request information from firms, but rather, explain the Commission's procedures that provide an opportunity for firms to comment on product-specific information before disclosure. Thus, the PRA is not implicated in this proposed rulemaking.

VI. Executive Order 12988 (Preemption)

According to Executive Order 12988 (February 5, 1996), agencies must state in clear language the preemptive effect, if any, of new regulations. Section 26 of the CPSA explains the preemptive effect of consumer product safety standards issued under the CPSA. 15 U.S.C. 2075. The proposed rule is not a consumer product safety standard, but rather, is an interpretive rule that would interpret section 6(b) of the CPSA. Therefore, section 26 of the CPSA would not apply to this rulemaking.

VII. Effective Date

The APA generally requires that the effective date of a rule be at least 30 days after publication of the final rule. 5 U.S.C. 553(d). However, an earlier effective date is permitted for interpretive rules and statements of policy. *Id.* Thus, this proposed rule is excepted from the APA effective date requirement. *Id.* 553(d)(2).

Because CPSC is giving notice and soliciting comment (even though notice and comment procedures are not required), the public and potentially affected firms will have significant advance notice of the agency's proposed rule. Moreover, implementation of the rule will not result in the imposition of new, mandatory requirements on firms. Therefore, the Commission proposes that the effective date be the date of publication of a final rule in the **Federal Register**.

VIII. Request for Comments

The Commission requests comments on all aspects of the proposed rule. Comments should be submitted in accordance with the instructions in the **ADDRESSES** section at the beginning of this NPR. Written comments must be received by April 28, 2014.

List of Subjects in 16 CFR Part 1101

Administrative practice and procedure; Consumer protection.

Accordingly, the Commission proposes to revise 16 CFR Part 1101 to read as follows:

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

Authority: Section 6(b) of Pub. L. 92–573, as amended by Section 211 of Pub. L. 110–314, 122 Stat. 3016, 15 U.S.C. 2055(b), 5 U.S.C. 553(b).

Subpart A—Background

§ 1101.1 General background.

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

(b) *Statutory requirements.* Section 6(b) establishes procedures that the Commission must follow when it releases certain firm specific information to the public and when it retracts certain information it has released.

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

(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.'' January 16, 2003.)

§ 1101.2 Scope.

Section 6(b) and this part apply to information obtained under the CPSA or to be disclosed to the public concerning products subject to the CPSA (15 U.S.C. 2051–2089), 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. 1471–1477 (PPPA); the Federal Hazardous Substances Act, 15 U.S.C. 1261–1278a (FHSA); and the

Refrigerator Safety Act, 15 U.S.C. 1211–1214 (RSA). These provisions also apply to the Child Safety Protection Act 101 and 102, Public Law 103–267, 108 Stat. 722 (June 16, 1994) (CSPA); the Virginia Graeme Baker Pool and Spa Safety Act, 15 U.S.C. 8003(a) (VGBA); and the Children's Gasoline Burn Prevention Act 2(a), Public Law 110–278, 122 Stat. 2602 (July 17, 2008) (CGBPA).

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.

(2) The information must be obtained under the acts the Commission administers, or be disclosed to the public in connection therewith.

(3) The Commission, any member of the Commission, or any employee, agent, or representative, including contractor, of the Commission in an official capacity must propose to disclose the information to the public (see § 1101.12).

(4) The manner in which the product is designated or described in the information must permit the public to ascertain readily the identity of the manufacturer or private labeler. [See § 1101.13.]

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

(1) Information described in the exclusions contained in section 6(b)(4) or (b)(5) of the CPSA (see subpart E and G 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. 2067(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 1019.)

(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.

(6) A report of harm posted on the publicly available consumer product safety information database pursuant to section 6A of the CPSA, 15 U.S.C. 2055a.

(7) Information that is publicly available or that has been disseminated in a manner intended to reach the public in general, such as news reports; articles in academic and scientific journals; press releases distributed through news or wire services; or information that is available on the Internet.

(8) Information that is substantially the same as information that the Commission previously disclosed in accordance with section 6(b)(1), except as specified in § 1101.31(d).

§ 1101.12 Definition of ''public''.

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

(a) Any member of the Commission or any employee, agent, or representative, including contractor, of the Commission in an 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 which 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 which 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.

(h) Any federal, state, local, or foreign government agency pursuant to, and in accordance with, section 29(f) of the Consumer Product Safety Improvement Act of 2008 (Pub. L. 110–314, 122 Stat. 3016 (August 14, 2008)).

§ 1101.13 Public ability to ascertain readily identity of manufacturer or private labeler.

The advance notice and analysis provisions of section 6(b)(1) apply only when a reasonable person receiving the information in the form in which the information 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.

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.* (1) The Commission will generally provide to manufacturers or private labelers written notice and opportunity to comment on information subject to section 6(b)(1). Whenever possible, the Commission will transmit such notice electronically. However, when the Commission publishes a finding that the public health and safety requires a lesser period of notice pursuant to section 6(b)(1) of the CPSA, the Commission may determine that notice and opportunity to comment orally is necessary.

(2) Any notice required to be given under the provisions of this Part 1101 may be transmitted using electronic means of communication. Whenever possible, the Commission will transmit such notice electronically.

(b) *Content of notice.* The Commission shall, to the extent practicable, 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 if the manufacturer or private labeler objects to disclosure of its comments or a portion thereof, the manufacturer or private labeler must notify the Commission of such objection at the time the manufacturer or private labeler submits its comments, provide a rationale, such as an applicable statutory or regulatory basis or provision, for why the comments should not be disclosed, and explain why disclosure of the comments is not fair in the circumstances or is not reasonably related to effectuating the purposes of the CPSA.

(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 the Commission intends to disclose information that is substantially the same as the information that the Commission previously disclosed.

(8) The name, address, applicable contact information for electronic communication, 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) In the interest of promoting timely notification, the Commission, whenever possible, will transmit electronically to the manufacturer or private labeler the notice to furnish comments to the Commission. Generally firms will receive ten (10) calendar days from the date of such notice. Firms that receive notice by mail will receive an additional three (3) calendar days to comment to account for time in the mail.

(2) 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 publish a finding that the public health and safety requires a lesser period of notice and may require a response in a shorter period of time (see § 1101.23).

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

(2) The Commission will not disclose the information in fewer than 15 calendar days after providing a manufacturer or private labeler with notice and an opportunity to comment, unless (i) the firm agrees to a lesser period or does not object to disclosure, or (ii) the Commission publishes a finding that the public health and safety requires a lesser period of notice (see § 1101.23).

(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 15 days notice before disclosing information.

There are two circumstances in which the Commission may disclose to the public information subject to section 6(b)(1) in a time less than 15 calendar days after providing notice to the manufacturer or private labeler.

(a) *Firm agrees to lesser period or does not object to disclosure.* The Commission may disclose to the public information subject to section 6(b)(1) before the 15-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 the firm has no comment; or notifies the Commission that the firm does not object to disclosure.

(b) *Commission finding a lesser period is required.* Section 6(b)(1) provides that the Commission may publish a finding that the public health and safety requires a lesser period of notice than the 15 calendar days advance notice that section 6(b)(1) generally requires. The Commission may find that the public health and safety requires less than 15 calendar 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 15 calendar days advance notice either orally or in writing, depending on the immediacy of the need for quick action. If written notice is provided, the Commission, whenever possible, will transmit such notice electronically. 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 refers to trade secret or other confidential material and information subject to 5 U.S.C. 552(b)(4), 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 or subject to 5 U.S.C. 552(b)(4) and must state with specificity the grounds on which the firm bases its 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, the firm must notify the Commission of such objection at the time the firm submits its comments, provide a rationale, such as an applicable statutory or regulatory basis or provision, for why the comments should not be disclosed, and explain why disclosure of the comments is not necessary to assure that the disclosure of the information that is the subject of the comments is fair in the circumstances. If the firm objects to the disclosure of a portion of its comments, the firm must specifically identify those portions that should be withheld. Conclusory statements that comments must be withheld with no supporting basis are not sufficient to justify a request for nondisclosure.

§ 1101.25 Notice of intent to disclose.

(a) *Notice to manufacturer or private labeler.* In accordance with section 6(b)(2) of the CPSA, if the Commission, after following the notice provisions of section 6(b)(1), determines that information claimed to be inaccurate by a manufacturer or private labeler in comments submitted under section 6(b)(1) should be disclosed because the Commission believes it has complied with section 6(b)(1), the Commission shall notify the manufacturer or private labeler that the Commission intends to disclose the information not less than five (5) calendar 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 and 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 five (5) calendar days advance notice of the Commission's intent to disclose information claimed to be inaccurate. For example, the Commission may determine that the public must be warned more quickly than five (5) calendar days because of 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 inaccurately attributes to the Commission statements about the product.

(c) *Notice of findings.* The Commission will inform a manufacturer or private labeler of a product that is the subject of a public health and safety finding that the public health and safety requires less than five (5) calendar days advance notice either orally or in writing, depending on the immediacy of the need for quick action. If written notice is provided, the Commission, whenever possible, will transmit such notice electronically.

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

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

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

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

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

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

§ 1101.31 General requirements.

(a) *Timing of decisions.* The Commission will attempt to make its decision on disclosure so that the Commission can disclose information in accordance with section 6(b) after expiration of the statutory 15-day prohibition on disclosure.

(b) *Inclusion of comments.* In disclosing any information under this section, the Commission may, and upon the request of the manufacturer or private labeler shall, include any comments or other information or a summary thereof submitted by the manufacturer or private labeler to the extent permitted by and subject to the requirements of section 6(b). If the manufacturer or private labeler, at the time it submits its section 6(b) comments, specifically requests that the Commission not include the comments, or include only a designated portion of the comments, the manufacturer or private labeler must provide for evaluation by the Commission, a rationale, such as an applicable statutory or regulatory basis or provision, supporting such withholding and an explanation of why disclosure of the comments is not necessary to assure that the disclosure of the information that 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. The Commission also will accompany the disclosure, to the extent practicable, with any other relevant information in the Commission's possession that places the released information in context.

(d) *Information previously disclosed.* If the Commission intends to disclose information that is substantially the same as information that the Commission previously disclosed in accordance with section 6(b)(1), the Commission is not obligated to take any additional steps to assure accuracy unless the Commission has reason to question the accuracy of the information.

§ 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 that the Commission 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 the information 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 the Commission 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 of this part, 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 paragraph (a) of this section and release it, generally without further investigating the accuracy of the information 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 that the Commission proposes to disclose, the Commission will review the information in light of the comments. The degree of review by the Commission and the weight accorded a firm's comments will be directly related to the specificity and completeness of the firm's comments on accuracy and the accompanying documentation. Documented comments will be given more weight than undocumented comments. Specific comments will be given more weight than general comments. Further steps may be taken to determine the accuracy of the information if the Commission determines such action appropriate.

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

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

(1) To the extent permitted by and subject to the requirements of section 6(b), the Commission may accompany information disclosed to the public with the manufacturer's or private labeler's comments or other information or a summary thereof unless the manufacturer or private labeler asks in the firm's section 6(b) comments that the comments or a designated portion thereof not accompany the information, provides a rationale, such as an applicable statutory or regulatory basis or provision, for why the comments should not be disclosed, and explains why disclosure of the comments is not necessary to assure that the disclosure of the information that is the subject of the comments is fair in the circumstances. If the firm objects to the disclosure of a portion of the firm's comments, the firm must specifically identify those portions that should be withheld. Conclusory statements that comments must be withheld with no supporting basis are not sufficient to justify a request for nondisclosure.

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

(3) The Commission will limit the form of disclosure to that which the Commission considers appropriate in the circumstances. For example, the Commission may determine that issuance of a nationwide press release in a particular situation is not appropriate 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 if such disclosure would be unfair.

(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 confidence.

(2) Disclosure of staff 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 a firm's comments (or a portion thereof) submitted under section 6(b)(1) if the firm provides a rationale, such as an applicable statutory or regulatory basis or provision, for why the comments should not be disclosed and explains why disclosure of the comments is not necessary to assure that the disclosure of the information that is the subject of the comments is fair in the circumstances.

§ 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, RSA, CSPA, VGBA, and CGBPA.* The Commission will also review information concerning products subject to the transferred and other acts it administers and to the Commission's specific functions under those acts to determine whether disclosure of information would be reasonably related to effectuating the purposes of those acts.

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

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

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

§ 1101.41 Generally.

(a) *Scope.* This subpart describes and interprets the exceptions to the requirements of section 6(b)(1)–(b)(3) that are set forth in section 6(b)(4). These exceptions apply to:

(1) Information about a product reasonably related to the subject matter of an imminent hazard action in federal court;

(2) Information about a product which the Commission has reasonable cause to believe is in violation of any consumer product safety rule or provision under the Consumer Product Safety Act (15 U.S.C. 2051, et seq.) or similar rule or provision of any other act enforced by the Commission;

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

§ 1101.42 Imminent hazard exception.

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

(b) *Scope of exception.* This exception applies once the Commission has filed an action under section 12 of the CPSA (15 U.S.C. 2061), in a United States district court. Once the exception applies, information may be disclosed to the public without following the requirements of section 6(b)(1) if the information concerns or relates to the product alleged to be imminently hazardous.

§ 1101.43 Section 6(b)(4)(A) exception.

(a) *Statutory provision.* Section (6)(b)(4)(A) provides that the requirements of section 6(b)(1) do not apply to public disclosure of information about any consumer product which the Commission has reasonable cause to believe is in violation of any consumer product safety rule or provision under the Consumer Product Safety Act (15 U.S.C. 2051 et seq.) or similar rule or provision of any other act enforced by the Commission.

(b) *Scope of exception.* This exception applies once the Commission has ''reasonable cause to believe'' there has occurred a violation of any consumer product safety rule or provision under the Consumer Product Safety Act (15 U.S.C. 2051 et seq.) or similar rule or provision of any other act enforced by the Commission. 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 violation.

§ 1101.44 Rulemaking proceeding exception.

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

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

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

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

§ 1101.45 Adjudicatory proceeding exception.

(a) *Statutory provision.* Section 6(b)(4)(B) provides that the requirements of section 6(b)(1) do not apply to public disclosure of

''information in the course of or concerning * * * [an] adjudicatory proceeding * * * under this Act.''

(b) *Scope of exception.* This exception applies once the Commission begins an administrative adjudication under the CPSA. The Commission will also apply the exception to any administrative adjudicatory proceeding under FHSA, FFA, or PPPA. An adjudicatory proceeding begins with the filing of a complaint under section 15 (c) or (d), 17(a) (1) or (3), or 20 of the CPSA (15 U.S.C. 2064 (c) or (d), 2066 (a) (1), or (3), or 2069); section 15 of the FHSA (15 U.S.C. 1274); section 5(b) of the FFA, (15 U.S.C. 1194(b)); or section 4(c) of the PPPA (15 U.S.C. 1473(c)). An adjudicatory proceeding ends when the Commission issues a final order, 16 CFR 1025.51–1025.58.

(c) The phrase ''in the course of'' refers to information disclosed as part of the adjudication, whether in documents filed or exchanged during discovery, or in testimony given in such proceedings, and may therefore, include information generated before the adjudication began.

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

§ 1101.46 Other administrative or judicial proceeding exception.

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

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

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

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

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

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

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

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

(7) A proceeding to obtain a retraction from the Commission pursuant to subpart F of these rules. This proceeding begins with the filing with the Secretariat 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 the information is adverse—i.e., if the information 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, any member of the Commission, or any employee, agent, or representative, including contractor, of the Commission in an official capacity 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 sent via either electronic mail to *cpsc-os@cpsc.gov* or first class mail to The Secretariat, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD, 20814–4408.

(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 that 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, any member of the Commission, or any employee, agent, or representative, including contractor, of the Commission in an official capacity 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, the Commission will publish a retraction in the manner that the Commission determines appropriate under the circumstances.

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

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

§ 1101.61 Generally.

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

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

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

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

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

(4) The Commission publishes a finding that the public health and safety requires public disclosure with a lesser period of notice than is required by section 6(b)(1).

§ 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 with respect to a consumer product which the Commission has reasonable cause to believe is in violation of any consumer product safety rule or provision under the Consumer Product Safety Act (Pub. L. 92–573, 86 Stat. 1207, as amended (15 U.S.C. 2051, et seq.)) or similar rule or provision of any other act enforced by the Commission; or

(3) Information in the course of or concerning a judicial proceeding (see § 1101.45).

(b) [Reserved]

§ 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 (1) independently obtained or prepared by the Commission staff or (2) identified by the Commission staff through publicly available sources. For example, information that is publicly available or that has been disseminated in a manner intended to reach the public in general, such as news reports; articles in academic and scientific journals; press releases distributed through news or wire services; information that is available on the Internet; or information appearing on the publicly available consumer product safety information database established pursuant to section 6A of the CPSA, 15 U.S.C. 2055a, does not fall within section 6(b)(5)'s disclosure limits.

Subpart H—Delegation of Authority to Information Group

§ 1101.71 Delegation of authority.

(a) *Delegation.* Pursuant to section 27(b)(10) of the CPSA, 15 U.S.C. 2076(b)(10), 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 Secretariat 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 Secretariat of the Commission or their designees who shall be senior staff members.

(b) *Findings not delegated.* 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 15 calendar 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 five (5) calendar days advance notice of its intent to disclose information claimed to be inaccurate.

(3) To decide whether the Commission 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 Secretariat 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 Secretariat may in his or her discretion refer an issue to the Commission for decision.

Dated: February 14, 2014.

Todd A. Stevenson,

Secretariat, Consumer Product Safety Commission.

[FR Doc. 2014–03600 Filed 2–25–14; 8:45 am]

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SOCIAL SECURITY ADMINISTRATION

20 CFR Part 404

[Docket No. SSA–2007–0082]

RIN 0960–AG71

Revised Medical Criteria for Evaluating Human Immunodeficiency Virus (HIV) Infection and for Evaluating Functional Limitations in Immune System Disorders

AGENCY: Social Security Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: We propose to revise the criteria in the Listing of Impairments (listings) that we use to evaluate claims involving human immunodeficiency virus (HIV) infection in adults and children under titles II and XVI of the Social Security Act (Act). We also propose to revise the introductory text of the listings that we use to evaluate functional limitations resulting from immune system disorders. The proposed revisions reflect our program experience, advances in medical knowledge, recommendations from a commissioned report and comments from medical experts and the public.

DATES: To ensure that your comments are considered, we must receive them by no later than April 28, 2014.

ADDRESSES: You may submit comments by any one of three methods—Internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA–2007–0082 so that we may associate your comments with the correct regulation.

Caution: You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as Social Security numbers or medical information.

1. Internet: We strongly recommend that you submit your comments via the Internet. Please visit the Federal eRulemaking portal at *http://www.regulations.gov*. Use the *Search* function to find docket number SSA–2007–0082. The system will issue you a tracking number to confirm your submission. You will not be able to view your comment immediately because we must post each comment manually. It may take up to a week for your comment to be viewable.

2. Fax: Fax comments to (410) 966–2830.

3. Mail: Address your comments to the Office of Regulations and Reports Clearance, Social Security Administration, 107 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401.

Comments are available for public viewing on the Federal eRulemaking portal at *http://www.regulations.gov* or in person, during regular business hours, by arranging with the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Cheryl Williams, Office of Medical Listings Improvement, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, (410) 965–1020. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213, or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov*.

SUPPLEMENTARY INFORMATION:

Why are we proposing to revise the listings for evaluating HIV infection?

We have not comprehensively revised the HIV infection listings, 14.08 for adults and 114.08 for children, since we first published final rules for them on July 2, 1993.[1] Although we published final rules for immune system disorders on March 18, 2008 that included changes to listings 14.08 and 114.08, the criteria in the current HIV infection listings are not substantively different from the criteria in the final rules we published in 1993.[2]

What revisions are we proposing?

We propose to:

- Revise and expand the introductory text for evaluating HIV infection for both adults (section 14.00) and children (section 114.00);
- Revise the introductory text for evaluating functional limitations resulting from immune system disorders for adults (section 14.00);
- Remove current HIV infection listings 14.08A–J for adults;
- Add HIV infection listings 14.11A–H for adults;
- Redesignate and revise current HIV infection listing 14.08K for adults as proposed listing 14.11I;
- Remove current HIV infection listings 114.08A–K for children; and
- Add HIV infection listings 114.11A–H for children.

How did we develop these proposed rules?

In addition to our adjudicative experience and our review of the advances in medical knowledge, treatment, and methods of evaluating HIV infection, we asked experts and the public to provide us with information that helped us develop the proposals.

We published an Advanced Notice of Proposed Rulemaking (ANPRM) in the **Federal Register** on March 18, 2008.[3] We informed the public that we were considering whether and how to update and revise the rules we use to evaluate HIV infection. We also invited interested persons and organizations to send us comments and suggestions about whether we should add, change, or remove any of the criteria in listings 14.08 and 114.08, and if so, what revisions did the commenters think we should make. We received comments from medical experts, advocates, and our adjudicators.[4]

In addition, we hosted a policy conference called ''HIV Infection in the Disability Programs'' in New York, N.Y., on September 10, 2008.[5] At this conference, we received comments and suggestions about how to update and revise our rules from professionals who work with patients with HIV infection, including physicians, medical experts, and advocates, as well as a person with HIV infection, and a mother of a child with HIV infection.

In 2009, we commissioned a report from the Institute of Medicine (IOM) of *The National Academies* on the criteria that we use to evaluate disability in persons with HIV infection. The IOM published the report, *HIV and Disability: Updating the Social Security*

[1] 58 FR 36008.

[2] 73 FR 14570.

[3] 73 FR 14409.

[4] We received seven comment letters. You may read the comment letters at *http://www.regulations.gov* under the same docket number as this notice.

[5] You can read a transcript of the policy conference at *http://www.ssa.gov/disability/SSA_HIV_Policy_Conf_Transcript.pdf*.