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: Supplemental notice of proposed rulemaking.

SUMMARY: The U.S. Consumer Product Safety Commission (CPSC or Commission) is issuing this supplemental notice of proposed rulemaking (Supplemental NPR) to update its regulation interpreting section 6(b) of the Consumer Product Safety Act (CPSA) (6(b) Regulation). On February 26, 2014, the Commission issued a notice of proposed rulemaking in this matter (2014 NPR). The 2014 NPR proposed to modernize the 6(b) Regulation to account for the significant improvements in information technology that have occurred since the regulation's initial adoption in 1983, and streamline the 6(b) Regulation to align more closely with the text of section 6(b), including with respect to protecting information filed by manufacturers, distributors, and retailers in accordance with the requirements of section 15(b) of the CPSA. This Supplemental NPR responds to public comments on the 2014 NPR and proposes additional changes to the 6(b) Regulation to further modernize and align the regulation with the statute.

DATES: Submit comments by April 3, 2023.

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

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: *www.regulations.gov.* Follow the instructions for submitting comments. Do not submit through this website: confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. CPSC typically does not accept comments submitted by electronic mail (email), except as described below.

Mail/hand delivery/courier: CPSC encourages you to submit electronic comments by using the Federal eRulemaking Portal. You may, however, submit comments by mail, hand delivery, or courier to: Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7479.

Instructions: All submissions must include the agency name and docket number. CPSC may post all comments without change, including any personal identifiers, contact information, or other personal information provided, to: *www.regulations.gov.* If you wish to submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public, you may submit such comments by mail, hand delivery, or courier, or you may email them to: *cpsc-os@cpsc.gov.*

Docket: For access to the docket to read background documents or comments received, go to: *www.regulations.gov,* and insert the docket number, CPSC–2014–0005, into the ''Search'' box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Amy S. Colvin, Attorney, Division of Federal Court Litigation, Office of the General Counsel, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: 301–504–7639; email: *acolvin@cpsc.gov.*

SUPPLEMENTARY INFORMATION: The Commission issues this Supplemental NPR proposing to amend the CPSC's regulation, Information Disclosure Under Section 6(b) of the Consumer Product Safety Act, codified at 16 CFR part 1101.

I. Background

A. Statutory Authority

Section 6(b) of the CPSA governs the Commission's disclosure of certain information to the public. In general, section 6(b)(1) requires, ''prior to its public disclosure of any information obtained under this Act, or to be disclosed to the public in connection therewith,'' that the Commission, ''to the extent practicable,'' provide manufacturers or private labelers with advance notice and opportunity to comment on the proposed disclosure, if the manner in which such consumer product is designated or described in such information ''permit[s] the public to ascertain readily the identity of such manufacturer or private labeler.'' 15 U.S.C. 2055(b)(1). The CPSA defines ''manufacturer'' to include an importer. 15 U.S.C. 2052(a)(11). Section 6(b)(1) also requires the Commission, prior to such public disclosure, to ''take reasonable steps to assure'' that the information CPSC intends to disclose ''is accurate, and that such disclosure is fair in the circumstances and reasonably related to effectuating the purposes of this Act.'' *Id.* In 1980, the U.S. Supreme Court ruled that CPSC's disclosures under the Freedom of Information Act (FOIA) are among the public releases covered by the section 6(b)(1) restrictions. *CPSC* v. *GTE Sylvania, Inc.,* 447 U.S. 102 (1980).

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, from 30 days to 15 days, the period for manufacturers and private labelers to receive advance notice and have an opportunity to comment on information that the Commission proposes to disclose. 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 with less notice than the default period specified in section 6(b)(1). CPSIA also broadened the statutory exceptions to section 6(b). For example, the amendments excluded from the requirements of section 6(b)(1)–(3) a 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 of the CPSA, or similar rule or provision of any other act enforced by the Commission.

B. History of the 6(b) Regulation

On December 29, 1983, the Commission published a final rule interpreting section 6(b) of the CPSA. 48 FR 57406; *see* 49 FR 8428 (Mar. 7, 1984) (technical correction). The 6(b) Regulation, 16 CFR part 1101, describes the Commission's procedures for providing manufacturers and private labelers advance notice and ''a reasonable opportunity to submit comments'' to the Commission on proposed disclosures of certain information. In addition, the 6(b) Regulation explains the ''reasonable steps'' the Commission will take pursuant to section 6(b) to assure, prior to public disclosure of covered information, that the information ''is accurate, and that such disclosure is fair in the circumstances and reasonably related to effectuating the purposes of this Act.'' In 2008, the Commission amended the 6(b) Regulation to reflect the CPSIA amendments. 73 FR 72334 (Nov. 28, 2008).

C. The 2014 NPR

On February 26, 2014, the Commission published the 2014 NPR. *Information Disclosure Under Section 6(b) of the Consumer Product Safety Act,* 79 FR 10712 (Feb. 26, 2014). The 2014 NPR was based on the following guiding principles:

1. Modernize the 6(b) Regulation to account for the significant advancements in information technology that have taken place since its initial adoption in 1983;

2. Streamline the 6(b) Regulation 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 FOIA backlogs; and (e) maximizing transparency and openness in the agency's 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) (*i.e.,* Section 15(b) reports).

See Fiscal Year 2013 Midyear Review and Operating Plan Adjustments, available at *https://www.cpsc.gov/s3fs-public/pdfs/foia_RCAFY13MidyearReviewandOperatingPlanAdjustments%2520050313.pdf.*

The Commission received 24 comments on the 2014 NPR. As discussed in section III below, seven consumer groups supported the proposed revisions to modernize the regulation and make it more consistent with the statute and industry practice. However, these commenters were concerned that section 6(b)'s obstacles to transparency and the immediate release of crucial product safety information remain. The other commenters, comprising trade associations and one firm, objected to various proposals contained in the 2014 NPR. In general, these commenters asserted that the proposed revisions would result in the disclosure of inaccurate or misleading information. Moreover, according to these commenters, some of the proposed changes could chill cooperation between the Commission and industry.

II. Detailed Description of the Proposed Revisions to the 6(b) Regulation

This section describes the changes proposed by this Supplemental NPR, in the order in which they appear in the proposed revised part 1101 of the Commission's rules.

A. Table of Contents

1. Proposed Changes to the Table of Contents

The 2014 NPR proposed a technical change to the Table of Contents. 79 FR 10713. The Supplemental NPR continues to propose this change. In addition, the Supplemental NPR proposes conforming changes to align the 6(b) Regulation with the statute, and minor grammatical edits for clarity. For example, the Supplemental NPR proposes to remove ''release'' and, in its place, add ''disclosure'' because section 6(b)(1) of the CPSA uses the terms, ''public disclosure,'' ''disclosure,'' ''disclosed,'' and ''disclosing.'' The Supplemental NPR also proposes to remove ''analysis'' and, in its place, add ''comment,'' because section 6(b)(1) requires the Commission to provide manufacturers and private labelers ''with a reasonable opportunity to submit comments.'' The Supplemental NPR proposes these conforming changes throughout the 6(b) Regulation. To improve clarity, the Supplemental NPR also proposes to redesignate § 1101.1 as ''Scope'' and § 1101.2 as ''General background.''

B. Subpart A—Background

1. Proposed Changes to § 1101.1 (General Background.)

To improve organization, the Supplemental NPR proposes to redesignate current § 1101.2 (Scope) as § 1101.1.

The 2014 NPR proposed technical changes to current § 1101.2 (which becomes § 1101.1). 79 FR 10713. The Supplemental NPR continues to propose only one of these technical changes: removing ''1476'' as a statutory section reference and, in its place, adding ''1477.''

Section 6(b)(1) of the CPSA applies to the Commission's ''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)(1). Section 6(d)(1) of the CPSA defines ''Act'' as the CPSA, FFA, PPPA, and FHSA. 15 U.S.C. 2055(d)(1). Current § 1101.2, however, more broadly defines the legislative acts that are relevant to section 6(b) to include not only the laws specified in section 6(d)(1) of the CPSA, but also the Refrigerator Safety Act, the Virginia Graeme Baker Pool and Spa Safety Act, and the Children's Gasoline Burn Prevention Act. The Supplemental NPR proposes to revise this section to conform to the language in section 6(b)(1) and (d)(1) of the CPSA, by removing the additional laws. In connection with this revision, the Supplemental NPR proposes to refer collectively to the CPSA, FFA, PPPA, and FHSA as ''the Acts'' and to use this defined term throughout the 6(b) Regulation. The Supplemental NPR also proposes edits to the statutory citations. Thus, revised proposed § 1101.1 reads:

> These rules apply to the public disclosure of any information obtained under the Consumer Product Safety Act, 15 U.S.C. 2051–2090 (CPSA), 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), and the Federal Hazardous Substances Act, 15 U.S.C. 1261–1278a (FHSA) (collectively, ''the Acts''), or to be disclosed to the public in connection therewith.

2. Proposed Changes to § 1101.2 (Scope.)

To improve organization, the Supplemental NPR proposes to redesignate current § 1101.1 (General background) as § 1101.2.

The 2014 NPR proposed revising current § 1101.1(b)(1) to reflect more clearly that there are exceptions to section 6(b)(5)'s limitations on the disclosure of information submitted to the Commission under section 15(b) of the CPSA. 79 FR 10713. The Supplemental NPR builds upon this approach and proposes additional changes throughout redesignated § 1101.2 to conform to the statute. For example, the Supplemental NPR proposes to revise the first sentence in renumbered § 1101.2(b)(1) to conform to the language in section 6(b)(1). This revised sentence now reads:

> Generally, section 6(b)(1) requires, prior to the Commission's public disclosure of any information obtained under the Acts, or to be disclosed to the public in connection therewith, that the Commission, to the extent practicable, provide manufacturers or private labelers with advance notice and opportunity to comment on the information, if the manner in which such consumer product is designated or described in the information permits the public to ascertain readily the identity of the manufacturer or private labeler.

Likewise, the Supplemental NPR proposes to add ''consumer'' before ''product'' because section 6(b)(1) refers to ''consumer product,'' a term defined in section 3(a)(5) of the CPSA. 15 U.S.C. 2052(a)(5). The Supplemental NPR

proposes this conforming revision throughout the 6(b) Regulation.

The 2014 NPR also proposed inserting in § 1101.1(b)(1) the word, ''calendar,'' between ''15'' and ''days.'' 79 FR 10713. For clarity and consistency, the Supplemental NPR continues to propose this change, without revision, in those sections of the 6(b) Regulation that discuss timing. The specification of calendar days reflects CPSC's practice since 2008, when the Commission published a final rule to revise the 6(b) Regulation in accordance with the 6(b) amendments under CPSIA. 73 FR 72334.

The 2014 NPR proposed revising the date of CPSC's internal Directive 1450.2 as listed in current § 1101.1(c). 79 FR 10713. The Supplemental NPR proposes to delete the reference to Directive 1450.2 entirely, to avoid obsolescence if the Commission chooses to update or revise that document. The Supplemental NPR also proposes removing from current § 1101.2(c) the words, ''internal'' and ''internal clearance,'' to conform to the language in section 6(b)(6) of the CPSA, which does not use these terms.

Finally, to provide clarity to covered firms, the Supplemental NPR proposes to add a sentence at the end of current § 1101.2(b)(1), explaining the requirements of section 15(b) of the CPSA. The Supplemental NPR, for clarity, also proposes minor grammatical edits throughout redesignated § 1101.2.

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

1. Proposed Changes to Subpart B Heading

The Supplemental NPR proposes to remove ''Analysis'' and, in its place, add ''Comment'' to conform to the language in section 6(b)(1) of the CPSA.

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

a. Proposed Changes to § 1101.11(a)

In § 1101.11(a), the Supplemental NPR proposes to remove ''analysis'' and, in its place, add ''comment'' to conform to the statute.

i. Proposed Changes to § 1101.11(a)(1)

Current § 1101.11(a)(1) states: ''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.'' The 2014 NPR proposed deleting the phrase, ''which is either designated or described in a manner which permits its identity to be ascertained readily by the public.'' 79 FR 10713–14. The Supplemental NPR proposes to delete § 1101.11(a)(1) entirely because section 6(b)(1) of the CPSA does not require that the information proposed for disclosure pertain to a specific product. Instead, section 6(b)(1) requires the Commission to provide a manufacturer or private labeler with advance notice and an opportunity to comment on the information, ''if the manner in which such consumer product is to be designated or described in such information will permit the public to ascertain readily *the identity of such manufacturer or private labeler.*'' 15 U.S.C. 2055(b)(1) (emphasis added). This statutory requirement that the public must be able to ascertain readily the identity of the manufacturer or private labeler of the consumer product is reflected in current § 1101.11(a)(4), which the Supplemental NPR proposes to redesignate as § 1101.11(a)(2).

ii. Proposed Changes to § 1101.11(a)(2) and (3)

Current § 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.'' The 2014 NPR proposed to revise § 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.'' 79 FR 10714. The Supplemental NPR proposes additional changes to § 1101.11(a)(2) to align with the statute. Revised § 1101.11(a)(2), which the Supplemental NPR proposes to redesignate as § 1101.11(a)(3), now reads: ''The information must be obtained, generated or received under the Acts, or be disclosed to the public in connection therewith.''

The Toy Industry Association (TIA) suggested that the 2014 NPR's proposal to remove from § 1101.11(a)(2) the phrase, ''individual members, employees, agents, contractors or representatives of the Commission acting in their official capacities,'' could cause these individuals to believe that they are no longer subject to section 6(b). We disagree. Section 6(d)(2) of the CPSA states that the ''provisions of [section 6] shall apply whenever information is to be disclosed by the Commission, any member of the Commission, or any employee, agent, or representative of the Commission in an official capacity.'' This statutory provision is repeated in current § 1101.11(a)(3), which the Supplemental NPR proposes to redesignate as § 1101.11(a)(1) and to revise with minor edits to conform to the statute. Revised § 1101.11(a)(1) now reads: ''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).''

iii. Proposed Changes to § 1101.11(a)(4)

The Supplemental NPR proposes to redesignate § 1101.11(a)(4) as § 1101.11(a)(2) and to insert ''consumer'' between ''the'' and ''product'' to align with the statute. The Supplemental NPR also proposes minor grammatical edits to this section.

b. Proposed Changes to § 1101.11(b)

The 2014 NPR proposed revising § 1101.11(b)(1) to clarify that the requirements of section 6(b)(1) do not apply to the information described in the exceptions listed in section 6(b)(5) of the CPSA. These exceptions include the public disclosure of information with respect to a consumer product which is the subject of an action brought under section 12, or 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 information in the course of or concerning a judicial proceeding. 15 U.S.C. 2055(b)(5). The Supplemental NPR continues to propose this change, incorporating a technical revision and minor grammatical edit.

The 2014 NPR also proposed adding the following three categories to the list of information not subject to the requirements of section 6(b):

- A report of harm posted on the publicly available consumer product safety information database;
- Information that is publicly available; and
- 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).

i. Reports of Harm

The 2014 NPR proposed including reports of harm posted on the publicly available consumer product safety information database (currently known as and accessible at *SaferProducts.gov*) in the list of information not subject to section 6(b)(1), because section 6A(f)(1) of the CPSA specifically excludes such reports from the provisions of section

6(b). 15 U.S.C. 2055a(f)(1). 79 FR 10714. The Supplemental NPR continues to propose implementing this revision.

The Commission acknowledges commenters' concerns with the Commission disclosing, without following the section 6(b) requirements, reports of harm that are *not* published on *SaferProducts.gov.* Although section 6A(f)(1) of the CPSA specifically excludes from the requirements of section 6(b), reports of harm that are published on *SaferProducts.gov,* this provision does not address reports of harm that do not meet the criteria for publication. *Id.* Accordingly, the Commission will provide firms with any requisite 6(b) notice for reports of harm that are not published on *SaferProducts.gov.*

The National Association of Manufacturers (NAM) asserted that the section 6(b) exclusion for reports of harm ''applies strictly to the reports of harm on the database and does not apply to alternative disclosures of information contained in the report.'' Without examples or explanation of the phrase ''alternative disclosures,'' we are unable to respond meaningfully to this comment. In general, however, the Commission may release or identify information contained in a report of harm that is posted to *SaferProducts.gov,* without notice under section 6(b)(1), if (1) the Commission does not characterize the information contained in the report, and (2) the Commission's use of *SaferProducts.gov* information is accurate and not misleading. For example, the Commission could state that *SaferProducts.gov* received 15 reports of harm involving Manufacturer ABC's lamp. In contrast, the Commission would have to provide 6(b) notice and opportunity to comment if that same release also warned consumers to stop using the lamps due to a hazard, or contained other information that is a public disclosure subject to the notice requirement of section 6(b)(1).

ii. Information That Is Publicly Available

The 2014 NPR proposed including in the list of information not subject to section 6(b)(1) the following: ''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.'' 79 FR 10714. Commenters raised concerns regarding the scope of the 2014 NPR's proposed revision, noting that publicly available information may be inaccurate, biased, or misleading and the Commission's reference to such information implies that the information is verified, accurate, or reliable. The Commission recognizes that even though information appearing in a news article or in an organization's published report is available to the general public, the Commission's repetition of that information could be inconsistent with the intent of section 6.

Based upon the comments that we received, this Supplemental NPR proposes a different approach for information that is already available to the public. Specifically, the Commission proposes to specify that the requirements of section 6(b)(1) do not apply to: ''Information that has already been made available to the public through sources other than the Commission, provided the Commission clearly indicates the source of the information and the Commission's use of the information is accurate and not misleading.''

Under the revised approach proposed here, the Commission may release or identify information that the Commission obtained from publicly available sources (*e.g.,* news clippings), without notice under section 6(b)(1), if (1) the Commission does not characterize the publicly available information or relay new information, and (2) the Commission's use of the information is accurate and not misleading. In determining whether the Commission's use of the information is accurate and not misleading, the integrity of the source may be relevant. For example, the Commission could state that it is aware of an identified newspaper's article reporting 10 incidents involving Manufacturer ABC's stroller, provided it is reasonable to attribute integrity to the source of the information (*e.g.,* the newspaper follows journalistic standards) and the Commission's description of the newspaper's report is accurate and not misleading. However, the Commission would provide 6(b) notice and opportunity to comment before posting to a social media platform: ''Check your ABC stroller for dangerous hinges—[Newspaper name] reports injuries to 10 kids.'' In this example, the Commission's social media message implies that the Commission considers the information contained in the news article to be a basis for action, or even that the Commission has itself determined the stroller hinges pose a hazard.

iii. Information That Is Substantially the Same as Information That the Commission Previously Disclosed

The 2014 NPR proposed including the following to the list of information not subject to section 6(b)(1): ''(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).'' 79 FR 10715.

Based upon comments that the Commission received, which asserted that the 2014 NPR proposal is vague and difficult to apply, and upon further consideration, the Commission proposes a modified approach. Under this new approach, the requirements of section 6(b)(1) do not apply to: ''Information, not previously disclosed, that in context does not disclose materially more or materially different information about the consumer product than what the Commission previously disclosed in accordance with the law.'' For example, under this proposal, a Commissioner may relate in a speech the findings regarding Manufacturer A's blender that appeared in a published CPSC report on kitchen appliances, for which the Commission provided the requisite 6(b) notice. However, the Commissioner would not discuss other staff findings that do not appear in the published report, unless the Commission previously provided Manufacturer A with 6(b) notice regarding those additional findings.

iv. Press Releases Issued by Firms

The Supplemental NPR proposes to delete § 1101.11(b)(4), ''Press releases issued by firms.'' While we do not believe that section 6(b) requires the Commission to provide a manufacturer or private labeler with 6(b) notice and an opportunity to comment before the Commission provides the public with information that is available in the firm's own publicly available press release, we hold to the Supplemental NPR's position that it is unnecessary to state in the 6(b) Regulation this specific application of general principals.

c. Proposed Technical and Conforming Changes to § 1101.11

The 2014 NPR proposed three technical and conforming changes to § 1101.11. 79 FR 10715. The Supplemental NPR continues to propose these revisions, except for the proposal to remove ''16 CFR part 1017,'' which is listed as ''Reserved,'' and, in its place, add ''16 CFR part 1019,'' which is titled ''Export of Noncomplying, Misbranded, or Banned Products,'' in § 1101.11(b)(2).

Instead, the Supplemental NPR proposes to remove the reference to the Commission's Export Policy Statement, which is not applicable, and insert the relevant regulatory citation, 16 CFR 1019.7. In addition, the Supplemental NPR proposes to re-number the paragraphs in § 1101.11(b) to reflect the proposed deletion of ''(4) Press releases issued by firms'' and insert a cross-reference to subpart E in redesignated § 1101.11(b)(4).

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

The 2014 NPR proposed technical and conforming changes to § 1101.12, including revising the heading to state: ''Definition of 'public.' '' 79 FR 10715. The Supplemental NPR continues to propose these changes, without revision.

For the requirements of section 6(b) to apply, 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* revised § 1101.11a(1). Current § 1101.12 includes in the list of persons who are not considered members of the ''public'':

- ''The persons or firms to whom the information to be disclosed pertains, or their legal representatives'' (16 CFR 1101.12(d)); and
- ''The persons or firms who provided the information to the Commission, or their legal representatives'' (16 CFR 1101.12(e)).

For greater specificity, the Supplemental NPR proposes to remove the reference to ''persons or firms'' and, in its place, add ''Persons, including but not limited to, consumers, manufacturers, private labelers, retailers, or distributors.''

The Commission may (and routinely does) contact consumers or firms to discuss information involving that particular consumer or firm. For example, when a manufacturer or private labeler provides the Commission with incident information that also identifies the consumers involved in those incidents, the Commission may use that information to contact the consumers to conduct in-depth investigations of the incidents. Similarly, when a manufacturer or private labeler provides the Commission with the names of firms that distributed or sold a violative or defective product, the Commission may contact the distributor or retailer to obtain additional information about the product. In these instances, neither the consumer, distributor, nor retailer constitutes the ''public'' under § 1101.12, because the information to be disclosed pertains to (1) the particular consumer who experienced an incident with the product, or (2) the particular distributor or retailer who distributed or sold the product.

The Supplemental NPR proposes additional technical and conforming changes, as well as minor grammatical edits, to § 1101.12 to provide clarity and to align with the statute. For example, the Supplemental NPR proposes to revise § 1101.12(a) and (b) to explain that section 6(b) applies to disclosures of information by state officials who are commissioned officers under section 29(a)(2) of the CPSA, and by any member of the Commission or any employee, agent, or representative, including contractor, of the Commission, in an official capacity. In § 1101.12(h), the Supplemental NPR proposes to remove the reference to ''CPSIA'' and, in its place, insert ''CPSA,'' which the CPSIA amended.

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

The 2014 NPR proposed deleting from § 1101.13 the last sentence, which states, ''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.'' 79 FR 10715. The 2014 NPR explained that this sentence is vague and inconsistent with the reasonable person standard that the Commission adopted in the first sentence of this section. *Id.* Under that 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 Commission will provide such information to the firm for section 6(b) comment. The Supplemental NPR continues to propose deleting the last sentence of § 1101.13, while retaining the reasonable person standard.

The Supplemental NPR proposes to insert two sentences in § 1101.13 to clarify that the following types of information are not within the scope of section 6(b)(1): (1) information about categories of consumer products, provided such information will not permit the public to ascertain readily the identity of the products' manufacturers or private labelers, and (2) information about manufacturers or private labelers, provided such information does not designate or describe a consumer product. Consistent with section 6(b)(6) of the CPSA, the Commission will ensure, pursuant to its established procedures, that information the Commission intends to disclose that reflects on the safety of a class of consumer products or on a manufacturer or private labeler of consumer products, is accurate and not misleading.

The 2014 NPR also proposed a technical change to § 1101.13. 79 FR 10715. The Supplemental NPR continues to propose this change, without revision. In addition, the Supplemental NPR proposes conforming changes to § 1101.13 to align with the statute and minor grammatical edits for clarity.

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

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

To increase efficiency and reduce burdens on the Commission and private parties, the 2014 NPR proposed revising the 6(b) Regulation to authorize electronic 6(b) notices, direct Commission staff to transmit notices electronically when possible, and encourage electronic communication back to the Commission. 79 FR 10715. Commenters overwhelmingly supported this proposal. The Supplemental NPR builds upon the 2014 NPR's approach. The Supplemental NPR proposes a new paragraph at § 1101.21(b) that requires, to the extent practicable, electronic transmission to avoid delays inherent in methods such as mail delivery. In response to commenters' questions, the new paragraph also clarifies the procedure if electronic transmission is not practicable or the Commission cannot confirm electronic receipt of the notice. In such instances, the Commission will take appropriate steps to provide notice using other methods, including delivery via U.S. mail or other delivery service.

Section 6(b)(1) of the CPSA states: ''In disclosing any information under [section 6(b)], the Commission may, and upon the request of the manufacturer or private labeler shall, include with the disclosure any comments or other information or a summary thereof submitted by such manufacturer or private labeler to the extent permitted by and subject to the requirements of [section 6].'' 15 U.S.C. 2055(b)(1). Thus, unless a manufacturer or private labeler specifically requests that the Commission disclose the firm's ''comments or other information or a summary thereof'' that is submitted in

response to a section 6(b)(1) notice from CPSC, the Commission is not required to disclose the firm's comments. Current § 1101.21(b)(4), however, requires the Commission to disclose comments even when a manufacturer or private labeler does not request disclosure. The Supplemental NPR proposes to revise this section to conform to the language in section 6(b)(1) and to require that requests for withholding be made in writing to assist Commission staff with processing and tracking such requests. Revised § 1101.21(b)(4) now reads: ''A statement that the Commission may, and upon the written request of the manufacturer or private labeler shall, include with the disclosure any comments or other information or a summary thereof submitted by such manufacturer or private labeler, to the extent permitted by and subject to the requirements of section 6 of the CPSA.''

Current § 1101.21(b) specifies the information that will appear in a section 6(b) notice to a manufacturer or private labeler. This information includes, among other contents, ''[a] statement that a request for comments be withheld from disclosure will be honored.'' The 2014 NPR proposed revising § 1101.21(b)(5). 79 FR 10715–16. The Supplemental NPR instead proposes to delete § 1101.21(b)(5) entirely. A blanket policy of always allowing a manufacturer or private labeler to have its comments withheld, even when such comments are not confidential commercial or trade secret information, and disclosure of the comments is not otherwise prohibited by law, may conflict with the public interest in transparency. Under the Commission's proposed revision at § 1101.24(c), a manufacturer or private labeler must explain its basis for requesting that the Commission exercise its discretion to not disclose the comments.

Current § 1101.21(b)(7) states that firms may request renotification, or the opportunity to comment on subsequent disclosures of ''identical information'' that is ''in the same format.'' The 2014 NPR proposed revisions to this section. 79 FR 10716. As discussed in section II.C.2.b.iii above, the Commission proposes a different approach for subsequent disclosures of information. In connection with this new approach, the Supplemental NPR proposes to revise § 1101.21(b)(7), now redesignated as § 1101.21(b)(6), to provide for delivery to the manufacturer or private labeler of: ''A statement that no further request for comment will be sought by the Commission if the Commission intends to disclose information, not previously disclosed, that in context does not disclose materially more or materially different information about the consumer product than what the Commission previously disclosed in accordance with the law.'' For example, the Commission would not have to provide another 6(b) notice before restating the contents of a CPSC news release that was issued after a notice and comment process under section 6(b).

Current § 1101.21(b)(2) calls for the inclusion in a section 6(b)(1) notice of:

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.

The Supplemental NPR proposes to delete the last sentence of this provision because it concerns renotification, which is addressed in redesignated § 1101.21(b)(6), rather than initial notification. The Supplemental NPR includes this example in redesignated § 1101.21(b)(6).

The 2014 NPR proposed two technical and conforming changes to § 1101.21. 79 FR 10716. The Supplemental NPR continues to propose only the conforming change in § 1101.21(b), redesignated § 1101.21(c). In addition, the Supplemental NPR proposes a technical change in § 1101.21(a) to cross-reference revised § 1101.26, which identifies circumstances when notice and opportunity to comment are not practicable. Finally, the Supplemental NPR proposes changes to conform to the statute and minor grammatical edits throughout § 1101.21 for simplification and clarity. For example, in § 1101.21(b)(6), redesignated § 1101.21(c)(5), the Supplemental NPR proposes to remove ''firm'' and, in its place, add ''manufacturer or private labeler.'' The Supplemental NPR also proposes to redesignate certain paragraphs and sub-paragraphs.

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

The 2014 NPR proposed inserting a sentence into § 1101.22(a)(1) regarding electronic transmission of the 6(b) notice. 79 FR 10716. The Supplemental NPR proposes to move discussion of electronic transmission to proposed § 1101.21(b).

Currently, the first sentence of § 1101.22(a)(2) states: ''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.'' The 2014 NPR proposed deleting from § 1101.22(a)(2) the phrase, ''Upon his or her own initiative or,'' because, absent a request from a manufacturer or private labeler, the Freedom of Information Officer generally will not provide a firm with additional time to comment on information proposed for disclosure. 79 FR 10716. The Supplemental NPR proposes additional non-substantive edits to the first sentence of § 1101.22(a)(2). The proposed revised sentence reads: ''The Commission may provide a longer amount of time for comment, particularly for manufacturers and private labelers that receive from the Commission voluminous or complex material to review.''

The 2014 NPR proposed revisions to § 1101.22(b)(2) to clarify when the Commission will disclose information in fewer than 15 calendar days. 79 FR 10716. The Supplemental NPR proposes to delete § 1101.22(b)(2) entirely because this section concerns timing, which is addressed in §§ 1101.22(a)(1) and 1101.23.

Current § 1101.22(b)(1) states: ''If the Commission has not received a response within the time specified and if it has received no request for extension of time, the Commission will analyze the information as provided in subpart D. If no comments are submitted the Commission will not give the further notice provided in section 6(b)(2).'' The Supplemental NPR proposes minor grammatical and clarifying revisions to this section to reflect that an extension request is not a substantive response. Revised § 1101.21(b)(1), redesignated § 1101.21(b), now reads: ''If the Commission has not received a response within the time specified (subject to any extension of time that has been granted under paragraph (c)), the Commission will analyze the information as provided in subpart D and will not give the further notice provided in section 6(b)(2).'' The Commission expects manufacturers and private labelers to submit comments by the deadline indicated in the 6(b) notice or otherwise given. The Commission ordinarily will disregard comments that are not submitted by the stated deadline.

The Supplemental NPR also proposes edits to provide manufacturers and private labelers more specific instructions regarding the Commission's process for requesting an extension of time to comment on information that the Commission proposes to disclose. The Supplemental NPR proposes requiring in § 1101.22(c) that such requests be in writing and submitted at least 48 hours before the deadline to

respond. The Commission believes this is a reasonable approach for processing and tracking any extension requests that staff may receive and for ensuring that proposed disclosures of information are not unnecessarily delayed. In addition, the Supplemental NPR clarifies that if the time for response has been shortened due to a public health and safety finding, no extension will be granted, except upon the Commission's initiative; in other words, extension requests from the party receiving notice will not be entertained in this situation.

The Supplemental NPR proposes to move the sentence in § 1101.22(c)(2) to the end of § 1101.22(c)(1) and to redesignate ''(3)'' as ''(2)''. In addition, in redesignated § 1101.22(c)(2), the Supplemental NPR proposes to remove, ''The Commission will promptly respond to requests for extension of time'' and, in its place, add ''It is the policy of the Commission to respond promptly to requests for extension of time.'' This change reflects that the statute does not require the Commission to respond promptly to an extension request, although the Commission endeavors to do so.

The 2014 NPR proposed two technical changes to § 1101.22. 79 FR 10716. In § 1101.22(a)(2), the Supplemental NPR continues to propose removing ''§ 1101.24'' and, in its place, adding ''§ 1101.23.'' The 2014 NPR's proposed revision to § 1101.22(b)(1) is no longer necessary in light of other revisions to this sentence.

The Supplemental NPR proposes additional conforming changes to align with the statute and minor grammatical edits for clarity. For example, the Supplemental NPR proposes to remove ''firm'' and, in its place, add ''manufacturer or private labeler'' to conform to the statute and to provide clarity about the types of entities that are subject to section 6(b)(1) of the CPSA. The Supplemental NPR proposes this revision at appropriate places throughout the 6(b) Regulation. The Supplemental NPR also proposes to revise the heading of § 1101.22 so that it reads: ''Time for comment and requests for extension of time''.

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

Current § 1101.23(c), titled ''Notice of finding,'' states that the Commission will provide the manufacturer or private labeler with notice of a public health and safety finding. The 2014 NPR proposed revisions to § 1101.23(c) to direct the Commission to provide such notice electronically. 79 FR 10716. The Supplemental NPR proposes to delete § 1101.23(c) entirely, because section 6(b) does not require the Commission to provide the manufacturer or private labeler direct notice of the finding. Rather, when the Commission finds that the public health and safety requires a lesser period of notice, section 6(b)(1) requires the Commission to publish such finding. In addition, section 6(b)(2) requires the Commission to notify the manufacturer or private labeler of the date set for public disclosure.

The Supplemental NPR proposes to revise the heading in § 1101.23(a) to include instances where the firm notifies the Commission that the firm has no comment. This provision currently appears in the text of § 1101.23(a).

In addition, the Supplemental NPR proposes to insert the following sentence into § 1101.23(b): ''The Commission will publish the finding in the disclosure itself or elsewhere.'' The CPSIA amendments in 2008 removed the previous requirement in section 6(b)(1) of the CPSA that the Commission publish its health and safety finding in the **Federal Register**. The House Report accompanying the CPSIA bill explained this revision as follows:

> [S]ection 205 further amends section 6(b)(1) to allow the Commission, in the case of a public health or safety hazard posed by a product, to simply publish its finding (presumably on the Commission's website) before disclosing the relevant information to the public. Currently, section 6(b)(1) requires the Commission to publish its finding in the **Federal Register**, which can needlessly delay the process for as long as five additional days.

H.R. Rep. No. 110–501, Consumer Product Safety Modernization Act (Dec. 19, 2007). Based upon this statutory revision and the accompanying legislative history, the Commission concludes that Congress intended the Commission to publish the finding quickly, such as in the press release or other public disclosure itself. This proposed revision, however, does not impact the requirement under section 6(b)(1) of the CPSA that the Commission, to the extent practicable, provide the manufacturer or private labeler with notice and an opportunity to comment on the information prior to disclosure.

The Supplemental NPR proposes additional conforming changes to align with the statute and minor grammatical edits for clarity throughout § 1101.23. For example, the Supplemental NPR proposes to replace ''firm'' with ''manufacturer or private labeler''; insert ''calendar'' between ''15'' and ''days''; and insert ''consumer'' between ''the'' and ''product''.

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

Section 6(b)(1) of the CPSA states: ''In disclosing any information under [section 6(b)], the Commission may, and upon the request of the manufacturer or private labeler shall, include with the disclosure any comments or other information or a summary thereof submitted by such manufacturer or private labeler to the extent permitted by and subject to the requirements of [section 6].'' 15 U.S.C. 2055(b)(1). The 2014 NPR proposed revising § 1101.24(c) to require that a manufacturer or private labeler provide a rationale to support withholding the 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. 79 FR 10716–17. The Commission proposed this revision ''[t]o obtain more substantive and useful information from firms who object to disclosure of comments.'' 79 FR 10718. The 2014 NPR explained that ''[c]onclusory assertions that comments be withheld without a rationale will not be sufficient to withhold comments'' and that ''a firm's comment that it has no objection to disclosure, without any additional comments, will not be sufficient to justify withholding.'' *Id.*

The Supplemental NPR revises this approach and proposes that a manufacturer or private labeler must provide a basis if it requests that the comments not be disclosed. For example, if a firm submits comments on what it believes is inaccurate information in the Commission's planned disclosure, and the Commission agrees with the comments and revises the proposed statement, the firm might contend that releasing comments referencing the inaccurate information in the proposed disclosure would not be a reasonable step to assure accuracy or fairness under the 6(b) requirements.

In addition, the Supplemental NPR proposes to revise the last sentence of § 1101.24(c) to clarify that if a manufacturer or private labeler objects to the disclosure of a portion of its comments, the firm must specifically identify that portion. Incorporating these revisions, along with conforming and grammatical edits, the revised proposed § 1101.24(c) now reads:

> *Requests for nondisclosure of comments.* If a manufacturer or private labeler objects to the disclosure of its comments or a portion thereof, it must notify the Commission at the time the manufacturer or private labeler submits its comments and provide the basis

for its request. If the manufacturer or private labeler objects to the disclosure of only a portion of its comments, the firm must identify with specificity those portions that it requests be withheld.

In response to the 2014 NPR, commenters expressed concern with the Commission's treatment of trade secret or privileged or confidential commercial or financial information that may appear in a firm's comments. The proposed revision in no way affects the Commission's treatment of such information. The Commission will maintain the protections on disclosure of trade secret or privileged or confidential commercial or financial information, as delineated in the CPSA, the FOIA, and our corresponding regulations, and in applicable case law. Firms should consult the Commission's FOIA regulation at 16 CFR 1015.18, which specifies the information a firm must provide with any request that the Commission withhold trade secret or privileged or confidential commercial or financial information.

The 2014 NPR proposed two technical changes to § 1101.24(b). 79 FR 10717. The Supplemental NPR no longer proposes the change to the first sentence of § 1101.24(b); instead, the Supplemental NPR proposes revisions to conform to the language in section 6(a)(2) of the CPSA. The Supplemental NPR continues to propose the change to the second sentence, along with other clarifying edits to the sentence. In addition, throughout § 1101.24, the Supplemental NPR proposes conforming changes to align with the statute and minor grammatical edits for simplification and clarity. For example, in § 1101.24(a), the Supplemental NPR proposes to delete ''undocumented'' and, in its place, add ''non-specific''.

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

The 2014 NPR proposed 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.'' 79 FR 10717. The Supplemental NPR continues to propose this revision, with minor grammatical edits.

In § 1101.25(a), the Supplemental NPR proposes non-substantive revisions to clarify the time at which the Commission may disclose the information. In addition, the Supplemental NPR proposes to remove the last sentence in § 1101.25(a), which states: ''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 FOIA requesters, which were not previously sent to the firm.'' Section 6(b)(2) of the CPSA only requires that the Commission ''notify the manufacturer or private labeler that the Commission intends to disclose [the information] at a date not less than 5 days after the date of the receipt of notification.'' For FOIA requests, however, it is the Commission's current practice to include, with the section 6(b)(2) notice, copies of the final package of materials that the Commission intends to disclose to the FOIA requester.

The Supplemental NPR proposes to delete § 1101.25(b) entirely, because the information in this paragraph appears in § 1101.23(b). In connection with this revision, the Supplemental NPR redesignates paragraph (c) as (b).

The 2014 NPR proposed technical changes to § 1101.25. 79 FR 10717. The Supplemental NPR continues to propose some of these changes. In addition, the Supplemental NPR proposes minor grammatical edits and conforming changes to align § 1101.23 with the statute. For example, in redesignated § 1101.25(b), the Supplemental NPR proposes to delete, ''depending on the immediacy of the need for quick action,'' because a health and safety finding itself constitutes a Commission determination regarding immediacy.

6. Proposed Changes to § 1101.26 (Circumstances When the Commission Does Not Provide Notice and Opportunity To Comment)

The 2014 NPR did not propose any changes to this section.

Section 6(b)(1) of the CPSA requires that, ''to the extent practicable,'' the Commission must provide manufacturers and private labelers notice and an opportunity to comment before disclosing information about a consumer product from which the public can ascertain readily the manufacturer's or private labeler's identity. Current § 1101.26(b) offers examples of circumstances in which notice and opportunity to comment is not practicable. The Supplemental NPR proposes to add to this list the following:

- When the Commission has been unable, after a diligent search, to obtain contact information for the manufacturer or private labeler of the consumer product to which the information pertains.
- When an extraordinary circumstance necessitates the immediate disclosure of information to protect the public health and safety while the Commission simultaneously pursues notification of the manufacturer or private labeler.

Regarding the first example, Commission staff conducts thorough searches in internal databases and other sources to locate contact information for manufacturers and private labelers. There have been occasions when staff was unable to find contact information for a particular firm after a diligent search, and thus, the Commission could not provide the requisite notice.

Regarding the second example, there may be emergency situations where the Commission must warn the public immediately about a particular hazard or risk while simultaneously pursuing notification to the manufacturer or private labeler. For example, on a holiday weekend the Commission might become aware of a serious hazard involving a new consumer product associated with the holiday, but the Commission's attempts to contact the manufacturer go unanswered. In that situation, the Commission might immediately notify the public of the hazard while awaiting a response from the firm. Importantly, consistent with the requirements in section 6(b)(1) of the CPSA, the Commission would 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.

The Supplemental NPR also proposes conforming changes to align with the statute and minor grammatical edits for clarity and simplification throughout § 1101.26. For example, the Supplemental NPR proposes to revise the sentence in § 1101.26(b) to state: ''Circumstances when notice and opportunity to comment is not practicable include, but are not necessarily limited to, the following . . .'' In § 1101.26(b)(1), the Supplemental NPR proposes to remove ''company'' and, in its place, add ''manufacturer or private labeler of any consumer product''.

E. 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

1. Proposed Changes to Subpart D Heading

The Supplemental NPR proposes minor edits to the heading of Subpart D for clarity and consistency. For example, the Supplemental NPR proposes to remove ''Assure Information It Discloses Is Accurate'' and, in its

place, add ''Assure Public Disclosure of Information Is Accurate.''

2. Proposed Changes to § 1101.31 (General Requirements)

Current § 1101.31(b) states:

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

The 2014 NPR proposed revisions to this section. 79 FR 10717. The Supplemental NPR proposes to revise § 1101.31(b) to conform to the statute and to require all requests regarding the disclosure of a manufacturer's or private labeler's comments to be in writing. Revised § 1101.31(b), redesignated § 1101.31(a), now reads: ''*Inclusion of comments.* In disclosing any information under this section, the Commission may, and upon the written 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 of the CPSA.''

Current § 1101.31(d) states:

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

The 2014 NPR proposed deleting substantially all of § 1101.31(d). 79 FR 10718.

Upon further consideration, the Commission now proposes a more straightforward approach for releasing information that does not disclose materially more or materially different information than what was previously disclosed. Proposed § 1101.31(d), redesignated § 1101.31(c), now reads: ''*Disclosing materially more or materially different information.* If the Commission intends to disclose information, not previously disclosed, that in context does not disclose materially more or materially different information about the consumer product than what the Commission previously disclosed in accordance with the law, 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.'' This provision reflects that, in the situation described, the notice and comment process has already occurred for the substance of the proposed disclosure, and repeating that process would not advance the purposes of section 6(b).

The Supplemental NPR also proposes to delete § 1101.31(a), which states that the Commission will attempt to make its decision on disclosure ''as soon as is reasonably possible after expiration of the statutory fifteen day moratorium on disclosure.'' There is no statutory requirement that the Commission disclose information within a certain time after the 15-day period has expired, assuming that the surrounding circumstances have not significantly changed.

In § 1101.31(c), now redesignated § 1101.31(b), the Supplemental NPR proposes to delete the sentence: ''Inclusion of an explanatory statement is in addition to, and not a substitute for, taking reasonable steps to assure the accuracy of information.'' The Supplemental NPR proposes instead to include a reference to an explanatory statement as a new paragraph (b) in revised § 1101.32 (Reasonable steps to assure disclosure of information is accurate). The Supplemental NPR also proposes other revisions to conform to the statute and clarify that the Commission is not required under section 6(b)(1) of the CPSA to provide an explanatory statement with information that it discloses to the public. These revisions include: (1) removing ''Where appropriate''; (2) removing ''will'' and, in its place, adding ''may''; and (3) removing ''To the extent practicable''. The Supplemental NPR also proposes to remove ''released'' and, in its place, add ''disclosed'' to conform to the statute.

The 2014 NPR proposed two technical and conforming changes to § 1101.31. 79 FR 10718–19. These changes have been superseded by the Supplemental NPR's proposed revisions.

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

The 2014 NPR proposed technical changes to § 1101.32. 79 FR 10719. The Supplemental NPR continues to propose these changes, without revision.

Section 6(b)(1) of the CPSA requires the Commission to take reasonable steps to assure, prior to disclosing information, that such information is accurate. Section 1101.32(a) of the 6(b) Regulation specifies the types of actions that the Commission considers to be reasonable steps to assure the accuracy of information that the Commission proposes to disclose to the public. The Supplemental NPR proposes to add the following as a reasonable step to assure the accuracy of the information: ''(3) The Commission staff relies on a statement made under oath, or a similar statement enforceable under penalty of perjury (*e.g.,* 28 U.S.C. 1746), that yields or corroborates the information to be disclosed.'' The making of a statement under penalty of perjury, such as in a sworn affidavit or declaration provided under 28 U.S.C. 1746, is generally accepted as sufficient indicia of reliability and appropriate for the Commission to similarly credit. In connection with this proposed addition, the Supplemental NPR proposes to redesignate current paragraph ''(3)'' as paragraph ''(4)''.

Current § 1101.32(a)(1) provides another action that the Commission considers to be a reasonable step: ''The Commission staff or a qualified person or entity outside the Commission . . . conducts an investigation or an inspection which yields or corroborates the product information to be disclosed.'' The Supplemental NPR proposes to delete ''or an inspection'' from this sentence because ''investigation'' is a broad term under the Commission's regulations that encompasses ''inspection.'' *See* 16 CFR 1118.1(a)(4) (''The term investigation includes, but is not limited to, inspections . . .'').

The Supplemental NPR proposes to add a new paragraph (b) explaining that in addition to the reasonable steps specified in § 1101.32(a), the Commission may include the explanatory statement referenced in proposed § 1101.31(b) to assure the accuracy of the information proposed for disclosure. In connection with this proposed revision, the Supplemental NPR proposes to redesignate current paragraph (b) as paragraph (c).

The Supplemental NPR also proposes conforming changes to align with the statute and other non-substantive

revisions for simplification throughout § 1101.32. For example, the Supplemental NPR proposes to revise § 1101.32(a)(3), redesignated as § 1101.32(a)(4), to state: ''The person who submitted the information to the Commission confirms the information as accurate to the best of the submitter's knowledge and belief, provided that . . . .'' In § 1101.32(b)(4), the Supplemental NPR proposes to delete the sentence, ''Specific comments will be given more weight than general comments.'' The Supplemental NPR also proposes a technical change to redesignated § 1101.32(c)(1) and minor grammatical edits throughout § 1101.32.

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

Current § 1101.33(a) specifies the types of actions that constitute reasonable steps to assure disclosure of information to the public is fair in the circumstances. The Supplemental NPR proposes several revisions to § 1101.33(a).

First, in § 1101.33(a)(1), the Supplemental NPR revises the approach proposed in the 2014 NPR regarding the disclosure of a firm's comments. The Supplemental NPR proposes that a manufacturer or private labeler must provide a basis, as opposed to a legal rationale, if the firm requests that its comments not be disclosed. The Supplemental NPR also proposes revisions that conform § 1101.33(a)(1) to the statute and require requests regarding the disclosure of a manufacturer's or private labeler's comments to be in writing.

Second, in § 1101.33(a)(2), the Supplemental NPR proposes revisions to conform to the statute and to clarify that the Commission *may,* but is not required to, (1) accompany the disclosure with an explanatory statement that makes the nature of the information disclosed clear to the public and (2) assure disclosure is fair in the circumstances by disclosing other relevant information in the Commission's possession, subject to the requirements of section 6(b)(1) and other requirements of law.

Third, the Supplemental NPR proposes to delete § 1101.33(a)(3), which states: ''The Commission will limit the form of disclosure to that which it considers appropriate in the circumstances. For example, the Commission may determine it is not appropriate to issue a nationwide press release in a particular situation and rather will issue a press release directed at certain localities, regions, or user populations.'' The Commission believes that this section is obsolete given the general absence of geographic restrictions when information is posted on the internet.

Finally, the Supplemental NPR proposes to delete, as unnecessary, § 1101.33(a)(4), which states: ''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.'' There is no need for notice under section 6(b) of the CPSA if the Commission decides to delay disclosure of the information.

Current § 1101.33(b) provides examples of disclosures that generally would not be fair in the circumstances. The Supplemental NPR proposes two substantive revisions to § 1101.33(b).

First, consistent with the 2014 NPR, the Supplemental NPR continues to propose deleting § 1101.33(b)(3), which identifies as inappropriate:

> 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.

As explained in the 2014 NPR, in general, we believe that firms waive these protections when they intentionally submit to CPSC information that is attorney work-product or subject to the attorney/client privilege. 79 FR 10719. The Commission does not expect, nor do we want, firms to provide legally privileged information to the Commission. However, if a firm inadvertently submits such information without intending a waiver, the Commission will treat the information in accordance with applicable authorities governing inadvertent disclosure. Moreover, if the submitted information contains trade secret or privileged or confidential commercial or financial information, the firm may request confidentiality of the information in accordance with the Commission's FOIA regulation at 16 CFR 1015.18.

Second, the Supplemental NPR proposes to revise § 1101.33(b)(4), which states: ''Disclosure of a firm's comments (or a portion thereof) submitted under section 6(b)(1) over the firm's objection.'' The 2014 NPR proposed revising § 1101.33(b)(4) to require a rationale for why the comments should not be disclosed. 79 FR 10719–20. Instead of requiring a legal rationale such as a statute or regulation, the Supplemental NPR recognizes that the Commission generally has broad discretion whether to grant a request for non-disclosure of such comments, and accordingly proposes that the manufacturer or private labeler must simply provide some basis for why it believes the Commission should decide against disclosing the comments. The Supplemental NPR also proposes revisions to conform to the statute and minor edits for clarity.

The Supplemental NPR proposes conforming changes to align with the statute and minor grammatical edits throughout § 1101.33. In addition, the Supplemental NPR proposes to redesignate § 1101.33(b)(4) as (b)(3) to reflect the proposed deletion of § 1101.33(b)(3).

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

The 2014 NPR proposed technical changes to § 1101.34(a)(2). 79 FR 10720. The Supplemental NPR no longer proposes these changes.

As discussed in section II.B.1 above, section 6(b)(1) of the CPSA applies to the Commission's ''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)(1). Section 6(d)(1) of the CPSA defines ''Act'' as the CPSA, FFA, PPPA, and FHSA. 15 U.S.C. 2055(d)(1). The Supplemental NPR proposes conforming revisions to align § 1101.34(a) with section 6(b)(1) and (d)(1) of the CPSA by removing references to acts other than the CPSA, FHSA, FFA, and PPPA.

Section 6(b)(1) requires the Commission to take reasonable steps to assure that ''disclosure is . . . reasonably related to effectuating the purposes of'' the CPSA, FFA, PPPA, and FHSA. 15 U.S.C. 2055(b)(1). Current § 1101.34(a)(3), which addresses FOIA requests, requires the Commission to determine whether disclosure of information in response to a FOIA request is reasonably related to effectuating one or more of the purposes of the acts administered by the Commission and that, in the event of a close question on this issue, the Commission will defer to the purposes of the FOIA. The FOIA is not one of the enumerated acts in section 6(d)(1) of the CPSA, and thus, the Commission is not required to determine whether disclosure of the information would be

reasonably related to effectuating the purposes of the FOIA. Therefore, the Supplemental NPR proposes to delete § 1101.34(a)(3) entirely. However, this proposed revision does not affect the Commission's obligation, as determined by the U.S. Supreme Court in *CPSC* v. *GTE Sylvania, Inc.,* to comply with the requirements of section 6(b) of the CPSA before disclosing any information in response to a FOIA request. 447 U.S. 102 (1980).

The Supplemental NPR also proposes conforming changes and non-substantive revisions for simplification and clarity throughout § 1101.34. For example, in the heading for § 1101.34, the Supplemental NPR proposes to remove ''release'' and, in its place, add ''disclosure''; and in § 1101.34(a)(2), the Supplemental NPR proposes to insert ''consumer'' between ''concerning'' and ''products.''

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

1. Proposed Changes to § 1101.41 (Generally)

The 2014 NPR proposed technical changes to § 1101.41. 79 FR 10720. The Supplemental NPR no longer proposes those revisions.

The Supplemental NPR instead proposes conforming revisions to align with the statute and non-substantive revisions for clarity and simplification throughout § 1101.41. For example, the Supplemental NPR proposes to insert ''Acts'' to clarify that these exceptions apply specifically to the CPSA, FHSA. FFA, and PPPA. The Supplemental NPR also proposes to delete § 1101.41(b), which states that the Commission will apply the section 6(b)(4) exceptions to ''the transferred acts.'' Section 1101.41(b) is duplicative and repeats the information already contained in revised § 1101.41, as well as in revised § 1101.1 (Scope). In addition, the Supplemental NPR proposes to reformat the information in paragraphs (a)(3) and (a)(4) as a combined list under paragraph (3). Proposed § 1101.41(3) now states that the statutory exceptions in section 6(b)(4) apply to (among other disclosures) ''[i]nformation in the course of or concerning: (i) a rulemaking proceeding under the Acts; (ii) an adjudicatory proceeding under the Acts; or (iii) any other administrative or judicial proceeding under the Acts.'' The Supplemental NPR also proposes to remove paragraph designation and subheading ''(a) Scope'' to reflect the proposed removal of paragraph (b).

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

Current § 1101.42(b) states:

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

The 2014 NPR proposed the following revisions to § 1101.42(b):

- In the second sentence, remove: ''while the proceeding is pending.''
- Remove the third and fourth sentences.

79 FR 10720. The 2014 NPR explained the Commission's belief that, upon filing a section 12 action, 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. *Id.* The Supplemental NPR continues to propose these revisions, without change.

In addition, the Supplemental NPR proposes conforming changes to align with the statute and minor grammatical edits.

3. Proposed Changes to § 1101.43 (Section 6(b)(4)(A) Exception)

The 2014 NPR did not propose any changes to § 1101.43.

The Supplemental NPR proposes to delete the first sentence in paragraph (b) because it repeats the information that appears in paragraph (a) and to combine paragraphs (a) and (b). In addition, the Supplemental NPR proposes conforming changes to align with the statute and minor grammatical edits.

''Reasonable cause to believe'' is not a defined phrase in either section 6(b)(4)(A) of the CPSA or § 1101.43. The Commission believes that reasonable cause exists when the belief is supported by existing laws and regulations and is based on factual conclusions that have evidentiary support. *Cf.* Fed. R. Civ. Proc. 11 (providing standard for filing pleadings and motions with a Federal court). Thus, for example, the Commission would have ''reasonable cause to believe'' a consumer product is in violation if Commission testing indicates that a toy contains excessive levels of lead, Commission staff confirms that a toy lacks the requisite General Conformity Certification, or Commission staff determines that a manufacturer is distributing ATVs without the requisite ATV Action Plan. The Commission will notify a manufacturer or private labeler orally or in writing if the Commission has reasonable cause to believe a consumer product is in violation of a consumer product safety rule or provision of the CPSA or similar rule or provision of any other act enforced by the Commission.

4. Proposed Changes to § 1101.44 (Rulemaking Proceeding Exception)

The 2014 NPR did not propose any changes to § 1101.44.

Section 6(b)(4) of the CPSA states that the provisions of section 6(b)(1)–(3) do not apply to the Commission's ''public disclosure of . . . (B) information in the course of or concerning a rulemaking proceeding.'' 15 U.S.C. 2055(b)(4)(B). Current § 1101.44(d) interprets the term ''concerning'' as follows:

> 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.

The Commission believes that this explanation restricts the type of information that falls under the rulemaking proceeding exception, beyond what Congress intended. ''Concerning'' is a broad term that can be understood as synonymous with ''relating to.'' *See United States* v. *Olea-Monarez,* 908 F.3d 636, 640 (10th Cir. 2018) ('''Concerning' is a neutral term meaning 'relating to' '') (citing Black's Law Dictionary (5th ed. 1979)); *Bloomberg L.P.* v. *U.S. Food & Drug Admin.,* 500 F.Supp.2d 371, 377 (S.D.N.Y. 2007) (''Its definition is 'relating to; to be about; to bear on.' '') (citing Merriam-Webster Online Dictionary, *http://www.merriam-webster.com* (last visited Aug. 13, 2007)). To reflect the common understanding of this term, the Supplemental NPR proposes to insert (1) ''or addressing'' after ''information about'' in the first sentence of § 1101.44(d), and (2) ''or relates to'' after ''describes'' in the second sentence of § 1101.44(d). Incorporating these revisions, as well as minor grammatical edits for simplification, revised § 1101.44(d) now reads:

The phrase ''concerning'' refers to information about or addressing the proceeding both after the proceeding has begun and indefinitely thereafter. Therefore, the Commission may at any time publicly disclose information that describes or relates to the substance, process, or outcome of the proceeding. For example, Commissioners may publicly explain their individual votes and any decision rendered by issuing written opinions and making public statements.

The Supplemental NPR also proposes conforming changes to align with the statute and minor grammatical edits.

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

The 2014 NPR proposed a technical correction to § 1101.45(b). 79 FR 10720. This change has been superseded by the Supplemental NPR's proposed revisions.

Section 6(b)(4)(B) of the CPSA states that the provisions of section 6(b)(1)–(3) do not apply to the Commission's ''public disclosure of . . . (B) information in the course of or concerning . . . an adjudicatory proceeding (which shall commence upon the issuance of a complaint).'' 15 U.S.C. 2055(b)(4)(B). Current § 1101.45(d) interprets the term ''concerning'' as follows:

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.

The Supplemental NPR proposes to revise the discussion of ''concerning'' for the reasons stated in section II.F.4 above. Incorporating these revisions, as well as minor grammatical edits for simplification, revised § 1101.45(d) now reads:

The phrase ''concerning'' refers to information about or addressing the administrative adjudication, both once it begins and indefinitely thereafter. Therefore, the Commission may at any time publicly disclose information that describes or relates to the substance, process, or outcome of the proceeding. For example, (i) Commissioners may publicly explain their individual votes and any decision rendered by issuing written opinions and making public statements and (ii) the Commission may disclose information regarding the effectiveness of any corrective action, such as information on the number of products corrected as a result of a remedial action.

The Supplemental NPR also proposes conforming changes to align § 1101.45 with the statute and minor grammatical edits for clarity. For example, in § 1101.45(a), the Supplemental NPR proposes to insert ''(which shall commence upon the issuance of a complaint)'' after ''adjudicatory proceeding'' to conform to the language in the statute. In § 1101.45(b), the Supplemental NPR proposes non-substantive edits for simplification. These edits reflect that the exception applies once the Commission files a complaint under specific provisions of the CPSA, FHSA, FFA, or PPPA.

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

The 2014 NPR proposed removing ''Secretary'' and, in its place, adding ''Secretariat'' in § 1101.46(b)(7). 79 FR 10720. The Supplemental NPR no longer proposes this revision, which would be inconsistent with the Commission's current organization.

The Supplemental NPR proposes to delete as unnecessary the last sentence in § 1101.46(b)(1), which states: ''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.'' The other examples listed in § 1101.46(b) do not specify the types of information that are subject to this exception, and the language proposed for deletion could be excessively restrictive in actual practice.

The Supplemental NPR proposes conforming changes to align § 1101.46 with the statute and non-substantive edits for clarity. For example, in § 1101.46(a), the Supplemental NPR proposes to insert ''–(3)'' after ''6(b)(1)''. In § 1101.46(b), the Supplemental NPR proposes to insert ''without limitation'' after ''Proceedings within this exception include,'' to clarify that the list appearing at § 1101.46(b) is not exhaustive and could include other administrative or judicial proceedings as authorized under section 6(b)(4)(B) of the CPSA. In addition, the Supplemental NPR proposes to revise § 1101.46(c) to state: ''The phrase 'in the course of or concerning' shall be interpreted consistent with § 1101.44(c) and (d) or § 1101.45(c) and (d), as applicable.''

G. Subpart F—Retraction

1. Proposed Changes to § 1101.51 (Commission Interpretation)

The 2014 NPR proposed technical corrections to § 1101.51(b). 79 FR 10720. These changes have been superseded by the Supplemental NPR's proposal to delete the first two sentences of § 1101.51(b) because these sentences repeat the information contained in § 1101.51(a). The Supplemental NPR also proposes changes to § 1101.51(b) to conform to the language in section 6(b) of the CPSA and minor grammatical edits for clarity.

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

Section 6(b)(7) of the CPSA states:

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 of misleading information.

15 U.S.C. 2055(b)(7). While section 6(b)(7) of the CPSA identifies four categories of requesters (*i.e.,* manufacturers, private labelers, distributors, and retailers), current § 1101.52 authorizes an ''any other person'' category as an additional group that can request retraction. The Supplemental NPR proposes to align the retraction procedure in § 1101.52 with the interested classes referenced in the statute, and delete from this section all references to ''any other person.''

Relatedly, in § 1101.52(c), which lists the information that must appear in a request for retraction, the Supplemental NPR proposes to add as paragraph (1): ''The identity and relationship (*i.e.,* manufacturer, private labeler, distributor, or retailer) of the requester.'' In connection with this proposed revision, the Supplemental NPR proposes paragraph redesignations throughout § 1101.52(c).

In § 1101.52(d), the Supplemental NPR proposes to remove the language: ''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 publication in a manner equivalent to that in which the disclosure was made is not practicable or could result in further disclosure of the information, the Commission will publish a retraction or take other action in a manner that the

Commission determines appropriate under the circumstances and consistent with the purposes of section 6(b)(7).

This proposed revision makes the rule flexible enough to address situations such as, for example, a public disclosure of inaccurate information by Commission staff during a phone conversation or in an email, where publication of the correction would result in further disclosure of the inaccurate or misleading information. In these instances, the Commission will take other action that the Commission deems appropriate under the circumstances to correct the prior release.

The 2014 NPR proposed technical and conforming changes to § 1101.52. 79 FR 10720. The Supplemental NPR continues to propose some of these changes, along with additional conforming changes to align with the statute, particularly section 6(b)(7) of the CPSA, and minor grammatical edits for clarity. For example, the Supplemental NPR proposes to revise the paragraph heading for § 1101.52(a) to reflect that retraction can occur upon the Commission's own initiative or upon request. In § 1101.52(b), the Supplemental NPR proposes revisions to the contact information where a request for retraction should be sent. In addition, in redesignated § 1101.52(c)(1), which discusses the information that a requester must submit in connection with a retraction request, the Supplemental NPR proposes to update the rule by replacing the language: ''A photocopy of the disclosure should accompany the request,'' with ''A reproduction of the disclosure (*e.g.,* image, audio or video file, copy of document) should accompany the request, if practicable,'' to reflect advancements in technology that have occurred since 1983.

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

1. Proposed Changes to § 1101.61 (Generally)

The 2014 NPR proposed a technical correction to § 1101.61(b)(3). 79 FR 10721. These changes have been superseded by the Supplemental NPR's proposed revisions.

Section 6(b)(5) of the CPSA prohibits the Commission from ''disclos[ing] to the public information submitted pursuant to section 15(b) respecting a consumer product'' unless certain conditions apply. 15 U.S.C. 2055(b)(5). Current § 1101.61(b) states:

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 . . .

The Supplemental NPR proposes several revisions to § 1101.61(b). First, the Supplemental NPR proposes to delete the phrase, ''or which is treated by the Commission staff as being submitted pursuant to section 15(b).'' As explained in the 1983 final rule, the Commission inserted this phrase in response to comments that Commission staff sometimes treated reports as being filed under section 15(b), even when the submitting firm disclaimed any legal obligation to report. 48 FR 57428. The Commission will continue to apply section 6(b)(5)'s additional information disclosure limitations when a firm indicates that it is making a submission pursuant to section 15(b) and 16 CFR 1115.13, even if, as authorized under 16 CFR 1115.12(a), the submitting firm refuses to admit, or specifically denies, in its report to the Commission that the information reasonably supports the conclusion that the submitting firm's consumer product is noncomplying, contains a defect which could create a substantial product hazard, or creates an unreasonable risk of serious injury or death. Absent exceptional circumstances where a filing clearly does not come within the requirements of section 15(b), however, the Commission will rely, for purposes of applying section 6(b)(5), upon the filer's own characterization of its filing as being submitted pursuant to section 15(b) and 16 CFR 1115.13.

Second, the Supplemental NPR proposes to require that a submitting firm identify the information as submitted pursuant to both section 15(b) of the CPSA and 16 CFR 1115.13. The regulation at 16 CFR 1115.13 specifies the information a submitting firm must include in an initial report and a full report under section 15(b) of the CPSA. The revised sentence now reads: ''Under section 6(b)(5), the Commission shall not disclose to the public information that has been identified as submitted pursuant to section 15(b) and 16 CFR 1115.13.''

Finally, the Supplemental NPR proposes to delete the second sentence in § 1101.61(b), which states: ''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.'' The proposed revisions to the first sentence in § 1101.61(b), discussed above, conform better to the language in section 6(b)(5) of the CPSA and 16 CFR 1115.13.

Section 6(b)(5) of the CPSA lists four instances in which its additional information disclosure limitations do not apply. The Supplemental NPR proposes revisions to the instances described in § 1101.61(b)(2) and (3). First, in § 1101.61(b)(2), the Supplemental NPR proposes to insert a corrective action plan and a consent order as examples of remedial settlement agreements where section 6(b)(5)'s additional disclosure limitations do not apply. The legislative history demonstrates that Congress envisioned formal documents, such as consent orders, as well as informal agreements, like corrective action plans, would constitute ''remedial settlement agreements'' under section 6(b)(5) of the CPSA. *See* H.R. Rep. No. 97–208, Consumer Product Safety Amendments of 1981, at 1242 (1981) (''The conferees do not intend that a settlement agreement must be made by a formal written agreement, but rather, for example, may be made by an exchange of letters.''). For nearly 40 years, the Commission has interpreted remedial settlement agreements to include letters that embody corrective action plans.

Second, the Supplemental NPR proposes to redesignate paragraph (3), ''The person who submitted the information under section 15(b) agrees to its public disclosure,'' as a new paragraph (c), with minor clarifying edits. The proposed paragraph reads: ''*Disclosure upon consent.* The Commission may disclose information submitted pursuant to section 15(b) without following the requirements of section 6(a) or 6(b) if the person who submitted the information under section 15(b) agrees to its public disclosure.'' This proposal reflects instances in which Commission staff and a manufacturer or private labeler have negotiated and agreed upon language, for example in a news release such as a recall alert. Section 6 notice is not required for such consensual releases.

Paragraph (4) currently applies the exception in section 6(b)(5)(D) where ''[t]he 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).'' The legislative history of section 6(b)(5)(D) suggests that public health and safety findings trigger an exception to section 6(b)(3) and, relatedly, section 6(b)(2), which requires the Commission to notify the manufacturer or private labeler if it

intends to disclose information that the firm claimed to be inaccurate. *See* H.R. Rep. No. 110–501, Consumer Product Safety Modernization Act (Dec. 19, 2007) (''It is important to note that section 6(b)(3) of CPSA, which allows the affected company to seek an injunction against the release of information in Federal court, does not apply to section 6(b)(5) and the new health and safety exception.''). Congress, however, did not clearly incorporate these exclusions into the text of section 6(b)(5). Accordingly, the Commission seeks comment on whether sections 6(b)(2) and (b)(3) apply where there has been a public health and safety finding under section 6(b)(5)(D) of the CPSA.

The Supplemental NPR proposes one conforming change in § 1101.61(b), to align with the statute and non-substantive edits for clarity. The Supplemental NPR proposes to remove ''section 6(b)(1)–(3)'' and, in its place, add ''sections 6(a) and 6(b)(1)–(3)'' to reflect that the Commission may disclose, in certain instances, information submitted pursuant to 15(b) of the CPSA only after complying with the requirements of sections 6(a) and 6(b)(1)–(3) of the CPSA. The Supplemental NPR also proposes to redesignate paragraphs in § 1101.61(b) and to insert minor grammatical edits throughout § 1101.61 for clarity.

2. Proposed Changes to § 1101.62 (Statutory Exceptions to Section 6(b)(5) Requirements)

The 2014 NPR did not propose any changes to § 1101.62.

The Supplemental NPR proposes conforming changes to align with the statute and minor grammatical edits. For example, in § 1101.62(a)(2), the Supplemental NPR proposes to remove ''under the Consumer Product Safety Act (Pub. L. 92–573, 86 Stat. 1207, as amended (15 U.S.C. 2051, *et seq.*))'' and, in its place, add ''of the Acts''.

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

Current § 1101.63(c) reads: ''Section 6(b)(5) does not apply to information independently obtained or prepared by the Commission staff.'' The 2014 NPR proposed revising this section 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.

79 FR 10721.

The Supplemental NPR continues to propose, with minor revisions, that section 6(b)(5) does not apply to information that is already available to the public. The Commission disagrees with commenters who asserted that the Commission must withhold from disclosure information that is already available to the public, just because it also appears in a report filed with the Commission pursuant to section 15(b) of the CPSA. The legislative history of section 6 of the CPSA indicates that Congress intended the Commission to have access to information that would not be available to the public and to protect such non-public information from disclosure. H.R. Rep. No. 92–1153, at 31 (1972). But there is no indication that Congress intended for section 6(b)(5) to apply to materials such as a firm's press release or product user manual that a firm already has disclosed to the public, or to retail locations or sale prices that can be identified by running a search on the internet or visiting a retail store, even if this same information appears in a section 15(b) report. The Supplemental NPR thus proposes to revise section 1101.63(c)(2), redesignated as § 1101.63(b)(2), to exclude: ''Information that is already available to the public, including but not limited to, information appearing in a company's press statements, websites, Frequently Asked Questions, product user manuals, sales materials, Securities and Exchange Commission filings, or other public statements or documents published or publicly disseminated by a manufacturer, distributor, or retailer.''

The Supplemental NPR also proposes clarifying revisions to the phrase, ''information independently obtained or prepared by the Commission staff,'' which the 2014 NPR proposed to redesignate as § 1101.63(c)(1). A firm submitting a section 15(b) report must provide copies or a summary of any complaints related to the safety of the product, or any allegations or reports of injuries associated with the product. 16 CFR 1115.13(d)(6). In addition, upon request, the submitting firm must provide the names and addresses of all distributors, retailers, and purchasers, including consumers, of the product. 16 CFR 1115.13(d)(14). We do not believe that Congress intended section 6(b)(5) to preclude the Commission from contacting a consumer to obtain additional information about an incident referenced in a section 15(b) report. Likewise, there is no indication that Congress intended to restrict the Commission from contacting other purchasers, such as retailers and distributors, to acquire additional information about a product at issue in a section 15(b) report, even if purchaser information appears in a section 15(b) report. If the Commission could not investigate information contained in a section 15(b) report, the benefit of those reports would be largely lost. Furthermore, the Commission would not be able to ''protect the public against unreasonable risks of injury associated with consumer products'' or ''promote . . . investigation into the causes and prevention of product-related deaths, illnesses, and injuries,'' as Congress mandated. 15 U.S.C. 2051(b)(1), (4). Accordingly, the Supplemental NPR proposes to revise § 1101.63(c), redesignated § 1101.63(b)(1), to state that section 6(b)(5) does not apply to: ''Information independently obtained or prepared, or developed through subsequent investigation and verification, by the Commission, any member of the Commission, or any employee, agent, or representative, including contractor, of the Commission in an official capacity.''

In § 1101.63(a), redesignated § 1101.63(a)(1), the Supplemental NPR proposes revisions to align with revised § 1101.61(b). The Supplemental NPR also proposes to insert at the end of redesignated § 1101.63(a)(1) the citation to 16 CFR 1115.13.

In addition, the Supplemental NPR proposes throughout § 1101.63 conforming changes to align with the statute, organizational edits to make this section easier to read, and minor grammatical edits for clarity. For example, the Supplemental NPR proposes to combine the information contained in paragraphs (a) and (b) as § 1101.63(a), which now specifies all of the information to which section 6(b)(5) applies. The Supplemental NPR also proposes to state explicitly that section 6(b)(5)'s additional disclosure limitations apply not just to documents generated by staff, but also to documents generated by the Commission, any member of the Commission, or any employee, agent, or representative, including contractor, of the Commission in an official capacity, and to any oral communications made by these individuals or the Commission.

I. Subpart H—Delegation of Authority to Information Group

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

The 2014 NPR proposed technical changes to § 1101.71. 79 FR 10721. The Supplemental NPR continues to propose most of these changes.

The Supplemental NPR proposes to remove from § 1101.71 all references to Commission delegation of authority to the Secretary and/or his or her designees. These proposed revisions reflect the current organizational structure of the Commission, in which the Secretary reports directly to the General Counsel. The Supplemental NPR also proposes to remove all references to the General Counsel's senior staff designees and the establishment of an Information Group. When making decisions under this section, the General Counsel routinely consults with staff across the Office of the General Counsel, including the Secretary of the Commission.

In addition, the Supplemental NPR proposes conforming changes to align with the statute, paragraph designations in § 1101.71(a), and minor grammatical edits for clarity. For example, in § 1101.71(a), the Supplemental NPR proposes to (1) remove ''release'' and, in its place, add ''disclosure'' and, (2) remove ''firms'' and, in its place, add ''the manufacturer or private labeler.''

III. Public Comment on the 2014 NPR

In the 2014 NPR, the Commission invited comments on the proposed changes to 16 CFR part 1101. The Commission received 24 comments. The comments are available on *www.regulations.gov* by searching under docket number CPSC–2014–0005. This section III responds to significant issues raised by the commenters.

A. General Comment

Comment 1—The Consumer Federation of America (CFA), Consumers Union, Kids in Danger, National Consumers League, Public Citizen, The Safety Institute, and the U.S. Public Interest Research Group (U.S. PIRG) stated that the 2014 NPR proposes moderate revisions to modernize the regulation and to make it more consistent with the statute and industry practice. Although these commenters agreed with the 2014 NPR's provisions, they asserted that the modest changes do not do enough to ameliorate the inherent problem of section 6(b), namely, its obstacles to transparency and the immediate release of crucial product safety information.

Response 1—Section 6(b) imposes unique requirements on the Commission's public disclosure of information, that do not limit other Federal safety agencies. In revising the 6(b) Regulation, the 2014 NPR sought to improve transparency and openness in the Commission's disclosure of information while maintaining compliance with the stringent statutory requirements. The Supplemental NPR proposes additional revisions to increase transparency and prevent unnecessary delays in disclosing critical health and safety information.

B. Comments Addressing Specific Sections of the 6(b) Regulation

i. Insertion of the Word ''Calendar'' Before ''Days'' (§§ 1101.1 (Redesignated § 1101.2) and 1101.22, 1101.23, 1101.25, and 1101.71)

Comment 2—The Outdoor Power Equipment Institute (OPEI) objected to the proposal in the 2014 NPR to insert throughout the 6(b) Regulation the word, ''calendar'', between ''15'' and ''days''. This commenter stated that shortening a manufacturer or private labeler's response period from 15 business days to 15 calendar days would place an additional burden on firms to provide meaningful comments within an already short period.

Response 2—Rather than shorten the time to respond to section 6 notices, this proposed revision reflects CPSC's practice since November 2008, when the Commission published a final rule to revise CFR part 1101 in accordance with CPSIA's 6(b) amendments. 73 FR 72334. As part of these revisions, the Commission amended § 1101.25 and replaced the words, ''10 working,'' with ''5''. 73 FR 72335. Since then, the Commission has calculated the time for providing notice and for receiving comments under section 6(b) as calendar days.

Currently, however, only 16 CFR 1101.22(a)(1) specifies ''calendar'' days, while the remaining sections in part 1101 that discuss notice and comment timing simply state ''days.'' To remove potential ambiguity, the Supplemental NPR continues to propose inserting ''calendar'' before ''days'' in sections that discuss timing and that do not already refer to ''calendar days.''

ii. The Information Must Pertain to a Specific Product (§ 1101.11(a)(1))

Comment 3—NAM, the Outdoor Industry Association (OIA), and the Upholstered Furniture Action Council (UFAC) objected to the 2014 NPR proposal to delete from § 1101.11(a)(1) the phrase, ''which is either designated or described in a manner which permits its identity to be ascertained readily by the public.'' NAM stated that deleting this phrase would narrow the type of information subject to section 6(b), and OIA maintained that because ''descriptive, contextual or use statements'' will no longer be subject to section 6(b), the Commission may reveal the identity of a product under a trade or brand name without providing a firm with the requisite notice and opportunity to comment. UFAC stated that the Commission should reconsider its proposal in the context of rulemaking. According to UFAC, some stakeholders provide information during a rulemaking with the intent of impacting negatively entire product categories.

Response 3—The commenters' belief that the 2014 NPR proposal would narrow the type of information that triggers section 6(b)'s requirements, is mistaken. Section 6(b)(1) requires the Commission to provide a manufacturer or private labeler with advance notice and opportunity to comment on the information, ''if the manner in which such consumer product is designated or described in such information *will permit the public to ascertain readily the identity of such manufacturer or private labeler.*'' 15 U.S.C. 2055(b)(2) (emphasis added). This statutory provision is currently reflected in § 1101.11(a)(4), which the Supplemental NPR proposes to redesignate as § 1101.11(a)(2) and to revise with minor edits. Proposed § 1101.11(a)(2) now reads: ''The manner in which the consumer 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).'' In addition, § 1101.11(a)(1) of the current 6(b) Regulation contains the following additional requirement that serves to limit the types of intended disclosures that obligate the Commission to satisfy the requirements of section 6(b)(1): ''The information must pertain to a specific product which is either designated or described in a manner which permits its identity to be ascertained readily by the public.'' Thus, under the current regulation, pursuant to § 1101.11(a)(1) and (4), section 6(b)(1) notice and opportunity to comment apply only if the public could ascertain readily both the identity of the manufacturer or private labeler and the identity of the product from the face of the information proposed to be disclosed. The requirement in § 1101.11(a)(1) could result in instances where the Commission does not provide 6(b)

notice and opportunity to comment because the public could ascertain readily, from the information proposed for disclosure, only the identity of the product's manufacturer or private labeler, but not the identity of the product itself.

Despite the 6(b) Regulation, the Commission does not believe the statutory language supports this approach. Accordingly, the Supplemental NPR proposes to delete § 1101.11(a)(1) to adhere more closely to the statutory language and provide for greater use of the section 6(b) procedures.

Regarding rulemakings, the Commission recognizes that stakeholders may have differing views on a proposed consumer product safety regulation. However, the Commission will not apply the requirements of section 6(b)(1)–(3) of the CPSA to a rulemaking proceeding because such proceedings are specifically exempt. Section 6(b)(4)(B) of the CPSA states that the requirements of section 6(b)(1)–(3) shall not apply to the 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).'' 15 U.S.C. 2055(b)(4)(B).

iii. Removal of the Phrase, ''Individual Members, Employees, Agents, Contractors or Representatives of the Commission Acting in Their Official Capacities'' (§ 1101.11(a)(2))

Comment 4—TIA observed that the 2014 NPR's proposal to remove from § 1101.11(a)(2) the phrase, ''individual members, employees, agents, contractors or representatives of the Commission acting in their official capacities,'' could cause these individuals to believe that they are no longer subject to section 6(b).

Response 4—Section 6(d)(2) of the CPSA states that the ''provisions of [section 6] shall apply whenever information is to be disclosed by the Commission, any member of the Commission, or any employee, agent, or representative of the Commission in an official capacity.'' 15 U.S.C. 2055(d)(2). This statutory restriction on the Commission and specified individuals appears in § 1101.11(a)(3), which the Supplemental NPR proposes to redesignate as § 1101.11(a)(1) and to revise with minor edits to conform to the statute. Addressing the commenter's concern, revised § 1101.11(a)(1) would read: ''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).''

iv. Inclusion of Reports of Harm in the List of Information Not Subject to Section 6(b)'s Notice and Comment Requirements (§ 1101.11(b)(6) (Redesignated § 1101.11(b)(5))

Comment 5—CFA, Consumers Union, Kids in Danger, National Consumers League, Public Citizen, The Safety Institute, and U.S. PIRG supported the 2014 NPR's proposal to add reports of harm posted on *SaferProducts.gov* to the list of information not subject to section 6(b)(1). These commenters state that reports of harm posted to *SaferProducts.gov* specifically fall outside the statutory requirements of section 6(b). Several of these commenters also noted that the Commission should not have to ''spend resources hiding information that either has already been disclosed by the agency or available elsewhere.''

On the other hand, the Juvenile Products Manufacturer's Association (JPMA), NAM, and TIA objected to the 2014 NPR's proposal to add reports of harm posted on *SaferProducts.gov* to the 6(b) Regulation's list of information not subject to section 6(b)(1). TIA asserted that the exclusion from section 6(b) for reports of harm applies ''only within the confines'' of *SaferProducts.gov* and ''subject to the express disclaimers provided therein.'' Letter from Toy Industry Association, Inc. (Apr. 28, 2014); *see also* Letter from National Association of Manufacturers (Apr. 28, 2014) (asserting that 6(b) exclusion does not apply to ''alternative disclosures of information contained in the report''). According to these associations, the Commission's proposal to categorically exclude reports of harm from section 6(b) procedures creates fairness issues. JPMA further stated that excluding from the section 6(b) requirements disclosure of a report of harm that is responsive to a FOIA request deprives a firm of the right to challenge the accuracy, fairness, or responsiveness of the document.

Response 5—This Supplemental NPR adopts the 2014 NPR's proposed revision. Reports of harm posted on *SaferProducts.gov* are explicitly excluded from the scope of the statutory 6(b) requirements by statute and the Commission's current regulations. *See* 15 U.S.C. 2055a(f)(1) (excluding from section 6(b) reports of harm published to *SaferProducts.gov*); 16 CFR 1102.44(a) (''Sections 6(a) and 6(b) of the CPSA shall not apply to the submission, *disclosure,* and publication of information provided in a report of harm that meets the minimum requirements for publication in § 1102.10(d) in the Database'' (emphasis added)).

Once posted to *SaferProducts.gov*, reports of harm are readily available to the general public. Consequently, the Commission will treat such reports in accordance with the Commission's proposed approach for publicly available information. As discussed in section II.C.2.b.ii above, under this approach, the Commission could release reports of harm or information contained in such reports, without notice under section 6(b)(1), if the Commission does not characterize the information contained in the report or also release other information that is subject to section 6(b)(1), and the Commission's use of the *SaferProducts.gov* information is accurate and not misleading.

JPMA's argument that excluding a report of harm deemed responsive to a FOIA request from the section 6(b) process deprives a firm of the right to challenge the accuracy of the document is without merit. Pursuant to section 6A(c) of the CPSA, the Commission must transmit a report a harm to a manufacturer or private labeler identified in a report and provide such firm with an opportunity to submit comments on the information contained in the report, including claims regarding accuracy. 15 U.S.C. 2055a(c)(1), (2), (4); 16 CFR 1102.12, 1102.20(a), 1102.26. If the Commission determines that the information is materially inaccurate, the Commission must: (1) decline to add the materially inaccurate information to *SaferProducts.gov;* (2) correct the materially inaccurate information in the report and add the report to *SaferProducts.gov;* or (3) add information to correct inaccurate information in *SaferProducts.gov.* 15 U.S.C. 2055a(c)(4)(A); *see also* 16 CFR 1102.26 (interpreting statutory requirement).

Although section 6A(f)(1) of the CPSA specifically excludes from the 6(b) notice and comment requirements reports of harm that are published on *SaferProducts.gov*, this provision is silent regarding reports of harm that do not meet the criteria for publication. 15 U.S.C. 2055a(f)(1). For reports of harm that the Commission has not published on *SaferProducts.gov*, the Commission will provide firms with the requisite 6(b) notice.

Comment 6—JPMA noted that the Commission should not expend resources to gather and produce information, such as reports of harm published on *SaferProducts.gov*, if such

information is independently available to the FOIA requester.

Response 6—We agree with this comment. One of the purposes of the CPSA is to ''assist consumers in evaluating the comparative safety of consumer products.'' 15 U.S.C. 2051(b)(2). If the Commission receives a FOIA request specifically seeking reports of harm, we will continue our current practice of referring the requester to *SaferProducts.gov* to conduct their own search for this publicly available information.

v. Inclusion of Information That Is Already Available to the Public in the List of Information Not Subject to Section 6(b)'s Notice and Comment Requirements (§ 1101.11(b)(7) (Redesignated § 1101.11(b)(6))

Comment 7—Seven commenters comprising consumer groups, including CFA, Kids in Danger, and U.S. PIRG, supported the 2014 NPR's proposal to include in the list of information not subject to section 6(b)(1) the following: ''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.''

In contrast, 14 commenters, including the Consumer Specialty Products Association (CSPA), Footwear Distributors and Retailers of America (FDRA), and NAM, among others, objected to the 2014 NPR's proposal to include publicly available information in the list of information not subject to section 6(b)(1). In general, these commenters asserted that the Commission's proposal to exclude publicly available information from the notice and comment requirements violates the CPSA. The commenters stated that the 6(b) requirements apply to any information the Commission releases to the public, regardless of the public's pre-existing access to the information.

Response 7—The Commission disagrees with the assertion that section 6(b) applies to information that is already available to the public. Section 6(b)(1) of the CPSA requires the Commission to provide advance notice and an opportunity to comment ''prior to [the Commission's] 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)(1). Black's Law Dictionary defines ''disclosure'' as ''[t]he act or process of making known something that was previously unknown.'' *U.S.* v. *Fei Ye,* 436 F.3d 1117, 1120 (9th Cir. 2006) (citing Black's Law Dictionary 477 (7th ed. 1999)). The Commission's use of publicly available information, such as information in a news article or an academic or scientific journal, does not constitute a ''public disclosure'' under section 6(b) for which notice and opportunity to comment are required, because such information has already been put in the public domain by the Commission or by others.

However, commenters correctly noted that publicly available information, including but not limited to, information that appears on the internet, can be misleading or inaccurate—even intentionally so. Commenters also expressed concern that the Commission's public use of such information may imply that the information is verified, accurate, or reliable.

Taking account of the comments received, the Supplemental NPR proposes a revised approach for information already available to the public. As discussed in section II.C.2.b.ii above, under the revised approach, the Commission will release or identify information that the Commission obtained from publicly available sources only if (1) the Commission does not characterize the publicly available information or relay new information, and (2) the Commission's use of the information is accurate and not misleading. This revised approach provides additional protection against inaccurate or misleading communications from the Commission.

vi. Information Previously Disclosed (Proposed § 1101.11(b)(7)) and §§ 1101.21(b)(7) (Redesignated § 1101.21(b)(6)), and 1101.31(d) (Redesignated § 1101.31(c))

Comment 8—Seven consumer groups supported the 2014 NPR proposal to include the following in the list of information not subject to section 6(b)(1): ''(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 general, these commenters noted that the proposal would save the Commission time and resources.

In contrast, 16 commenters comprising one firm and trade associations, including the Association of Home Appliance Manufacturers (AHAM), JPMA, and the National Retail Federation (NRF), objected to the 2014 NPR proposal. In particular, 12 commenters asserted that the phrase, ''substantially the same,'' is vague and undefined.

Response 8—Section 6(b) does not require a new notice and comment process when the Commission discloses for an additional time, information as to which appropriate notice already has been conveyed and applicable procedures followed. Section 6(b)(1) of the CPSA requires the Commission to provide a manufacturer or private labeler with notice and ''*a reasonable opportunity* to submit comments to the Commission'' on information proposed for release. 15 U.S.C. 2055(b)(1) (emphasis added). Likewise, section 6(b)(6) of the CPSA, which requires the Commission to establish procedures to ensure that information disclosed is accurate and not misleading, applies ''[w]here the Commission *initiates the public disclosure* of information.'' 15 U.S.C. 2055(b)(6). The phrase, ''initiates the public disclosure,'' implies that disclosure constitutes a single event. Moreover, attempting to restrict Commission communications by requiring 6(b) notice and opportunity to comment for each subsequent disclosure would be futile, because the Commission has already disclosed the information to the public in accordance with the section 6(b) requirements, and the Commission does not control who views the previously disclosed information, or how it is further disseminated.

Nevertheless, the Commission agrees with commenters that the proposal announced in the 2014 NPR could be confusing. Upon further consideration, the Commission proposes a different approach for subsequent disclosures of information that should be more straightforward to apply. Under this new approach, the 6(b) Regulation will specify that the requirements of section 6(b)(1) do not apply to: ''Information, not previously disclosed, that in context does not disclose materially more or materially different information about the consumer product than what the Commission previously disclosed in accordance with the law.''

Comment 9—Thirteen commenters comprising one firm and trade associations, including the Fashion Jewelry & Accessories Trade Association (FJATA) and Philips Electronics North America, maintained that renotification for previously disclosed information is critical because: (1) it allows firms to provide new comments on information that the Commission proposes to release again, and (2) a release may be accurate and/or fair at its initial disclosure, but may be inaccurate and/or unfair at a later time, because the firm or the Commission receives or develops new

or additional information, and/or the understanding of information previously disclosed may change.

Response 9—Renotification is not necessary for manufacturers and private labelers to provide the Commission, in the course of its proceedings, with new data or arguments regarding information that CPSC disclosed previously. Regarding commenters' concerns that a subsequent release of information may be inaccurate or unfair, the Commission has an ongoing duty under section 6(b)(7) of the CPSA to ensure that any information it discloses is accurate and not misleading.

Comment 10—The Motorcycle Industry Counsel (MIC) argued that without renotification, firms will not be able to identify staff errors in connection with FOIA requests.

Response 10—The Commission provides firms with two opportunities to review the materials that CPSC intends to disclose in response to a FOIA request. The 6(b)(1) notice includes a copy of the materials that the Commission proposes to disclose to the FOIA requester. This material contains any staff redactions to Personally Identifiable Information (PII) and information subject to Exemption 5 of the FOIA, 5 U.S.C. 552(b)(5), which protects ''inter-agency or intra-agency memorandums or letters that would not be available by law to a party other than an agency in litigation with the agency.'' The 6(b)(2) notice, which informs the manufacturer or private labeler that the Commission disagrees with the firm's inaccuracy objections and will release the documents, includes copies of the final package of materials CPSC intends to disclose to the FOIA requester. These materials incorporate any comments from the manufacturer or private labeler with which Commission staff agrees, and all redactions to the materials, including information considered confidential under section 6(a)(2) of the CPSA. Commission staff also includes with the 6(b)(2) notice a copy of the cover letter to the FOIA requester, explaining the information that the Commission could not disclose. Therefore, firms have several opportunities before the Commission discloses materials to identify staff errors in connection with FOIA requests.

Finally, as already noted, the Commission cannot control further distribution of information it makes public through the section 6(b) process, and thus attempts by manufacturers or private labelers to limit subsequent releases of previously disclosed information could be futile even if they were allowed under the 6(b) Regulation.

Comment 11—FJATA, MIC, and TIA stated that renotification is critical because it allows manufacturers and private labelers to know who requested their information.

Response 11—Renotification is not necessary for a firm to know who submitted a FOIA request for its information. The Commission posts on its FOIA web page FOIA Request Logs, which describe each FOIA request that the Commission receives and identify the FOIA requester (available at *https://www.cpsc.gov/Newsroom/FOIA/FOIA-Request-Logs*).

vii. The Commission Will Provide 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 (§ 1101.13)

Comment 12—The 2014 NPR proposed deleting from § 1101.13 the last sentence, which states, ''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.'' 79 FR 10715. The Coalition for Sound Safety Solutions (CS3), JPMA, MIC, NAM, and NRF objected to this proposal. In general, these commenters stated that the Commission's proposal to remove this sentence implies that the Commission will not provide notice, even when there is ambiguity regarding whether the public could ascertain the identity of the firm. Two of these commenters asserted that the proposed revision conflicts with the statutory language, legislative history, and purpose of section 6(b).

Response 12—We disagree with these comments. The sentence proposed for deletion establishes a subjective standard for section 6(b) notification that would be difficult to apply consistently. It is, moreover, inconsistent with the objective ''reasonable person'' standard the Commission adopted in the first sentence of this section. Under the objective standard, if a reasonable person who lacks specialized expertise can ascertain readily the identity of the manufacturer or private labeler from the information proposed to be disclosed, the Commission will provide such information to the firm for section 6(b) comment. The proposed deletion removes a potential source of confusion around the more easily applied, objective standard.

viii. Electronic Notice and Communication (§§ 1101.21, 1101.22(a) (Removed), 1101.23(c) (Removed), and 1101.25(c) (Redesignated § 1101.25(b))

Comment 13—Commenters on §§ 1101.21, 1101.22(a), 1101.23(c), and 1101.25(c) overwhelmingly supported the 2014 NPR's proposal to authorize electronic 6(b) notices, direct Commission staff to transmit requisite notices through an electronic medium whenever possible, and encourage electronic communication with the Commission. Some commenters sought clarification of the Commission's process for sending the initial 6(b) notice, including whether the Commission will use the business portal (available through *https://www.saferproducts.gov/Business*) for providing notice and receiving comments and whether firms may continue to submit and receive 6(b) communications via U.S. mail and other methods.

Response 13—Currently, when the FOIA Office receives a request for records pertaining to a manufacturer or private labeler, the Commission sends the section 6(b)(1) notice to the firm via secure collaboration software. This notice includes a copy of the FOIA request, with redactions of any PII, and a copy of the records requested, with redactions of PII and any information that falls under FOIA Exemption 5, 5 U.S.C. 552(b)(5). The FOIA Office also uses secure collaboration software to send to the manufacturer or private labeler the section 6(b)(2) notice, a copy of the redacted records, and a copy of the Commission's final letter to the requester. To use the software, the FOIA Office must have the current email address of the firm's representative. If an email address cannot be found, the FOIA Office sends the notice via certified mail.

For other proposed disclosures, such as a ''unilateral'' news release in which the Commission warns consumers about a potential defect or risk without the relevant firm's cooperation, the Commission's current practice is to provide the section 6(b)(1) and (2) notices via email. Where the Commission does not have an email address or the Commission cannot confirm electronic receipt of the notice, Commission staff will provide notice using other methods, including delivery via U.S. mail or other delivery service. *See* proposed § 1101.21(b).

ix. Deletion of the Phrase, ''Upon His or Her Own Initiative Or'' (§ 1101.22(a)(2))

Comment 14—CFA, Consumers Union, Public Citizen, The Safety

Institute, and U.S. PIRG supported the 2014 NPR's proposal to delete the phrase, ''Upon his or her own initiative or,'' from the first sentence of § 1101.22(a)(2), which states: ''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.'' The commenters noted that this is a minor revision to reflect actual practice.

Response 14—The Commission agrees with these comments. Absent a specific request from a manufacturer or private labeler, the Freedom of Information Officer typically has not provided a longer amount of time for a firm to comment. In general, firms are in the best position to initiate a suggestion that additional time may be necessary to provide substantive comments on information that the Commission proposes to disclose.

x. Disclosure of a Firm's Comments (§§ 1101.21(b)(5) (Redesignated 1101.21(b)(4)), 1101.24(c), 1101.31(b) (Redesignated 1101.31(a)), 1101.33(a)(1), and 1101.33(b)(3) (Redesignated 1101.21(b)(4))

Comment 15—CFA, Consumers Union, Kids in Danger, National Consumers League, Public Citizen, The Safety Institute, and U.S. PIRG supported the 2014 NPR's proposal to require manufacturers and private labelers to provide a rationale, such as an applicable statutory or regulatory basis or provision, to support withholding their comments and an explanation why disclosure of the firm's comments is not necessary to ensure that the disclosure of the information that is the subject of the comments is fair in the circumstances. These commenters noted that this proposal will increase transparency unless there is a valid reason for the information to be withheld.

In contrast, 13 trade associations, including the Art & Creative Materials Institute, Inc., FDRA and the Retail Industry Leaders Association (RILA), objected to the 2014 NPR's proposal. These commenters stated that the Commission's proposal would chill cooperation between firms and the Commission, causing manufacturers and private labelers to provide limited comments and data regarding the information proposed for disclosure.

Response 15—When the Commission adopted the 6(b) Regulation in 1983, we stated that a firm's comments may ''clarify questions of accuracy, especially those concerning the factual basis for specific statements and the qualifications of individuals to make certain observations or to express opinions.'' 48 FR 57423. In addition, a firm's comments might ''correct minor inaccuracies although the overall substance of the information to be disclosed is accurate.'' *Id.* For these reasons, instead of requiring of a legal rationale such as a statute or regulation, the Supplemental NPR proposes to more broadly require that the manufacturer or private labeler provide the basis for why it suggests the comments should not be disclosed.

We do not expect that adopting this proposal would reduce the usefulness of information firms provide to the Commission in response to section 6(b)(1) notices. We expect firms to submit detailed comments on the information proposed for disclosure, particularly to make their opposition to the proposal more forceful and credible. Indeed, as the regulation explains, a manufacturer or private labeler's submission ''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.'' 16 CFR 1101.24(a).

Comment 16—FDRA, MIC, FJATA, OIA, CS3, and JPMA argued that the 2014 NPR proposal requiring that manufacturers and private labelers provide a rationale to support withholding their comments violates the CPSA. JPMA stated that although the CPSA requires the Commission to disclose a manufacturer or private labeler's comments upon the firm's request, the CPSA does not similarly require the Commission to disclose a firm's objection when the manufacturer or private labeler objects to disclosure. FJATA stated that the Commission would violate the statute if the Commission released a manufacturer's or private labeler's comments without first assessing whether such release is fair and reasonably related to effectuating the purposes of the CPSA.

Response 16—We do not agree with the comments that the Commission's proposal to release a firm's comments violates the CPSA. Section 6(b)(1) states 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.*'' 15 U.S.C. 2055(b)(1) (emphasis added). Thus, the Commission has discretion in deciding whether to release a firm's comments, to the extent permitted by and subject to the requirements of section 6. As the Commission explained in 1983, disclosure of a firm's comments may help to place the information that the Commission proposes to disclose in the proper context, particularly if releasing the comments helps to assure the accuracy of the underlying information disclosure. 48 FR 57423.

The Commission agrees with the comment that the Commission would violate the CPSA if the Commission discloses a manufacturer's or private labeler's comments without first assessing whether the information contained in the comments is accurate and that disclosure of the comments would be fair and reasonably related to the purposes of the CPSA. Thus, the Commission will not disclose comments that the Commission determines are inaccurate or misleading.

Comment 17—ACMI and MIC argued that the Commission's proposal regarding publication of comments contradicts the legislative history of section 6(b). These commenters cited House Report 92–1153 as evidence that Congress did not intend the Commission to release a manufacturer's or private labeler's comments. House Report 92–1153 states:

> There is no intention that the Commission be required to include a manufacturer's or private labeler's explanation in the materials which it determines to disseminate at the end of the 30-day period. This was suggested to the committee and rejected.

Response 17—The proposal regarding release of a firm's comments is aligned with the cited legislative history. While section 6(b)(1) does not *require* the Commission to disclose a manufacturer's or private labeler's comments, unless that firm specifically requests disclosure, the Commission nevertheless has discretion in deciding whether to disclose a firm's comments absent a specific request from the firm. *See* 15 U.S.C. 2055(b)(1) (''In disclosing any information under this subsection, the Commission *may,* . . . include with the disclosure any comments or other information or a summary thereof.'').

Comment 18—FDRA asserted that section 6(a)(3)–(6) of the CPSA only requires firms to mark information as confidential and does not require that firms provide a statutory or regulatory basis for withholding. MIC maintained that neither Exemption 4 of the FOIA, 5 U.S.C. 552(b)(4), nor section 6(a)(2) of the CPSA, requires a firm to provide a rationale to support withholding of trade secret and confidential commercial information. This commenter also stated that without a guarantee that Exemption 4 of the FOIA will protect trade secrets and privileged or confidential commercial information, firms will not provide comments

containing this information, which could deprive the Commission of relevant information.

Response 18—The proposed revisions to the 6(b) Regulation maintain the protections for trade secret or privileged or confidential commercial or financial information as delineated in the CPSA, the FOIA, and our corresponding regulations. *See also* revised 16 CFR 1101.24(b) (claims of confidentiality). Contrary to the commenters' suggestion, merely marking information as confidential is not sufficient to support a claim of confidentiality. Firms should consult the Commission's FOIA regulation at 16 CFR 1015.18, which specifies the information that a firm must provide with any request for confidentiality, and 16 CFR 1015.19, for additional information on Commission determinations regarding confidentiality requests.

Comment 19—ACMI, the American Apparel & Footwear Association, CS3, OIA, and OPEI stated that the Commission's proposed requirement that a manufacturer or private labeler provide a rationale to support withholding of its comments would create additional burdens for both the Commission and firms. OPEI further observed that the Commission's proposal will not create efficiencies because Commission staff will have to review two documents: (1) an argument against disclosure of the information that is the subject of the FOIA request, and (2) an argument against disclosure of the firm's comments.

Response 19—The Commission believes that any additional burdens that the revised policy might create for firms and Commission staff are minimal and justified by legitimate administrative interests as well as the public benefit from greater transparency about consumer product safety.

xi. Disclosure of Information That Is Attorney Work-Product or Subject to an Attorney/Client Privilege (§ 1101.33(b)(3))

Comment 20—Section 1101.33(b) provides examples of disclosures of information that generally would not be fair in the circumstances. Five commenters comprising consumer groups, including Consumer Union and Public Citizen, supported the 2014 NPR's proposal to delete § 1101.33(b)(3), which covers information that is work-product or subject to an attorney/client privilege. Public Citizen noted that ''[t]he Commission is a government agency, and not an arm, client or legal advisor of manufacturers or their law firms.''

In contrast, eight commenters comprising a firm and trade associations, including OPEI and TIA, objected to the Commission's proposal to remove from § 1101.33(b) information that is attorney work-product or subject to the attorney/client privilege. These commenters stated that this provision encourages firms' candor with the Commission and that removal could chill cooperation. OPEI observed that when the Commission adopted the regulation in 1983, the Commission agreed with a comment that disclosure of attorney work-product and information subject to the attorney/client privilege would be unfair. According to this commenter, ''[n]othing has changed that would now render the disclosure of such information fair.''

Response 20—The Commission is concerned that the current regulation may cause a manufacturer or private labeler mistakenly to believe that information the firm intentionally submits to the Commission that is attorney work-product or subject to the attorney/client privilege will remain privileged. To the contrary, if a manufacturer intentionally submits information that is subject to the attorney/client privilege and later becomes involved in litigation with a third party, including another government agency, a court could conclude that the manufacturer waived the privilege when it voluntarily provided the information to the Commission. Moreover, the Commission does not expect or encourage firms to submit information that is legitimately attorney work-product or subject to the attorney/client privilege.

If a firm inadvertently submits information that is attorney work-product or subject to the attorney/client privilege without intending a waiver, the Commission will treat the information in accordance with applicable authorities governing waiver and inadvertent disclosure. In addition, the firm may request confidential treatment of the information in accordance with the Commission's FOIA regulation at 16 CFR 1015.18.

Comment 21—AHAM maintained that even if the information is no longer privileged, the information could still be confidential, and its release would be unfair. Similarly, TIA argued that this provision is important for protecting from disclosure information that manufacturers or private labelers submit to the Commission in connection with section 15(b) of the CPSA, which also may be referenced by staff in preliminary determinations.

Response 21—The submitting manufacturer or private labeler may still assert that other provisions in the CPSA and corresponding regulations require the Commission to maintain the information as confidential. For example, a manufacturer or private labeler may claim that disclosure of the information under section 6(b)(1) would not be fair because the firm furnished the information to facilitate prompt remedial action or settlement of a case and the firm had a reasonable expectation that the information would be maintained in confidence. 16 CFR 1101.33(b)(1). A manufacturer or private labeler also may assert that disclosure is prohibited under section 6(b)(5) of the CPSA because the firm had identified the information as submitted pursuant to section 15(b) and 16 CFR 1115.13, as explained in revised § 1101.61(b). In addition, a manufacturer or private labeler may contend that section 6(a)(2) of the CPSA prohibits disclosure because the information constitutes trade secret or privileged or confidential commercial or financial information under 5 U.S.C. 552(b)(4).

xii. Information Submitted Pursuant to Section 15(b) of the CPSA and Identified by the Commission Staff Through Publicly Available Sources (§ 1101.63(c))

Comment 22—CFA, Consumers Union, and the Safety Institute supported the 2014 NPR's proposal to revise § 1101.63(c) to state that 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. The commenters maintained that the Commission should not have to use resources to withhold information that is already available to the public.

In contrast, CS3, JPMA, NAM, the Outdoor Industry Council, RILA, and TIA objected to this proposal. In general, these commenters stated that the Commission's proposal violates the CPSA, noting that section 6(b)(5) does not include publicly available information as one of the limited exceptions to that paragraph's extra restriction. The commenters also maintained that the Commission's proposal violates the legislative history of the CPSA. According to TIA, Congress' intent in enacting section 6(b)(5) of the CPSA was to protect information, including publicly available information, that Commission staff did not independently identify or prepare. TIA noted that section 15 reports may reference publicly available

information that was not known previously to the Commission.

Response 22—There is no indication that Congress intended the Commission to withhold from disclosure information that is already available to the public and that appears in a report filed with the Commission pursuant to section 15(b) of the CPSA. In *CPSC* v. *GTE Sylvania, Inc.,* 447 U.S. 102 (1980), the Supreme Court examined the legislative history of the CPSA, including the House Report, and observed that ''[t]he CPSA gave the Commission broad powers to gather, analyze, and *disseminate* vast amounts of *private information*.'' *Id.* at 111 (emphasis added). The House Report on the CPSA states:

> If the Commission is to act responsibly and with adequate basis, it must have complete and full access to information relevant to its statutory responsibilities. Accordingly, the committee has built into this bill broad information-gathering powers. It recognizes that in so doing it has recommended giving the Commission the means of gaining access to a great deal of information which would not otherwise be available to the public or to Government. Much of this relates to trade secrets or other sensitive cost and competitive information. Accordingly, the committee has written into section 6 of the bill detailed requirements and limitations relating to the Commission's authority to disclose information which it acquires in the conduct of its responsibilities under this act.

Id. at 111–112 (citing H.R. Rep. No. 92–1153, p. 31 (1972)).

In enacting the CPSA, in particular section 15(b) and other ''information-gathering'' provisions, Congress authorized the Commission to (1) obtain information that would not be available to the public and (2) protect such information from disclosure. Therefore, information that a firm maintains as confidential and provides in a section 15(b) report, such as test results and the names of manufacturers or suppliers, may be subject to the additional disclosure limitations under section 6(b)(5) of the CPSA. However, information that a person can obtain through a simple internet search or even by entering a retail store that sells the product, such as sales price or product details, is not subject to section 6(b)(5)'s additional disclosure protections.

Comment 23—JPMA and RILA insisted that the Commission should continue to protect from disclosure, under section 6(a)(2) and 6(b)(5) of the CPSA, confidential business information provided in section 15(b) reports.

Response 23—The Commission will withhold under section 6(a)(2) of the CPSA information that a firm considers to be trade secret or privileged or confidential commercial or financial information if the firm submitting the information requests withholding and specifically identifies those sections that must be withheld, and the information meets the statutory and regulatory requirements for withholding. In addition, as discussed in revised § 1101.61(b), the Commission will not disclose information that a firm identifies as submitted pursuant to section 15(b) of the CPSA and 16 CFR 1115.13, unless one of the statutory exceptions applies. If a statutory exception applies, the Commission must still comply with the requirements of sections 6(a) and 6(b)(1)–(3) before disclosing the information.

Comment 24—OIA and NAM maintained that the Commission's disclosure of inaccurate, misleading, or unfair information contained in a section 15(b) report could damage a firm's reputation.

Response 24—The Commission believes that most firms are diligent and thorough in executing their CPSA reporting obligations to the Commission. To the extent that the commenters suggest that the Commission may have reason to believe that a releasable section 15(b) report contains inaccurate, misleading, or unfair information, the Commission will review its release of such submission in accordance with the provisions of section 6(b). *See also* 15 U.S.C. 2068(a)(13) (discussing misrepresentation).

xiii. Voluntary Corrective Action Plans and Remedial Settlement Agreements Under Section 6(b)(5) of the CPSA

Comment 25—Section 6(b)(5) of the CPSA states that, in addition to the requirements of section 6(b)(1), ''the Commission shall not disclose to the public information submitted pursuant to section 15(b) respecting a consumer product unless . . . (B) 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.'' JPMA and TIA asserted that ''[n]either the CPSA nor the regulations equate a 'remedial settlement agreement dealing with [a] product' accepted by the Commission 'in lieu of proceeding against such product [under] 15(c) or (d)' . . . with a voluntary recall corrective action plan where no administrative action is pending or contemplated.'' In addition, NRF urged the Commission to maintain the ''current and long-standing agency practice (if not formal interpretive position) that, in the absence of some other exception under 6(b), all information'' that a firm provides to the Commission under section 15(b) will not be disclosed, regardless of whether the information results in a voluntary recall.

Response 25—The legislative history of the CPSA indicates that Congress did not intend remedial settlement agreements necessarily to be formal written agreements. *See* H.R. Rep. No. 97–208, at 1242 (1981) (''The conferees do not intend that a settlement agreement must be made by a formal written agreement, but rather, for example, may be made by an exchange of letters.''). For nearly 40 years, the Commission has interpreted remedial settlement agreements to include voluntary corrective action plans:

> A voluntary corrective action plan in effect settles a potential administrative or judicial action. Such corrective action can range in scope from adding a label to a product or altering future production to a total recall and publication notification program. *The nature and extent of such an undertaking however does not change the fact that it is a remedial settlement agreement.* 48 FR 57428 (emphasis added).

While section 6(b)(5)'s additional layer of protection may no longer apply to information that a manufacturer or private labeler submits under section 15(b) of the CPSA because the firm and the Commission have agreed to a corrective action plan, the manufacturer or private labeler may still assert that the information must be withheld from disclosure under section 6(a) and 6(b)(1) of the CPSA and the corresponding regulatory provisions.

Comment 26—NRF argued that if the Commission determines that corrective action plans are remedial settlement agreements under section 6(b)(5) of the CPSA, firms will provide the Commission with only ''bare bones'' information under section 15(b). According to this commenter, sharing such limited information with the Commission would ''lead to more protracted and less informed product safety investigations,'' which would jeopardize consumer safety.

Response 26—Tactical submission of only ''bare bones'' information to the Commission in connection with section 15(b), while withholding other information required to be submitted, is prohibited under the requirements of sections 15, 16, 19, and 27 of the CPSA and the corresponding regulations. In addition, we have no reason to believe that restating established policy—that remedial settlement agreements under section 6(b)(5) include corrective action plans—would impact the type and extent of information that firms provide to the Commission under section 15(b).

Section 6(b)(5) of the CPSA creates an *additional* layer of protection from the disclosure of information that a firm submits to the Commission pursuant to section 15(b) of the CPSA. 15 U.S.C. 2055(b)(5) (''In addition to the requirements of paragraph 1 . . .''). Therefore, even if information submitted in connection with section 15(b) is not protected from disclosure under section 6(b)(5) of the CPSA, the information nevertheless may be protected under other withholding provisions specified in the CPSA and the corresponding regulations.

xiv. Firms Can File a Lawsuit To Enjoin the Disclosure of Information

Comment 27—CFA, Consumers Union, National Consumers League, The Safety Institute, and U.S. PIRG expressed disappointment that the proposed rule does not prevent a firm from filing a lawsuit to enjoin the Commission's release of information. These commenters stated that the threat of a lawsuit ''compels CPSC to maintain the secrecy or delay the disclosure of important product safety information.''

Response 27—Congress specifically authorized (1) the manufacturer and private labeler to ''bring an action in the district court . . . to enjoin disclosure of the document'' at issue in a section 6(b)(1) notification, and (2) the district court to ''enjoin such disclosure if the Commission has failed to take the reasonable steps'' established in section 6(b)(1). 15 U.S.C. 2055(b)(3)(A). In any event, the commenters' belief that the Commission withholds releasable information when faced with the threat of a lawsuit is mistaken. The Commission routinely discloses to the public crucial product safety information, even when a manufacturer or private labeler does not agree to conduct a recall or implement another corrective action. In these instances, for example, the Commission may publish a ''unilateral'' press release after complying with the notice and comment requirements under section 6(b) of the CPSA.

xv. Retailers Should Continue To Be Included Among the Firms That Are Covered Under Section 6(b)

Comment 28—RILA stated that the Commission should continue to withhold from disclosure information that retailers, who are not acting as manufacturers, private labelers, or importers of a subject product, provide to the Commission when the Commission contacts the retailer to obtain information regarding (1) an issue that another firm reported to the Commission under section 15(b) of the CPSA or (2) an incident reported to *SaferProducts.gov.* RILA also requested clarification that information a retailer provides in connection with the Retailer Reporting Program, including confidential customer, supplier, and sales data, will remain protected from disclosure under sections 6(a)(2) and 6(b)(5) of the CPSA.

Response 28—Retailers are listed among the entities that must report to the Commission under section 15(b) of the CPSA. 15 U.S.C. 2064(b). Thus, under revised § 1101.63(a), section 6(b)(5)'s additional disclosure limitations apply to information that a retailer identifies as submitted pursuant to section 15(b) of the CPSA and 16 CFR 1115.13, unless one of the exceptions applies.

Before the Commission determines whether particular information proposed for disclosure is confidential, the submitting firm must, among other requirements, specifically identify those portions that the firm claims are confidential and exempt from disclosure. 15 U.S.C. 2055(a)(3); 16 CFR 1015.18, 1015.19(a), 1101.24(b). The Commission will review the information proposed for disclosure, the firm's claims, and applicable authorities, and determine whether the information can be disclosed. 16 CFR 1015.19(a).

xvi. The Commission Should Establish an Appeals Process for 6(b) Determinations

Comment 29—TIA suggested that the Commission create a process within the Office of the General Counsel to enable firms that have received notice to appeal section 6(b) determinations.

Response 29—Section 27(b)(10) of the CPSA, 15 U.S.C. 2076(b)(10), empowers the Commission ''to delegate any of its functions or powers, other than the power to issue subpoenas . . . to any officer or employee of the Commission.'' When the Commission adopted the 6(b) Regulation in 1983, the Commission delegated to the General Counsel ''the authority to render all decisions . . . concerning the release of information subject to section 6(b) when firms have furnished section 6(b) comment,'' except in certain situations. 16 CFR 1101.71(a). The Commission determined that a decision by the General Counsel is a final agency decision and is not appealable as of right to the Commission. 16 CFR 1101.71(c). However, the General Counsel may refer an issue to the Commission for decision under 16 CFR 1101.71(c). Adding an additional appeals process on top of the current Commission process for processing proposed public disclosures would entail additional delay in providing information to the public, that is not justified by a countervailing benefit.

IV. 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. Those regulations provide a categorical exclusion for certain Commission actions that normally have ''little or no potential for affecting the human environment.'' 16 CFR 1021.5(c)(1). Like the 2014 NPR, *see* 79 FR 10721, this Supplemental NPR falls within the categorical exclusion.

V. 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 (IRFA), 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 rules of agency procedure and practice. 5 U.S.C. 553(b). Therefore, the CPSC is not required to prepare an IRFA under the RFA. *See* 79 FR 10721 (discussing IRFA requirement). Moreover, the Supplemental NPR does not propose to establish mandatory requirements for, and would not impose any significant obligations on, small entities (or any other entity or party).

VI. 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 Supplemental NPR proposes to 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 information. The Supplemental NPR does not propose to create information collection requirements. The PRA is not implicated in this proposed rulemaking because the existing rule and the Supplemental NPR do not require or request information from firms, but rather, explain the Commission's procedures for providing firms with an

opportunity to provide voluntary comment on certain information before disclosure. *See* 79 FR 10721.

VII. 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 Supplemental NPR proposes updates to the regulation that interprets section 6(b) of the CPSA and does not seek to issue a consumer product safety standard. Accordingly, section 26 of the CPSA does not apply to this rulemaking. Furthermore, this Supplemental NPR implements a provision of the CPSA that is uniquely applicable to the Commission, and is not enforced by state or local governments. Preemption therefore is not relevant.

VIII. Proposed 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, the APA exempts interpretive rules and statements of policy from the general effective date requirement. 5 U.S.C. 553(d)(2). The Supplemental NPR accordingly proposes to make the final rule, if one is adopted, effective as of the date of its publication in the **Federal Register**.

IX. Request for Comments

The Commission requests comments on all aspects of the Supplemental NPR. Comments must be submitted in accordance with the instructions in the **ADDRESSES** section of the preamble. Comments must be received no later than April 3, 2023.

List of Subjects in 16 CFR Part 1101

Administrative practice and procedure; Consumer protection.

For the reasons set forth in the preamble, 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

Subpart A—Background

Sec.

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

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

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

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

Subpart F—Retraction

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

Subpart H—Delegation of Authority to Information Group

Authority: 15 U.S.C. 2055(b).

Subpart A—Background

§ 1101.1 Scope.

These rules apply to the public disclosure of any information obtained under the Consumer Product Safety Act, 15 U.S.C. 2051–2090 (CPSA), 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), and the Federal Hazardous Substances Act, 15 U.S.C. 1261–1278a (FHSA) (collectively, ''the Acts''), or to be disclosed to the public in connection therewith.

§ 1101.2 General background.

(a) *Basic purpose.* These rules set forth the Consumer Product Safety Commission's policy and procedure under sections 6(b)(1)–(5) of the CPSA, 15 U.S.C. 2055(b)(1)–(5), which relate to public disclosure of any information obtained under the Acts, or to be disclosed to the public in connection therewith, from which the identity of a manufacturer or private labeler of any consumer product can be ascertained readily. In addition, these rules provide for retraction of inaccurate or misleading information the Commission has disclosed that reflects adversely upon the safety of any consumer product, class of consumer 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 prior to its public disclosure of certain firm-specific information and to retract certain information the Commission has publicly disclosed.

(1) Generally, section 6(b)(1) requires, prior to the Commission's public disclosure of any information obtained under the Acts, or to be disclosed to the public in connection therewith, that the Commission, to the extent practicable, provide manufacturers or private labelers with advance notice and opportunity to comment on the information, if the manner in which such consumer product is designated or described in the information permits the public to ascertain readily the identity of the manufacturer or private labeler. Section 6(b)(1) also requires, prior to such public disclosure, that the Commission 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. Disclosure of information may not occur in fewer than 15 calendar days after notice to the manufacturer or private labeler unless the manufacturer or private labeler consents or 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 advance notice requirements. In addition to the requirements of Section 6(b)(1), Section 6(b)(5) creates additional limitations, as well as additional exceptions to these limitations, on the public disclosure of information submitted to the Commission under section 15(b) of the CPSA. Section 15(b) of the CPSA, 15 U.S.C. 2064(b), requires every manufacturer, distributor, and retailer of a consumer product to immediately inform the Commission once the firm obtains information which reasonably supports the conclusion that the product (a) fails to comply with an applicable consumer product safety rule or with a voluntary consumer product safety standard upon which the Commission has relied under section 9 of the CPSA; (b) fails to comply with any other rule, regulation, standard, or ban under the CPSA or any other act enforced by the Commission; (c) contains a defect which could create a substantial product hazard; or (d) creates an unreasonable risk of serious injury or death (see 16 CFR part 1115).

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

(3) Section 6(b)(3) authorizes manufacturers and private labelers to bring lawsuits against the Commission to prevent public disclosure of information after receipt of notice from the Commission designating the date set for release of the information.

(c) *Clearance procedures.* Section 6(b)(6) requires the Commission to establish procedures to ensure that Commission-initiated disclosures of information that reflect on the safety of a consumer product or class of consumer products are accurate and not misleading, whether or not such information would enable the public to ascertain readily the identity of a manufacturer or private labeler.

Subpart B—Information Subject to Notice and Comment 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 comment provisions of section 6(b)(1), information must meet all the following criteria:

(1) 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).

(2) The manner in which the consumer 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).

(3) The information must be obtained, generated or received under the Acts, or be disclosed to the public in connection therewith.

(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 exceptions contained in section 6(b)(4) or (b)(5) of the CPSA (see subparts E and G of this part).

(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 16 CFR 1019.7).

(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) 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 (see subpart E of this rule).

(5) 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.

(6) Information that has already been made available to the public through sources other than the Commission, provided the Commission clearly indicates the source of the information and the Commission's use of the information is accurate and not misleading.

(7) Information, not previously disclosed, that in context does not disclose materially more or materially different information about the consumer product than what the Commission previously disclosed in accordance with the law.

§ 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. However, disclosures of information by such persons are subject to section 6(b).

(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. However, disclosures of information by such officials are subject 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) Persons, including but not limited to, consumers, manufacturers, private labelers, retailers, or distributors, to which the information to be disclosed pertains, or their legal representatives.

(e) Persons, including but not limited to, consumers, manufacturers, private labelers, retailers, or distributors, which 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 CPSA.

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

The advance notice and comment 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 ascertain readily from the information itself the identity of the manufacturer or private labeler of a consumer product at issue in the disclosure. Information about categories of consumer products is not within the scope of section

6(b)(1), provided such information will not permit the public to ascertain readily the identity of the products' manufacturers or private labelers. Information about manufacturers or private labelers is not within the scope of section 6(b)(1), provided such information does not designate or describe a consumer product.

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

§ 1101.21 Form, transmission, and content of notice.

(a) *Notice may be oral or written.* The Commission will generally provide to manufacturers or private labelers written notice and opportunity to comment on information subject to section 6(b)(1), except as provided in § 1101.26. However, if the Commission determines that written notice is impracticable, it will provide notice and opportunity to comment orally, if practicable.

(b) *Electronic transmission.* In the interest of promoting timely notification, the Commission, to the extent practicable, will transmit any notice required under this part via email or other electronic means. If electronic transmission is not practicable or the Commission cannot confirm electronic receipt of the notice, the Commission will take appropriate steps to provide notice using other methods, including delivery via U.S. mail or other delivery service.

(c) *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 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.

(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 the Commission may, and upon the written request of the manufacturer or private labeler shall, include with the disclosure any comments or other information or a summary thereof submitted by such manufacturer or private labeler, to the extent permitted by and subject to the requirements of section 6 of the CPSA.

(5) Notice that the manufacturer or private labeler may request confidential treatment for the information, in accordance with section 6(a)(3) of the CPSA, 15 U.S.C. 2055(a)(3) (see § 1101.24(b)).

(6) A statement that no further request for comment will be sought by the Commission if the Commission intends to disclose information, not previously disclosed, that in context does not disclose materially more or materially different information about the consumer product than what the Commission previously disclosed in accordance with the law.

(7) The name, contact information, 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 Time for comment and requests for extension of time.

(a) *Time for comment.* (1) Generally, manufacturers and private labelers will receive 10 calendar days from the date on which the Commission transmits the notice to furnish comments. Manufacturers and private labelers that receive requests for comments by mail will receive an additional 3 calendar days to comment to account for time in the mail.

(2) The Commission may provide a longer amount of time for comment, particularly for manufacturers and private labelers that receive from the Commission voluminous or complex material to review. 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.* If the Commission has not received a response within the time specified (subject to any extension of time that has been granted under paragraph (c)), the Commission will analyze the information as provided in subpart D and will not give the further notice provided in section 6(b)(2).

(c) *Requests extension of time.* (1) Requests for extension of time to comment on information to be disclosed must be in writing and submitted to the person who provided the Commission's notice and opportunity to comment at least 48 hours before the deadline to respond. If the time for response has been shortened due to a public health and safety finding, no extension will be granted except upon the Commission's own initiative. Requests for extension must explain with specificity why the extension is needed and how much additional time is required.

(2) It is the policy of the Commission to respond promptly to requests for extension of time.

§ 1101.23 Providing less than 15 calendar days' notice before disclosing information.

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 in the following circumstances:

(a) *Manufacturer or private labeler agrees to lesser period or notifies the Commission that the firm has no comment 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 manufacturer or private labeler 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 finds 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 15 calendar days. The Commission will publish the finding in the disclosure itself or elsewhere. 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 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 consumer product or which attributes to the Commission statements about the consumer product that the Commission did not make.

§ 1101.24 Scope of comments Commission seeks.

(a) *Comment in regard to the information.* The section 6(b) opportunity to comment on information permits manufacturers and private labelers to furnish information and data to the Commission that will assist the agency in its evaluation of the accuracy of the information. A manufacturer or private labeler'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 manufacturer's or private labeler's comments on the accuracy of information and the degree of scrutiny 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 that are accompanied by documentation will be given more weight than those that are non-specific 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 information reported to or otherwise obtained by the Commission that contains or relates to a trade secret or other matter referred to in section 1905 of title 18 or 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 1101.24. Such claims must identify the specific information that the manufacturer or private labeler 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 manufacturer or private labeler objects to the disclosure of its comments or a portion thereof, it must notify the Commission at the time the manufacturer or private labeler submits its comments and provide the basis for its request. If the manufacturer or private labeler objects to the disclosure of only a portion of its comments, the firm must identify with specificity those portions that it requests be withheld.

§ 1101.25 Notice of intent to disclose.

(a) *Notice to manufacturer or private labeler.* In accordance with section 6(b)(2) of the CPSA, if the Commission, after following the notice provisions of section 6(b)(1), determines that information claimed to be inaccurate by a manufacturer or private labeler in comments submitted under section 6(b)(1) should be disclosed because the Commission believes it has complied with section 6(b)(1), the Commission shall notify the manufacturer or private labeler that the Commission intends to disclose the information and identify the earliest time at which it intends to do so.

(b) 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 5 calendar days' advance notice either orally or in writing. If written notice is provided, the Commission, to the extent practicable, will transmit such notice via email or other electronic means.

§ 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.* Circumstances when notice and opportunity to comment is not practicable include, but are not necessarily limited to, the following:

(1) When the Commission has taken reasonable steps to assure that the manufacturer or private labeler of any consumer product 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.

(3) When the Commission has been unable, after a diligent search, to obtain contact information for the manufacturer or private labeler of the consumer product to which the information pertains.

(4) When an extraordinary circumstance necessitates the immediate disclosure of information to protect the public health and safety while the Commission simultaneously pursues notification of the manufacturer or private labeler.

Subpart D—Reasonable Steps Commission Will Take To Assure Public Disclosure of Information 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) *Inclusion of comments.* In disclosing any information under this section, the Commission may, and upon the written 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 of the CPSA.

(b) *Explanatory statement.* The Commission may 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. The Commission also may accompany the disclosure with any other relevant information in the Commission's possession that places the disclosed information in context.

(c) *Disclosing materially more or materially different information.* If the Commission intends to disclose information, not previously disclosed, that in context does not disclose materially more or materially different information about the consumer product than what the Commission previously disclosed in accordance with the law, 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 disclosure of information is accurate.

(a) The following types of actions are reasonable steps to assure the accuracy of information that the Commission proposes to disclose 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 that yields or corroborates the information to be disclosed;

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

(3) The Commission staff relies on a statement made under oath, or a similar statement enforceable under penalty of perjury (*e.g.,* 28 U.S.C. 1746), that yields or corroborates the information to be disclosed; or

(4) The person who submitted the information to the Commission 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;

(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;

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

(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) In addition to the reasonable steps specified in § 1101.32(a), the Commission may include the explanatory statement in § 1101.31(b) to assure the accuracy of the information proposed for disclosure.

(c) The steps set forth below are steps the Commission will take to analyze the accuracy of information that the Commission proposes to disclose 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 paragraphs (a) and (b).

(2) As described in subpart C, the Commission will provide a manufacturer or private labeler with a summary or text of the information the Commission proposes to disclose and will invite comment with respect to that information.

(3) If the Commission receives no comments or only general, non-specific comments claiming inaccuracy, the Commission will review the information in accordance with paragraph (a) and disclose 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 manufacturer or private labeler provides specific 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 manufacturer's or private labeler's comments will be directly related to the specificity and completeness of the firm's comments. Specific comments supported by documentation will be given more weight than non-specific 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 disclosure is fair in the circumstances.

(a) The following types of actions are reasonable steps 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 of the CPSA, the Commission may, and upon the written request of the manufacturer or private labeler shall, accompany information disclosed to the public with the manufacturer's or private labeler's comments or other information or a summary thereof. If the manufacturer or private labeler objects to the disclosure of its comments or a portion thereof, the manufacturer or private labeler must provide the basis for its request that the comments not be disclosed.

(2) The Commission may accompany the disclosure of information with an explanatory statement that makes the nature of the information disclosed clear to the public. Subject to the requirements of section 6(b)(1) and other requirements of law, the Commission also may disclose any other relevant information in its possession that will assure disclosure is fair in the circumstances.

(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 that generally would not be fair in the circumstances:

(1) Disclosure of information furnished by a manufacturer or private labeler 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 manufacturer or private labeler has a reasonable expectation that such written materials will be maintained by the Commission in confidence.

(3) Disclosure of a manufacturer's or private labeler's comments or other information or a summary thereof submitted under section 6(b)(1), when the Commission deems the firm has provided a sufficient basis for why the comments should not be disclosed.

§ 1101.34 Reasonable steps to assure information disclosure is ''reasonably related to effectuating the purposes of'' the Acts.

(a) The following types of actions are reasonable steps to assure that the disclosure of information to the public effectuates the purposes of the Acts:

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

(2) *Purposes of the FHSA, FFA, and PPPA.* The Commission will also review information concerning consumer products subject to the FHSA, FFA, or PPPA and to the Commission's specific functions under those acts to determine whether disclosure of information is reasonably related to effectuating the purposes of those acts.

(b) As part of its review of the information proposed for disclosure, the Commission will determine whether the information was prepared or 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.

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 any consumer product with respect to which the Commission has filed an action under section 12 of the CPSA (relating to imminently hazardous products);

(2) Information about any consumer product which the Commission has reasonable cause to believe is in violation of any consumer product safety rule or provision of the CPSA or similar rule or provision of any other act enforced by the Commission; or

(3) Information in the course of or concerning:

(i) a rulemaking proceeding under the Acts;

(ii) an adjudicatory proceeding under the Acts; or

(iii) any other administrative or judicial proceeding under the Acts.

§ 1101.42 Imminent hazard exception.

(a) *Statutory provision.* Section 6(b)(4)(A) provides that the requirements of section 6(b)(1)–(3) 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)–(3) if the information concerns or relates to the consumer product alleged to be imminently hazardous.

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

Section 6(b)(4)(A) provides that the requirements of section 6(b)(1)–(3) 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 of the CPSA 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)–(3) if the information concerning the consumer 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)–(3) 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. Once the exception applies, the Commission may publicly disclose information in the course of the rulemaking proceeding, which is presented during the proceeding, which is contained or referenced in the public record of the proceeding, or which concerns the proceeding, without regard to the requirements of section 6(b)(1)–(3). Documentation supporting the public record is also excepted from section 6(b)(1)–(3). A rulemaking proceeding includes a proceeding to consider issuing, amending, or revoking 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 or addressing the proceeding both after the proceeding has begun and indefinitely thereafter. Therefore, the Commission may at any time publicly disclose information that describes or relates to the substance, process, or outcome of the proceeding. For example, Commissioners may publicly explain their individual votes and any decision rendered by issuing written opinions and making public statements.

§ 1101.45 Adjudicatory proceeding exception.

(a) *Statutory provision.* Section 6(b)(4)(B) provides that the requirements of section 6(b)(1)–(3) do not apply to public disclosure of ''information in the course of or concerning * * * [an] adjudicatory proceeding (which shall commence upon the issuance of a complaint) * * * under this Act.''

(b) *Scope of exception.* This exception applies once the Commission files 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 disclosure during the adjudication of information generated before the adjudication began.

(d) The phrase ''concerning'' refers to information about or addressing the administrative adjudication, both once it begins and indefinitely thereafter. Therefore, the Commission may at any time publicly disclose information that describes or relates to the substance, process, or outcome of the proceeding. For example, (i) Commissioners may publicly explain their individual votes and any decision rendered by issuing written opinions and making public statements and (ii) the Commission may disclose information regarding the effectiveness of any corrective action, such as information on the number of products corrected as a result of a remedial action.

§ 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)–(3) 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 Acts. Proceedings within this exception include without limitation:

(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.

(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 or other pleading is filed and ends when a final decision (including appeal) is rendered with respect to the Commission.

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

(7) A proceeding to obtain a retraction from the Commission pursuant to subpart F of these rules. This

proceeding begins with the filing with the Secretary of the Commission of a request for retraction and ends when the request is denied or, if granted, when the information is retracted.

(c) The phrase ''in the course of or concerning'' shall be interpreted consistent with § 1101.44 (c) and (d) or § 1101.45(c) and (d), as 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 information disclosed by the Commission, any member of the Commission, or any employee, agent, or representative, including contractor, of the Commission in an official capacity, in the course of administration of the Acts.

§ 1101.52 Procedure for retraction.

(a) *Retraction Upon Commission's Own Initiative or Request.* The Commission may publish a retraction of information under section 6(b)(7) upon the initiative of the Commission or upon the request of a manufacturer, private labeler, distributor, or retailer of a consumer product, in accordance with the procedures provided in this section.

(b) *Request for retraction.* Any manufacturer, private labeler, distributor, or retailer of a consumer product may request that the Commission publish a retraction if they believe the Commission, any member of the Commission, or any employee, agent, or representative, including contractor, of the Commission in an official capacity has, in the course of administration of the Acts, 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 a covered firm. The request must be in writing and sent via either electronic mail to *cpsc-os@cpsc.gov* or first class mail addressed to the Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814–4408.

(c) *Content of request.* A request that the Commission publish a retraction must include the following information to the extent it is reasonably available:

(1) The identity and relationship (*i.e.,* manufacturer, private labeler, distributor, or retailer) of the requester.

(2) 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 requester has to assist the Commission in identifying the information. A reproduction of the disclosure (*e.g.,* image, audio or video file, copy of document) should accompany the request, if practicable.

(3) A statement of the specific aspects of the information that the requester believes are inaccurate or misleading and reflect adversely upon the safety of a consumer product or class of consumer products, or the practices of a covered firm.

(4) A statement of the reasons the requester believes the information is inaccurate or misleading and reflects adversely upon the safety of a consumer product or class of consumer products, or the practices of a covered firm.

(5) A statement of the specific action the requester asks the Commission to take in publishing a retraction in a manner equivalent to that in which disclosure was made.

(6) Any additional data or information the requester believes is relevant.

(d) *Commission action on request.* The Commission will act expeditiously on any request that the Commission publish a 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, in the course of administration of the Acts, made public disclosure of inaccurate or misleading information that reflects adversely upon the safety of a consumer product or class of consumer products, or the practices of a covered firm, the Commission will publish a retraction of information in a manner equivalent to that in which the disclosure was made. If publication in a manner equivalent to that in which the disclosure was made is not practicable or could result in further disclosure of the information, the Commission will publish a retraction or take other action in a manner that the Commission determines appropriate under the circumstances and consistent with the purposes of section 6(b)(7).

(e) *Notification to requester.* The Commission will promptly notify the requester in writing of the Commission's decision on the request to publish a 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 that has been identified as submitted pursuant to section 15(b) and 16 CFR 1115.13. The Commission may disclose information submitted pursuant to section 15(b) in accordance with sections 6(a) and 6(b)(1)–(3) if:

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

(ii) In lieu of proceeding against such product under section 15(c) or (d), the Commission has accepted in writing a remedial settlement agreement, including but not limited to, a corrective action plan or consent order, dealing with such product; or

(iii) 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).

(c) *Disclosure upon consent.* The Commission may disclose information submitted pursuant to section 15(b) without following the requirements of section 6(a) or 6(b) if the person who submitted the information under section 15(b) agrees to its public disclosure.

§ 1101.62 Statutory exceptions to section 6(b)(5) requirements.

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

(1) Information with respect to a consumer product which is the subject of an action brought under section 12 (see § 1101.42);

(2) Information 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 (see § 1101.45).

§ 1101.63 Information submitted pursuant to section 15(b) of the CPSA.

(a) Section 6(b)(5) applies to:

(1) Information provided to the Commission by a manufacturer, distributor, or retailer that has been identified by the manufacturer, distributor or retailer as submitted pursuant to section 15(b) and 16 CFR 1115.13;

(2) Any portions of documents generated by the Commission, any member of the Commission, or any employee, agent, or representative, including contractor, of the Commission in an official capacity that contain, summarize or otherwise reveal such information identified as submitted pursuant to section 15(b) and 16 CFR 1115.13; and

(3) Any oral communications made by the Commission, any member of the Commission, or any employee, agent, or representative, including contractor, of the Commission in an official capacity that reveal or refer to information identified as submitted pursuant to section 15(b) and 16 CFR 1115.13.

(b) Section 6(b)(5) does not apply to:

(1) Information independently obtained or prepared, or developed through subsequent investigation and verification, by the Commission, any member of the Commission, or any employee, agent, or representative, including contractor, of the Commission in an official capacity; or

(2) Information that is already available to the public, including but not limited to, information appearing in a company's press statements, websites, Frequently Asked Questions, product user manuals, sales materials, Securities and Exchange Commission filings, or other public statements or documents published or publicly disseminated by a manufacturer, distributor, or retailer.

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:

(1) The authority to render all decisions under this part concerning the disclosure of information subject to section 6(b) when the manufacturer or private labeler furnished section 6(b) comment, except as provided in paragraph (b); and

(2) The authority to make all decisions under this part concerning the disclosure of information under section 6(b) when the manufacturer or private labeler failed to furnish section 6(b) comment or has consented to disclosure, except as provided in paragraph (b).

(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 5 calendar days' advance notice of its intent to disclose information claimed to be inaccurate; and

(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 on delegated authority under paragraph (a) shall not be appealable as of right to the Commission. However, the General Counsel may in his or her discretion refer an issue to the Commission for final decision.

Alberta E. Mills,

Secretary, Consumer Product Safety Commission.

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