

Authority

This notice is being published in accordance with section 516(f), Tariff Act of 1930, as amended (19 U.S.C. 1516(f)), and § 175.31, Customs Regulations (19 CFR 175.31).

Drafting Information

The principal author of this document was Marvin M. Amernick, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Dated: December 23, 1983.

Peter Dispenzire,

Acting Commissioner, (Commercial Operations).

[FR Doc. 83-34560 Filed 12-28-83; 8:45 am]

BILLING CODE 4820-02-M

Internal Revenue Service

[Delegation Order No. 182 (Rev. 3)]

Delegation of Authority; Service Center Collection Branch Managers

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of Authority.

SUMMARY: This delegation order is revised to delegate authority to Service Center Collection Branch managers, GS-9 and above, to execute returns under 26 CFR 301.6020-1(b) when the person required to file such return fails to do so. The text of this delegation order appears below.

EFFECTIVE DATE: December 14, 1983.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Cavuto, OP:C:O, Internal Revenue Service, 1111 Constitution Ave., NW., Room 7539, Washington, D.C. 20224, (202) 566-4445 (Not a Toll Free Telephone Number).

SUPPLEMENTARY INFORMATION: This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury directive appearing in the *Federal Register* for Wednesday, November 8, 1978.

December 2, 1983.

William Wauben,

Acting Assistant Commissioner (Collection).

Order No. 182 (Rev. 3)

Effective date: 12-14-83.

Authority to Execute Returns

The authority granted to the Commission of Internal Revenue, by 26 CFR 301-6020-1(b) and 26 CFR 301.7701-9 to execute returns required by any internal revenue law or regulation made thereunder when the person required to

file such return fails to do so, is delegated to:

1. Revenue Agents;
2. Tax Auditors;
3. Revenue Officers, GS-9 and above;
4. Collection Office function managers, GS-9 and above;
5. Automated Collection Branch managers, GS-9 and above; and
6. Service Center Collection Branch managers, GS-9 and above.

The authority delegated herein may not be redelegated.

Delegation Order No. 182, (Rev. 2), effective March 7, 1983, is superseded.

Dated: November 29, 1983.

Approved:

James I. Owens,

Deputy Commissioner.

[FR Doc. 83-34566 Filed 12-29-83; 8:45 am]

BILLING CODE 4830-01-M

UNITED STATES INFORMATION AGENCY**Reporting and Information Collection Requirement Under OMB Review**

AGENCY: United States Information Agency.

ACTION: Notice of reporting requirement for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed or established reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the *Federal Register* notifying the public that the agency has made such a submission. USIA is requesting a generic clearance of 13 internal forms used in our procurement activities. The forms are intended to supplement procurement regulations which are under revision and which require changes to standard forms. The internal forms are used temporarily until new or revised regulations are codified and standard forms have been reprinted to incorporate the said changes.

DATE: Comments must be received by January 27, 1984.

Copies.—Copies of the request for clearance (SF-83), supporting statement, instructions, transmittal letter and other documents submitted to OMB for review may be obtained from the USIA Clearance Officer. Comments on the item listed should be submitted to the Office of Information and Regulatory Affairs of OMB, attention Desk Officer for USIA.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer, Charles N.

Canestro, United States Information Agency, M/M, 301 Fourth Street SW., Washington, D.C. 20547, telephone (202) 485-8676. And OMB Review: David S. Reed, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503, telephone (202) 395-7231.

SUPPLEMENTARY INFORMATION: Title: Supplemental Procurement Forms. Abstract: The information collection conducted with the use of the subject forms is needed to comply with Federal Procurement Regulations. They are used to evaluate offers, and must be on file to document the offeror's compliance with the solicitation requirements. OMB clearance is sought to cover the period up to April 1, 1984, on which date the new Federal Acquisition Regulations will become effective.

Dated: December 20, 1983.

Charles N. Canestro,

Management Analyst, Federal Register Liaison.

[FR Doc. 83-34606 Filed 12-28-83; 8:45 am]

BILLING CODE 8230-01-M

VETERANS ADMINISTRATION**Agency Forms Under OMB Review**

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains proposed extensions, a revision, a new collection and a reinstatement and lists the following information: (1) The department or staff office issuing the form; (2) The title of the form; (3) The agency form number, if applicable; (4) How often the form must be filled out; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to fill out the form; and (8) An indication of whether section 3504(h) of Pub. L. 96-511 applies.

ADDRESSES: Copies of the proposed forms and supporting documents may be obtained from Patricia Viers, Agency Clearance Officer (004A2), Veterans Administration, 810 Vermont Avenue NW., Washington, D.C. 20420, (202) 389-2146. Comments and questions about the items on this list should be directed to the VA's OMB Desk Officer, Dick Eisinger, Office of Management and Budget, 726 Jackson Place NW., Washington, D.C. 20503, (202) 395-6880.

DATES: Comments on the forms should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: December 23, 1983.

By direction of the Administration.

Dominick Onorato,

Associate Deputy Administrator for Information Resources Management.

Revision

1. Department of Veterans Benefits
2. Consumer Sampling Letter (Questionnaire Quality of Service Rendered)
3. VA Form Letter 27-652
4. On occasion
5. Individuals or households
6. 19,473 responses
7. 3,246 hours
8. Not applicable

New Collection

1. Department of Veterans Benefits
2. Veterans Application for Increased Compensation Based on Unemployability
3. VA Form 21-8940
4. On occasion
5. Individuals or households
6. 20,000 responses
7. 15,000 hours
8. Not applicable

Reinstatement

1. Department of Veterans Benefits
2. Application for Conversion
3. VA Forms 29-358, 29-358d, 29-358e, and VA Form Letter 29-165
4. On occasion
5. Individuals or households
6. 36,308 responses
7. 6,489 hours
8. Not applicable

Extensions

1. Department of Veterans Benefits

2. Claims for Disability Insurance Benefits
3. VA Form 29-357
4. On occasion
5. Individuals or households
6. 19,440 responses
7. 38,880 hours
8. Not applicable

1. Department of Veterans Benefits
2. Request to Employer for Verification of Applicant's Employment and Earning
3. VA Form Letter 26-253
4. On occasion
5. Businesses or other for-profit
6. 45,000 responses
7. 7,500 hours
8. Not applicable

1. Department of Veterans Benefits
2. Request to Employer for Employment Information in Connection with Claim for Disability Benefits
3. VA Form Letter 29-459
4. On occasion
5. Individuals or households
6. 5,294 responses
7. 900 hours
8. Not applicable

1. Department of Veterans Benefits
2. Designation of Beneficiary and Optional Settlement
3. VA Form 29-336
4. On occasion
5. Individuals or households
6. 202,941 responses
7. 34,500 hours
8. Not applicable

1. Department of Veterans Benefits
2. Rider for Application for Home Improvement Loan
3. VA Form 26-1816

4. On occasion
5. Individuals or households, businesses or other for-profit
6. 25 responses
7. 4 hours
8. Not applicable

1. Department of Veterans Benefits
2. Request for Postponement of Offsite or Exterior Onsite Improvements—Home Loan
3. VA Form 26-1847
4. On occasion
5. Individuals or households, businesses or other for-profit, small businesses or organizations
6. 5,000 responses
7. 2,500 hours
8. Not applicable

Extensions, cont.

1. Department of Veterans Benefits
2. Report of Treatment in Hospital
3. VA Form Letter 29-551
4. On occasion
5. Individuals or households
6. 23,757 responses
7. 7,840 hours
8. Not applicable

1. Department of Veterans Benefits
2. Report of Treatment by Attending Physician
3. VA Form Letter 29-551a
4. On occasion
5. Individuals or households
6. 23,757 responses
7. 7,840 hours
8. Not applicable

[FR Doc. 83-34403 Filed 12-28-83; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register

Vol. 48, No. 251

Thursday, December 29, 1983

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

Issued: December 22, 1983.

William J. Tricarico,

Secretary, Federal Communications Commission.

[S-1802 Filed 12-27-83; 11:46 am]

BILLING CODE 6712-01-M

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1

FEDERAL COMMUNICATIONS COMMISSION

December 21, 1983.

Fcc to Hold Closed Commission Meeting, Tuesday, January 10th Following Oral Argument.

The Federal Communications Commission will hold a Closed Meeting on Tuesday, January 10, 1984, for the purpose of issuing instructions to the staff following oral arguments in the Chicago cellular proceeding (CC Docket No. 82-721) and the Pittsburgh cellular proceeding (CC Docket No. 82-796).

Oral Argument, which is open to the public, is scheduled to start at 9:30 A.M. for Pittsburgh and 11:00 A.M. for Chicago, in Room 856, 1919 M Street, NW., Washington, D.C. (See News Release of December 8, 1983, No. 17787).

The Closed Meeting will take place at the same address after the conclusion of the Oral Argument. This meeting is closed to the public because of the disposition of adjudicatory proceedings (See 47 CFR 0.603 (j)).

The following reasons are expected to attend this meeting:

Commissioners and their Assistants
Managing Director and members of his staff
General Counsel and members of his staff
Chief, Common Carrier Bureau and members of his staff
Chief, Office of Public Affairs and members of his staff

Action by the Commission December 20, 1983. Commissioners Fowler, Chairman; Quello, Dawson, Rivera and Patrick voting to hold this Closed Meeting.

Additional information concerning this meeting may be obtained from Maureen Peratino, FCC Public Affairs Office, telephone number (202) 254-7674.

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FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 10:00 a.m. on Friday, December 23, 1983, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. Doyle L. Arnold, acting in the place and stead of Director C. T. Conover (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Application of First Savings Company of Fremont, Fremont, Nebraska, an operating noninsured industrial bank located at 2340 North Clarkson Street, Fremont, Nebraska, for Federal deposit insurance.

Application of First State Savings Company, LaVista, Nebraska, an operating noninsured industrial bank located at 7201 South 84th Street, LaVista, Nebraska, for Federal deposit insurance.

Application of Barnett Bank of St. Johns County, St. Augustine, Florida, for consent to establish remote service facilities at Ponce de Leon Mall Shopping Center, U.S. Highway 1 South, St. Augustine, Florida, and at St. Augustine Beach and Tennis Resort, 1981 A1A South, St. Augustine, Florida.

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 45,872-L—The Rocky Mountain Bank, Lakewood, Colorado

Case No. 45,879-L—Franklin National Bank, New York, New York

Memorandum and Resolution re: Implementation of Cooperative Examination Program with the Office of the Comptroller of the Currency

Reports of Committees and Officers:

Report of the Director, Office of Corporate Audits and Internal Investigations:

Audit Report re: Heritage Bank, Ashland, Oregon AP-343 (dated December 15, 1983)

By the same majority vote, the Board further determined that no earlier notice of these changes in the subject matter of the meeting was practicable.

Dated: December 23, 1983.

Federal Deposit Insurance Corporation.

Alan J. Kaplan,

Deputy Executive Secretary.

[S-1800-83 Filed 12-27-83; 11:46 am]

BILLING CODE 6714-01-M

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FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Changes in Subject Matter of Agency Meeting.

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 10:30 a.m. on Friday, December 23, 1983, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. Doyle L. Arnold, acting in the place and stead of Director C. T. Conover (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Application of Citicorp Person-To-Person Financial Center of Utah, Salt Lake City, Utah, an operating noninsured industrial bank located at 10 West First South, Salt Lake City, Utah, for Federal deposit insurance.

Application of Bank of Commerce, Morristown, Tennessee, and insured State nonmember bank, for consent to merge, under its charter and title, with City and County Bank of Jefferson County, White Pine, Tennessee, and Southern Industrial Banking Corporation, Knoxville, Tennessee, and for consent to establish the sole office of City and County Bank of Jefferson County and the nine offices of Southern Industrial Banking Corporation as branches of Bank of Commerce.

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 45,847-L (Amended)—United American Bank in Hamilton County, Chattanooga, Tennessee; and United

American Bank in Knoxville, Knoxville, Tennessee
 Case No. 45,878-L—First National Bank of Oak Lawn, Illinois
 Memorandum re: Office of Corporate Audits and Internal Investigations

The Board further determined, by the same majority vote, that no earlier notice of these changes in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5

U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: December 23, 1983.

Federal Deposit Insurance Corporation.

Alan J. Kaplan,

Deputy Executive Secretary.

[S-1901-83 Filed 12-27-83; 11:46 am]

BILLING CODE 6714-01-M

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INTERNATIONAL TRADE COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, January 12, 1984.

PLACE: Room 117, 701 E Street, NW., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

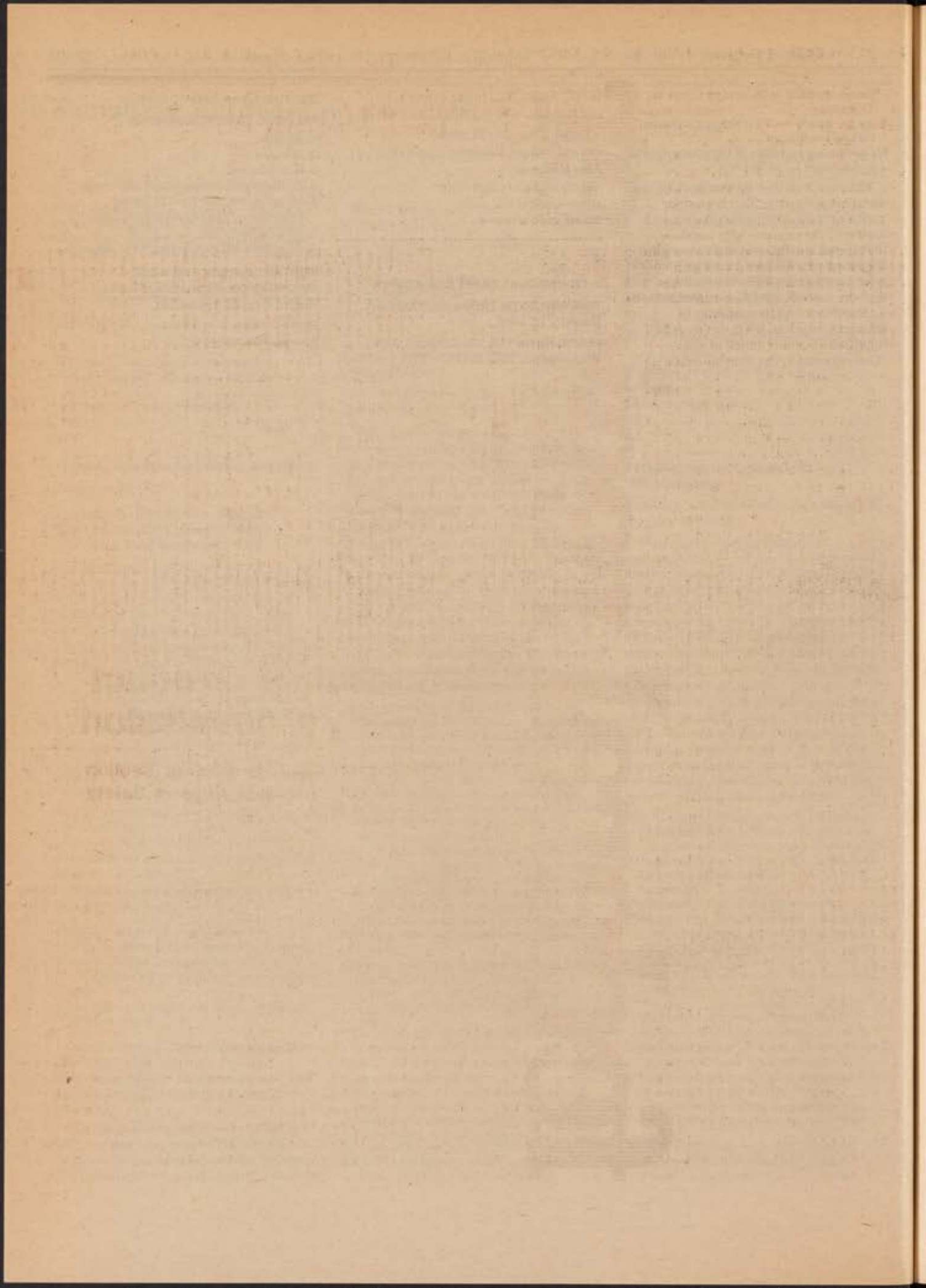
1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and complaints, if necessary.
5. Investigation 731-TA-125 [Final] (Potassium Permanganate from China)—briefing and vote.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE

INFORMATION: Kenneth E. Mason, Secretary; (202) 523-0161.

[S-1903-83 Filed 12-27-83; 1:50 pm]

BILLING CODE 7020-02-M



Registered Federal Reporter

Thursday
December 29, 1983

Part II

Consumer Product Safety Commission

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

CONSUMER PRODUCT SAFETY COMMISSION**16 CFR Part 1101****Information Disclosure Under Section 6(b) of the Consumer Product Safety Act**

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Consumer Product Safety Commission publishes a final interpretive rule containing its policy and procedure for disclosing to the public information from which the public can readily ascertain the identity of the manufacturer or private labeler of a consumer product. The rule interprets section 6(b) of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2055(b), which limits the Commission's authority to disclose such product-specific information to the public. The rule explains how the Commission will carry out its section 6(b) responsibilities to give manufacturers and private labelers notice of proposed information disclosures and to take reasonable steps to assure the accuracy of the information to be released, the fairness of the release under the circumstances, and the release will be reasonably related to effectuating the purposes of the statutes the Commission administers.

EFFECTIVE DATE: This rule shall be effective on December 29, 1983.

FOR FURTHER INFORMATION CONTACT: Michael J. Gidding, Office of the General Counsel, 301-492-6980 or Todd Stevenson, Freedom of Information Officer 301-492-6800, Consumer Product Safety Commission, Washington, D.C. 20207.

SUPPLEMENTARY INFORMATION: On November 5, 1982, the Commission published a proposed interpretive rule setting forth the policy and procedure it proposed to follow under section 6(b) of the CPSA when releasing to the public information from which the identity of the manufacturer or private labeler of a consumer product could be readily ascertained. In the proposed rule, the Commission attempted to strike a balance between the right of the public to obtain information from the government, particularly under the Freedom of Information Act (FOIA), 5 U.S.C. 552, and the rights of manufacturers and private labelers ("firms" or "manufacturers") under section 6(b) to receive notice, to have an opportunity to comment on information about the products they manufacture or private label, and to have the

Commission take reasonable steps to assure the accuracy and fairness of the information to be disclosed and that disclosure is reasonably related to effectuating the purposes of the acts the Commission administers.

The Commission received thirty-four comments in response to the proposal. The majority of the commenters were trade associations and consumer organizations.

In general, the consumer organizations supported the proposed rule on the grounds that it struck a reasonable balance between the rights of the public and the rights of identified firms. However, industry commenters objected to at least some portions of the proposed rule. The industry objecters generally contended that the rule did not go far enough to protect the rights of firms to be secure from inaccurate or misleading information disclosures. These commenters contended that the proposed rule gave the Commission too much discretion to determine when section 6(b) does not apply to the disclosure of information.

Many industry commenters expressed concern that the Commission did not undertake to restrict disclosure from people, such as product liability attorneys or competitors, who might seek to use the information in a manner that could prejudice a firm's product.

The Commission found many of the specific industry comments helpful and has revised the final rule in a number of places to reflect these comments. The Commission believes, however, that its obligation under the statute to take reasonable steps to assure accuracy need not meet the exacting standard of demonstrating to a certainty that the information to be disclosed is accurate and not misleading. The Commission does not believe, as many of the industry commenters apparently do, that it must be a guarantor of the accuracy of all information in its possession, especially that which the Freedom of Information Act requires it to release upon request.

In enacting section 6(b) Congress attempted to strike a balance between the right of the public to have free access to the information in the possession of the government while minimizing the possibility that a product might be unfairly disparaged. To accomplish this goal, the Commission believes that Congress contemplated a process by which the Commission, through its own research and investigation and with the assistance of identified firms, would be able to establish prior to disclosure that there was some reasonable and reliable

indication the manufacturer-specific information was accurate. The Commission believes that this final rule gives effect to the letter, spirit and intent of section 6(b). The Commission also believes that Congress did not intend to constrain it from carrying out the broad purposes of the Consumer Product Safety Act (e.g., to disseminate information to consumers on the comparative safety of consumer products and to promote research and investigation of deaths and injuries associated with consumer products) by unreasonably limiting the disclosure of information concerning specific products to only those individuals who will use the information for private purposes not adverse to the interest of the firms.

The Commission is therefore publishing a final rule that does not include many of the extreme measures advocated by some industry commenters. It has, however, revised several sections of the proposed rule to reflect a number of reasonable concerns voiced by commenters. For example, the Commission has modified provisions of the rule governing reasonable steps to assure accuracy, fairness, and reasonable relation to effectuation of purposes in a manner which it believes will be of benefit both to the firms and to consumers.

The specific comments on the proposed rule and the Commission's responses are discussed in the following paragraphs.

Section 1101.1 General Background.

Section 1101.1 contains the general background to the rule. The proposed rule did not include provisions implementing section 6(b)(6) of the CPSA, the provision that requires the Commission to establish internal procedures for the Commission-initiated disclosure of information about consumer products. These procedures are currently set forth in the Commission's internal directive system.

Several commenters felt that the proposed rule should have included such a provision. In addition, many commenters requested that the internal clearance procedures for such information disclosures be published in the *Federal Register* for notice and comment.

Both the types of information covered by affirmative disclosures of information and the procedures the Commission follows to assure that such disclosures are accurate and not misleading under section 6(b)(6) differ substantially from the types of information subject to section 6(b)(1) of the CPSA and from the procedures under sections 6(b)(1) through 6(b)(5)

used to process that information. Accordingly, the Commission declines to include in this rule a provision interpreting section 6(b)(6) of the CPSA. The Commission will separately consider the issue of whether notice and comment are legally necessary or, in the alternative, are desirable for any internal guidance published under section 6(b)(6).

Section 1101.11 General Application of the Provisions of Section 6(b)(1).

(a) Products Not Under Commission Jurisdiction

As proposed, this section limited the applicability of section 6(b) to information pertaining to products within the Commission's jurisdiction where the product was specifically "mentioned" in the information. Eleven commenters stated that the Commission should apply the section 6(b) protections to all product-specific information to be disclosed, even if the Commission lacks jurisdiction over the product mentioned. These commenters objected to using jurisdiction as the determining factor in a decision whether to comply with section 6(b), noting that in many instances jurisdiction over a specific product may be disputed. These commenters foresaw situations arising in which initial decisions that the Commission has jurisdiction over specific products may later be overturned in the courts. If the Commission interpreted section 6(b) as applying only to products within the Commission's jurisdiction, according to the commenters, such decisions would eliminate the section 6(b) protections for firms that had previously enjoyed the benefits of those safeguards.

The proposed rule tracked the statutory language of section 6(b). Nothing in the statute indicates that Congress intended for the CPSC to extend the section 6(b) procedures beyond the jurisdiction of the acts enforced by the agency nor does the CPSC generally retain information on products outside its jurisdiction. To the contrary, when the Commission receives information concerning products outside its jurisdiction, e.g., complaints about automobiles, it generally forwards the information to agencies with appropriate jurisdiction. The agency to whom the information is transmitted is not required by receipt of such information to follow itself the section 6(b) procedures prior to its own disclosure of such information.

In some cases the agency may have information in its files regarding products for which no jurisdictional determination has been made. As a

general matter, the CPSC processes requests for this information in accordance with the section 6(b) procedures as a matter of administrative convenience. In other cases where jurisdiction has been contested and a court has ruled that the agency lacks jurisdiction, most of the information regarding the product will have been introduced into the public record through the judicial proceeding, and so section 6(b) concerns will be minimal.

In the rare case that the CPSC has information in its files which clearly pertains to a product outside agency jurisdiction, the Commission will make a case-by-case determination whether or not to use section 6(b) procedures. However, the agency does not consider itself legally obligated to follow 6(b) procedures for product information regarding items outside its jurisdiction.

(b) Types of Information Subject to Section 6(b)

Several commenters wanted subsection (a)(2) of § 1101.11 expanded to cover information obtained, generated, or received by the Commission. As originally drafted, paragraph (a)(2) of § 1101.11 merely used the word "obtained." In using the word "obtained," the Commission did not intend to limit its responsibilities under section 6(b), but rather intended to cover all information in the possession of the Commission. Accordingly, the Commission has revised § 1101.11 of the final rule to reflect the concerns of those commenters by including the terms "generated or received."

(c) Information Presented in Litigation and Other State Local and Foreign Government Proceedings

One commenter wanted § 1101.11(a)(3) revised to state that public disclosure occurs when the CPSC staff introduces information in litigation and other state, local, or foreign government proceedings. The Commission declines to adopt this suggestion for two reasons. First, the sections of this rule concerning information not subject to section 6(b) and the exemptions from the section 6(b)(1) requirements deal specifically with issues concerning litigation and administrative proceedings. Second, adopting the commenter's suggestion in a blanket fashion would require that evidence prepared by the Commission for use in litigation against a firm be forwarded to and commented on by the firm before submission to the decision-maker. Congress clearly did not intend this result.

Section 1101.11(b) Information Not Subject to Section 6(b)(1)

(a) Disclosures Required by Law; Information in Public Proceedings

The proposed rule listed certain examples of information disclosures to which the Commission believes the requirements of section 6(b)(1) do not apply. These included information disclosures that the law requires the Commission to make publicly available and the filing or presentation of information by the Commission in public proceedings such as administrative hearings and litigation. Four commenters objected to the exemption for information which the Commission is required by law to make publicly available on the ground that there is no statutory basis for the exemption.

The provision concerning information required by law to be made publicly available was designed to deal with export notifications under the acts the Commission administers (15 U.S.C. 2067(b), 15 U.S.C. 1273(d), 15 U.S.C. 1202(c)). Those acts require that not less than 30 days before any person exports to a foreign country a product that violates a consumer product safety rule or a rule under the Federal Hazardous Substances Act (FHSA) or Flammable Fabrics Act (FFA), that is banned under one of the statutes, or that is misbranded under section 2(p) of the FHSA, that person file a statement with the Commission notifying the Commission of the intent to export the product. Upon receipt of the statement, the Commission must notify the government of the country to which export is to be made. The notice must specify the anticipated date of shipment to the country, the port of destination, and the quantity of the product to be exported. The notice must also provide an explanation of the safety standard or ban that the product violates.

The time frames contained in the export provisions conflict with those in section 6(b). An exporter must give the Commission at least 30 days notice that it intends to export the product. The statutes confer no authority on the Commission to prohibit a permissible export for a period beyond 30 days. Section 6(b), however, prohibits the disclosure of information to the public for a period of at least 30 days unless the Commission makes a public health and safety finding. Acceptance of the position that section 6(b) applies to export notifications would create an anomaly by which compliance with section 6(b) would deprive a recipient country of the statutorily-mandated notice. The result is that products the

country might object to receiving would be received and distributed before the section 6(b) process is complete. Because the Commission believes that Congress did not intend this result, the Commission excluded export notices from the provisions of section 6(b). The Commission has not revised this section of the rule.

In addition to the foregoing, although not mentioned in proposed § 1101.11, the Commission is required by law (15 U.S.C. 2076(j)) to furnish to Congress and the President detailed and lengthy reports. The Commission believes that application of section 6(b) to these reports would undermine the ability of the Commission to provide the requisite information to Congress and the President in a timely manner. Accordingly, the Commission has amended the final rule to make it clear that section 6(b) does not apply to information that the Commission is required to report to Congress and the President.

b. Information Presented in Litigation Public Proceedings

Several commenters objected to the exception from section 6(b) contained in the proposed rule for information filed or presented in public proceedings such as hearings or litigation. Most of these commenters claimed that the statutory exceptions from sections 6(b)(1) through (b)(3) for litigation and administrative proceedings is limited by section 6(b)(4) to proceedings or hearings held under the Consumer Product Safety Act. The commenters claimed that the exemption in the proposed rule for information filed during hearings and litigation was too broad and should either be modified to reflect the fact that it applies only to hearings conducted under statutes the Commission administers or should be deleted entirely as being redundant. The commenters noted that § 1101.11(b)(1) of the proposed rule already restated the section 6(b)(4) exemptions.

The Commission believes that these commenter's views are overly restrictive but agrees that the proposed rule was never intended to exempt from the section 6(b) safeguards all information presented in any hearing or proceeding regardless of whether the agency was a party. Accordingly, § 1101.11(b)(4) has been revised to apply only to proceedings or litigation to which the Commission is a party. The Commission has made this revision because the Commission may become involved in litigation not conducted under the acts it administers. For example, the Commission may be named as a third party in private litigation.

Compliance with section 6(b) in these types of cases, however infrequent, could well impede or even nullify the ability of the Commission to effectively defend itself. Nothing in the legislation indicates that Congress intended section 6(b) to apply to litigation. Indeed the converse appears to be true since all adjudicatory and judicial proceedings referenced in the acts administered by the Commission are excepted from section 6(b). The Commission has revised the final rule to reflect that section 6(b) does not apply to information filed or presented in litigation to which the Commission is a party and which is not otherwise subject to the express exceptions of section 6(b)(4).

Section 1101.12 Commission Must Disclose Information to the Public

(a) Persons to Whom Disclosure is Not Deemed to be Public Disclosure

The proposed rule contained a number of examples of disclosures that would not be considered public and therefore would not be covered by section 6(b). These included disclosures to employees, agents, representatives and contractors of the Commission; to state officials commissioned as officers under section 29(a) of the CPSA, 15 U.S.C. 2078(a); to members of the Commission's chronic hazard advisory panels (CHAPs); to other Federal agencies or state or local governments to whom accident and investigation reports are provided under section 29(e) of the CPSA, 15 U.S.C. 2078(e); and to the Chairman or ranking minority member of a Congressional committee or subcommittee having jurisdiction over the matter which is the subject of the information requested.

(1) *Contractors, CHAP members.* Several commenters expressed concern about disclosure to contractors and CHAP members, noting that because these persons are not necessarily under the direct control of the Commission, there is a risk that they might subsequently make a disclosure of the information in the violation of section 6(b). Some suggested that information disclosed to these people be subject to section 6(b) to avoid that danger. Others recognized that, while it would be appropriate for the Commission to furnish these people information without complying with section 6(b), it would be inappropriate for the CHAP members or contractors subsequently to disclose it to the public if the Commission had not complied with the statute.

The Commission must be able to furnish timely and unedited information to its agents and employees. The

Commission also recognizes that firms are entitled to the statutory safeguards if public disclosure of the information is subsequently made by an agent, contractors, or CHAP members. The Commission routinely apprises these individuals of their statutory obligation not to disclose information without the Commission's permission. The Commission will continue to do so. The Commission declines to adopt the suggestion that the rule specify penalties for contractors and CHAP members who violate section 6(b). These are matters covered by the personnel and contracting procedures of the agency, and violations will be dealt with in accordance with those procedures.

(2) *Congressional subcommittees.* One commenter objected to the exemption for the disclosure of information to Congressional subcommittees stating that there was no statutory basis for the provision. In the alternative, the commenter suggested that the Commission include in § 1101.12(g) a statement that disclosure of information to Congressional subcommittees shall be accompanied by a disclaimer, by an explanation that the Commission has not complied with section 6(b), and by a request that the information be treated as confidential and not publicly disclosable until the Commission has complied with its obligations under section 6(b).

As discussed earlier, the Commission believes that making section 6(b) applicable to disclosures of information to Congressional committees and subcommittees could impede the ability of the Commission to provide timely and complete information requested by Congress on specific products or classes of products. The Commission believes that Congress did not intend this effect when it promulgated section 6(b), see, e.g., section 6(a)(7) of the CPSA, which specifies that nothing in the CPSA shall authorize the withholding of information by the Commission from the authorized committees or subcommittees of Congress. Rather the Commission believes that Congress was concerned with disclosures of information to the public. Therefore, the Commission declines to delete this provision. However, as a matter of course, the Commission will place material forwarded to Congressional committees in context by informing the receiving committee when the information disclosed identifies a firm and when the agency has not complied with section 6(b).

(3) *State and local authorities.* The same commenter also had several comments about disclosure of

information to state and local authorities commissioned as officers of the Commission (see section 29(a)(2) of the CPSA) and about the disclosure of accident and investigation reports to other federal, state and local governments (see section 29(e) of the CPSA). Section 29 authorizes the Commission to disclose certain information to federal, state and local authorities without first complying with section 6(b). Those authorities may not make the information public until the Commission has complied with section 6(b).

With regard to commissioned officers, the commenter requested that the exception from section 6(b) apply only when the information provided to the officials is necessary for them to perform their designated function as Commission employees or agents. The commenter also suggested that the rule make it clear that, absent compliance with section 6(b) by the Commission, these officials would not be permitted to disseminate the information to the public. The Commission agrees with these comments and has clarified the rule accordingly.

With regard to the Commission's furnishing information to other federal, state or local agencies, the commenter took the position that the Commission must comply with section 6(b) before releasing to these agencies any investigation reports not prepared by Commission employees or agents, e.g., reports prepared by local fire officials. The commenter noted that, by its terms, section 29(e) applies only to reports made under the CPSA by officers, employees, or agents of the Commission. The commenter further contended that those officials receiving reports under section 29(e) could not disclose them until the Commission had complied with section 6(b).

The Commission agrees with the latter point but believes that the commenter's position on what can be made available to such agencies is too limited. In many instances, as part of the investigation of incidents, Commission investigators collect reports from local officials with expertise in investigating such matters. Those reports are incorporated into the Commission investigator's report. Accordingly when a Commission employee includes such information in a report, the Commission believes that the information is releasable under section 29(c) to federal, state or local agencies notwithstanding the fact that the Commission employee may not have done the investigation himself. In such situations, therefore, the Commission believes that section 6(b) does not

restrain it from disseminating the material to federal, state or local officials. The officials, however, may not disclose the information to the public until the Commission complies with section 6(b).

Section 1101.13 Public Ability to Ascertain Readily Identity of Manufacturer or Private Labeler.

The proposed rule attempted to differentiate between situations in which the public can readily ascertain the identity of a firm from the information to be disclosed and situations in which it cannot. The rule contained two examples of non-public information disclosure: (1) Disclosure from which only a few members of the trade would be able to ascertain the identity of the manufacturer or private labeler; and (2) disclosure that would require research to determine the identity of the manufacturer.

Many commenters questioned both examples. Most suggested that the examples simply be deleted. Some also wanted a statement that, if there were any question as to whether the public could readily ascertain the identity of a manufacturer from information, section 6(b) would apply to that information.

The examples in the proposed rule were intended to be illustrative rather than all encompassing and to reflect how the Commission in practice handles such matters. The Commission agrees with the commenters that there is no effective way in the text of the rule to categorize all situations in which section 6(b) would apply because the public could identify a firm from the information to be disclosed and those in which it would not. For example, the description in the proposed rule concerning members of the trade was intended to deal with the disclosure of generic information concerning a type of product manufactured by a small number of manufacturers, one of whom might be able to identify a competitor's product from the information even though it was not specifically mentioned or described in the disclosure. In that instance, if the information were disclosed to the competitor, the competitor might be able to ascertain the identity of the manufacturer even though members of the general public could not. Similarly, the degree of research necessary to ascertain the identity of a firm is a matter of speculation. The Commission has no way of quantifying or pinpointing precisely when section 6(b) would cease to apply to information because the degree of research necessary to ascertain the firm's identity is so great that the information could be construed

as not identifying or describing a specific manufacturer's product.

There is a practical resolution to this problem which the Commission adopts in this rule. If the manner in which a consumer product is designated or described in information which the Commission plans to disclose publicly is sufficient to permit a firm to be identified readily by a reasonable person, with no specific expertise in the matter, the information will be forwarded to the manufacturer for section 6(b) comment. If it is not, the staff will not give the requisite notice. The Commission has revised the regulation to state that section 6(b) applies when the identity of a manufacturer or private labeler of a product can be readily ascertained by a reasonable person receiving the information in the form in which it is disclosed. Such information includes not only the name of the manufacturer but also any technical description of the product which would permit the public to readily determine the identity of the manufacturer. The staff will not, however, customarily perform research or look beyond the face of the document to determine whether the identity of a manufacturer can be ascertained.

Section 1101.21 Form on Notice and Opportunity to Comment.

(a) Oral Notice

The proposed rule contained a provision stating that the Commission will give oral notice to a firm and request that the firm comment orally when the time for disclosure is of the essence. Five commenters objected to this provision. One claimed it was too vague because it did not provide guidelines or definitions as to when time is of the essence. Two others suggested that a "time-is-of-the-essence" finding would only be appropriate where the Commission has made a public health and safety finding pursuant to section 6(b)(1) that accelerated disclosure is necessary and has published a notice of its finding in the *Federal Register*. Three commenters suggested that, if the Commission gives oral notice, in the interest of fairness the Commission should follow the oral notification with written notice and should permit the firm to submit written comments. These commenters noted that requesting oral comment from the firm could limit the firm's ability effectively to communicate information to the Commission on the accuracy of the material to be disclosed.

The Commission agrees that oral notice under section 6(b) is appropriate only when the Commission makes a

public health and safety finding and publishes that finding in the *Federal Register*. After a public health and safety finding, if the Commission has notified the firm orally and has requested oral comment, the Commission will neither delay the disclosure while it follows an oral notification with a written one nor delay release to await a manufacturer's written response to the Commission's request for comments. The Commission, however, will accept and evaluate written comments from the firm, if the process does not delay a planned disclosure.

(b) Content of Notice

The proposed rule specified the types of information that the Commission will furnish to a firm from which it seeks comment. The rule stated that the Commission will provide the firm with the information that it proposes to release or a summary of that information as section 6(b)(1) expressly permits. The rule further provided that the Commission will inform the firm that its comments or a summary of those comments will be included in any disclosure. In addition, the proposed rule provided that the Commission will generally describe the manner in which the Commission plans to disclose the information, but noted that once the Commission had furnished such a general description, it would not give further notice if it were later to release the same type of information in an abbreviated form. As an example, if the Commission had informed a firm that the information would be disclosed by press release, the agency would not provide further notice if it later released a summary of the press release.

(1) *Summaries of Information to be Disclosed.* A number of commenters expressed concern about receiving only summaries of the information to be disclosed. Some stated that a firm should always receive the actual text of the information; and others recognized that, in some unusual circumstances, providing a summary might be appropriate. Sending summaries of information to firms for comment is statutorily permissible. In the agency's experience, however, it has generally been more fruitful to provide firms with the actual text of what is to be disclosed rather than a summary of that information. Receiving the actual text rather than a summary permits manufacturers to furnish more detailed comment. As a matter of policy, the Commission intends to continue its present practice of sending the actual text insofar as practical. However, the Commission has not deleted the

reference to summaries in the final rule as requested by some commenters because the statute permits summaries of information to be sent to manufacturers.

(2) *Release of Summaries of Manufacturers' Comments.* Five commenters objected to releasing summaries of firms' comments in lieu of disclosing the actual comments. These commenters expressed concern that a summary would not adequately reflect the views of the firm and suggested that the agency, as a matter of policy, release the actual text of the firm's comments or a summary approved by the firm. The Commission generally agrees with these comments. As a matter of practice, the Commission will release the complete text of a firm's comments or, if the firm wishes to prepare a summary, the firm's summary of its comments, provided the summary is received in a timely manner. The Commission, however, will withhold the portion of a firm's comments that concerns information the Commission decides must be withheld under section 6(b). To release that portion of a firm's comments that references withheld information could result in the release of the withheld information. Should the Commission determine that the release of a summary of the firm's comments is appropriate and it is impractical to obtain a summary from the firm or the firm refuses to prepare a summary, the Commission staff will prepare its own summary for release without seeking further comment from the firm, and as a courtesy send a copy to the firm simultaneously with disclosure.

(3) *Summaries of a news release.* Two commenters disputed the example contained in the proposed rule that indicated that if the Commission notified a manufacturer about an intended disclosure of information by means of a news release, the Commission would not provide notification when it subsequently released a summary of the news release. These commenters claimed that the Commission could only release the actual text of the news release, absent prior notification of the intent to release the summary.

The Commission disagrees with these commenters. The provision covering the manner in which disclosure would be made was inserted in the proposed rule solely to inform manufacturers and private labelers of the means by which information would be transmitted to the public. The provision was not to provide them with the power to "clear" or "veto" the text of Commission-initiated releases. Section 6(b) gives firms the

opportunity to comment on the substance of information that the Commission proposes to disclose. The statute itself requires that the Commission provide only a summary of the information. Accordingly, after complying with section 6(b), the Commission has the right to summarize the information it chooses to disclose without providing the firm a second notice and opportunity to comment. The Commission recognizes that it still must take reasonable steps to assure that the information in the summary is accurate, that disclosure is fair in the circumstances, and that disclosure is reasonably related to effectuating the purposes of one or more of the acts it administers.

(c) Disclosing Firms' Comments Under FOIA

One commenter expressed concern about a potential conflict between the Commission's interpretation of the Freedom of Information Act and its statement in § 1101.21(b) that it would notify firms that their comments would be released unless they expressly requested that they be withheld. That commenter noted that the preamble to the proposed rule stated that any Freedom of Information Act request for a manufacturer's comments would be considered under FOIA and section 6(b). The commenter envisioned a situation arising in which a firm's comments could be released in response to an FOIA request even though the firm had specifically requested that the Commission not release the comments. The Commission's response to this comment is discussed in detail in the section of the preamble dealing with reasonable steps to assure that disclosure is fair in the circumstances (§ 1101.33).

Section 1101.22 Timing: Request for Time Extensions.

(a) Comment Period

The proposed rule contained provisions that required each firm to furnish comments within 15 calendar days from the date of the letter in which the Commission transmitted the section 6(b) notice to the firm. This time period was adopted to minimize the conflict between the time periods in section 6(b) and those in the FOIA. Section 6(b) provides for a minimum 30 day period before the public disclosure of information, while the FOIA requires the agency to determine whether to comply with the FOIA request within ten days and immediately to notify the requester of that determination. Section 6(b)

affords grounds for withholding documents under Exemption 3 of the FOIA. The Commission therefore believes that the time frames in the proposed rule were necessary to permit the agency to give timely notice to FOIA requesters of its determination under section 6(b).

Industry representatives took the position that 15 days is an inadequate time in which to respond to a section 6(b) request for comments, especially when manufacturers are expected to provide data and technical analyses. These commenters also objected to the time period running from the date of the Commission's letter rather than from the date of the firm's receipt of the letter. Several suggested that the Commission send its notification letters by certified mail to assure that a firm in fact receives the Commission's notification.

The purpose of the section 6(b) notification is to allow firms to provide meaningful comments and, when possible, data on information the Commission proposes to disclose. The Commission agrees that the time frames in the proposed rule sometimes may be too constrictive. Recognizing that the amount of time necessary to furnish meaningful comments will vary depending on the type and amount of information a firm receives, the Commission has revised the final rule in several respects.

First, firms will be provided a minimum of 20 days from the date the Commission sends a section 6(b) notice for comments on a proposed information disclosure, and three additional days for mailing. If a response is due on a weekend or holiday, the time for comment will be extended to the next working day. Second, the Freedom of Information Officer may extend the comment period, particularly for firms receiving voluminous materials. The Freedom of Information Officer may make the decision on his or her initiative or at the request of the firm receiving the material. A firm believing it needs additional time to comment may contact the Freedom of Information Officer directly to work out an acceptable time period without formally requesting an extension.

In adopting this procedure, the Commission rejects the suggestion of several commenters that the time for comment run from the date a return receipt is signed and returned by a firm. In administering section 6(b), the Commission has already encountered several instances in which the return receipt from a certified letter has been delayed for substantial periods of time. In some cases receipts have never been returned. In the Commission's

experience, tying the time for comment to the return of a signed return receipt may encourage delay in responding to a request for comments.

Sections 1101.23 and 1101.25 Providing Less than 30 Days Notice Before Disclosing Information; Notice of Intent to Disclose.

Sections 6(b) (1) and (2) provide that the Commission may reduce the 30 day time period prior to disclosure and the ten day period for notification to firms before Commission disclosure if the Commission makes a finding that the public health and safety requires a shorter period and publishes that finding in the **Federal Register**. The proposed rule contained examples of situations in which a public health and safety finding might be appropriate. These included the example of the Commission attempting to correct inaccurate or misleading product safety information released by third parties or providing the information to a person who would use it for a safety-related purpose within a time limit. The proposed rule also provided that filing the **Federal Register** notice with the Office of Federal Register for publication was sufficient to permit disclosure and that disclosure need not await actual publication in the **Federal Register**.

(a) Correcting Inaccurate or Misleading Information; Providing Information Where There Are Time Limits

Most commenters objected to the two examples in the proposal. Some maintained that firms can take steps to obtain retraction or correction of inaccurate information released by third parties. Others pointed out that the exemption relating to disclosure of information to persons who will use it for a safety-related purpose within a time limit was so vague that it had the potential to nullify the section 6(b) safeguards.

The Commission intended these only as examples of instances in which a public health and safety finding might be triggered. They are not situations in which there would be an automatic finding. Because of the confusion generated by the examples, the Commission has deleted the second example from the final rule and has revised the first. The revised example applies only to situations in which an individual or firm has mischaracterized statements made by the Commission about a specific product. This most commonly might occur when a product is advertised as being endorsed or approved by the Commission.

Should the Commission learn that a firm's product is the subject of an

inaccurate or misleading statement by a third party and that the statement is based on information provided by the Commission, the Commission will notify the third party and the firm whose product has been disparaged and generally will not attempt publicly to correct the information itself. Should the third party refuse to correct or modify its advertising, the Commission will take appropriate action, including referring the matter to the Federal Trade Commission for action under its deceptive advertising authority.

(b) Health and Safety Finding

The Commission has included in the final rule a statement that a public health and safety finding may be appropriate when the Commission seeks to warn the public quickly because individuals may be in danger from a product hazard or a potential hazard. It has, however, not limited the final rule to make this example the sole instance in which a public health and safety finding may be made. Such a determination depends upon the circumstances surrounding specific information disclosures.

In taking this approach, the Commission declines to adopt the suggestions of several commenters that a public health and safety finding is proper only when there is an imminent hazard to health, a substantial product hazard, an immediate risk of serious injury, or some other degree of actual and immediate severe danger to the public. The Commission notes that information concerning products about which the Commission files an imminent hazard action in court or a substantial product hazard administrative action is specifically exempt from the section 6(b) protections. 15 U.S.C. 2055(b)(4). Thus, Congress did not intend to limit the public health and safety finding only to those types of information. The Commission will review all the circumstances associated with a proposed information disclosure, including the degree of danger and foreseeability of potential injury, in determining whether a public health and safety finding is appropriate.

If the Commission decides that a public health and safety finding is appropriate, firms will still receive the opportunity to comment before the Commission discloses the information. The Commission will also notify the manufacturer or private labeler in advance of the date on which the Commission intends to publish the information in the **Federal Register**. Such notice is consistent with section 6(b)(3), which contemplates that firms

will be notified in advance of disclosure to permit them to seek judicial relief. The Commission notes, however, that the legislative history of section 6(b) provides that actual publication in the **Federal Register** is not a prerequisite to disclosure and that filing of the notice is sufficient to permit disclosure.

Section 1101.24 Scope of Comments Commission Seeks.

The proposed rule included a section designed to give guidance to manufacturers and private labelers regarding the types of information they should provide in response to a request for section 6(b) comments to assist the Commission in evaluating the accuracy of information disclosures. The rule suggested that a firm's comments be specific and accompanied by documentation, where available. The proposal noted that comments of a general nature would not be sufficient to assist the Commission in its evaluation of accuracy.

Several commenters objected to an alleged inference in the proposed rule that firms are required by section 6(b)(1) to submit specific information to the Commission. They noted that the Commission, even in the absence of specific information, is required to take reasonable steps to assure the accuracy of information to be disclosed.

The legislative history of section 6(b) clearly shows a Congressional intent that firms provide adequate information to assist the Commission in evaluating issues of accuracy. Thus, while the Commission may not have legal sanctions against firms that fail to provide specific information, such a failure will normally result in a less detailed Commission review than would the receipt of specific comments. The Commission has modified the final rule to reflect this fact.

Several commenters suggested that, if the Commission found a firm's comments too general, the Commission send a second request for more specific information. The Commission believes that this is duplicative and encourages delay by firms that seek to obstruct disclosure. The Commission has, however, revised the final rule to provide clearer guidance in this area. Thus, the final rule states that the weight accorded a firm's response will depend on the specificity and completeness of the comments and any accompanying documentation. The Commission reiterates that even if a firm's comments are too general to be of assistance to the Commission in its evaluation, the agency will independently review the information in order to comply with the section 6(b)

requirements concerning reasonable steps. However, the degree of independent scrutiny by the Commission will be less comprehensive than that which occurs when the Commission receives specific and complete comments.

The Commission also encourages firms to inform the Commission when they are aware of any additional information needed to place the information to be disclose in context and any other consideration they believe relevant to any of the reasonable steps enumerated in section 6(b). For example, disclosure of a technical report may be unfair in the circumstances if the report is one of a series of reports and disclosure of all of the reports is necessary to place the single report in the proper context. Similarly, the fact that an FOIA requester is a competitor of a firm may be relevant to the issue of the fairness of disclosure.

Section 1101.25 Notice of Intent to Disclose.

Nine commenters suggested that when the Commission notifies a firm it intends to disclose information that the manufacturer states is inaccurate, the Commission should explain its reasons to the firm. Some believed that this would ensure that the Commission had properly understood the firm's position, while others contended it would facilitate judicial review. Three commenters went so far as to claim that the Commission's decision to disclose information over a manufacturer's objections is an adjudicatory determination requiring formal findings of fact. Four commenters requested that, at the time of the notice of intent to disclose, the Commission furnish the firm with a copy of everything it intended to disclose, including draft letters to FOIA requesters and any explanatory statements intended to put information into the proper context.

An information disclosure under section 6(b) is not an adjudicatory decision. As a matter of policy, however, the Commission believes it appropriate, where practicable, to furnish a firm with an explanation of the Commission's decision to disclose information over the firm's objections. The final rule has therefore been modified to provide for such an explanation.

In addition, and as a matter of policy, the Commission believes it appropriate for a firm disputing the accuracy of information to receive copies of everything the Commission proposes to disclose in the format the Commission proposes to use. Of course the

Commission usually will have provided almost all of the information to the firm in the initial section 6(b) notification. Accordingly, the Commission will only furnish objecting firms with new materials, such as letters to requesters, explanatory statements, and materials that have been edited to take into account the firm's section 6(b) comments. Thus the firm will have a fair opportunity to assess all the material the Commission intends to disclose, and the Commission will not need to duplicate materials previously provided to the firm.

Section 1101.26 Circumstances When the Commission Does Not Provide Notice and Opportunity to Comment

(a) Notice Not Practicable; Oral Discussions

Section 6(b)(1) of the CPSA requires that "to the extent practicable" manufacturers and private labelers receive notice and the opportunity to comment before the Commission discloses information. The proposed rule listed examples of situations in which notice and the opportunity to comment might not be practicable. These included the inadvertent disclosure of information during an oral discussion at a Commission meeting or at a meeting with outside parties where the substance of the disclosure could not be previously anticipated, disclosure in testimony during litigation or in depositions, and disclosure in response to a subpoena.

Thirteen commenters urged deletion of the provision covering inadvertent disclosures. One noted that disclosures by Commissioners in the course of a meeting could be potentially damaging to firms. Three commenters pointed out that, if the Commission wished to discuss manufacturer-specific information during the course of a meeting, the Commission could simply close the meeting. One also observed that the Commissioners or staff members could be briefed in advance of meetings, thereby eliminating or reducing the possibility of inadvertent disclosures of manufacturer-specific information.

The Commission agrees that both oral and written disclosures are subject to section 6(b) when the information discussed permits the public to ascertain readily the identity of a firm. The Commissioners and the staff are aware that section 6(b) applies to such discussions. Thus, when it becomes apparent that information subject to section 6(b) will be discussed during a

meeting, the Commission closes the meeting.

Because of the erroneous impression left by the inadvertent disclosure provision of the proposed rule, the Commission has deleted it from the final rule.

Ten commenters objected to the statement in the proposed rule that responding to a subpoena or giving testimony during litigation or in depositions would be occasions in which section 6(b) notification might be impracticable. Two contended that any *de facto* exemption for testimony during litigation should be limited only to litigation under the acts the Commission administers.

The Commission included these provisions merely as examples in which compliance with section 6(b) might be impracticable. They were never intended to be blanket exemptions as interpreted by some commenters. When the Commission receives a subpoena or when testimony is taken by deposition in cases to which the Commission is not a party, the Commission believes it would be rare for the agency to be incapable of complying with section 6(b). As some commenters correctly noted, the Commission may move for a protective order or may move to quash a subpoena *duces tecum* or *ad testificandum* in which the information to be elicited identifies the manufacturer or private labeler of a consumer product. In litigation to which the Commission is not a party, the Commission informs the private litigants deposing Commission employees that section 6(b) applies to manufacturer-specific information. It instructs its employees not to answer questions during depositions which elicit such information unless the Commission has complied with section 6(b). Accordingly, to avoid confusion, the Commission has deleted the examples concerning subpoenas and depositions. The determination of impracticability will, however, have to be made on a case-by-case basis.

If the Commission receives a subpoena issued in litigation to which the agency is not a party and if the Commission elects not to move to quash the subpoena, the Commission intends to file the responsive information under seal with the court issuing the subpoena, along with an explanation that the Commission has not released the information to the requesting party because it has not yet complied with section 6(b). This will permit the court to determine that action is appropriate without engaging the Commission in needless litigation to quash the subpoena on section 6(b) grounds. To initiate the section 6(b) process for

subpoenaed information, the Commission also intends to transmit the subpoenaed information to the manufacturer, if it has not previously done so, at the same time it files the information under seal with the court. If the manufacturer is a party to the litigation in which the subpoena is issued, the opposing party may seek a routine discovery, thereby alleviating some necessity for the Commission's involuntary involvement in that suit.

Oral testimony during litigation to which the Commission is not a party presents a different type of problem. The Commission intends to comply with the requirements of section 6(b) when oral testimony is taken in such cases, to the extent permitted by the court. However, situations arise in which compliance with section 6(b) could subject a Commission employee to contempt for failure to obey an order of the court to give specific testimony. On such occasions it would be impracticable for the Commission to comply with section 6(b). The final rule has been revised to reflect this limited exception.

Section 1101.31 General Requirements

Subpart D of the proposed rule discussed in detail the reasonable steps that the Commission believes are adequate to assure that the information it discloses is accurate, that disclosure is fair in the circumstances, and that disclosure is reasonably related to effectuating the purposes of the acts it administers. Section 1101.31 of the preamble to the discussion of the reasonable steps, discussed generally the requirements which the Commission believed section 6(b) imposes on it in this area.

(a) Release of Summaries of Manufacturers' Comments

Proposed § 1101.31(b) stated that, in disclosing information, the Commission would include the comments of manufacturers or private labelers unless those parties specifically requested the Commission not to include the comments or to include only a designated portion of the comments. One commenter suggested that in the interest of fairness, the Commission should always withhold such comments, absent a specific authorization from the firm to disclose them. The Commission's response to this comment can be found in the section of the preamble discussing § 1101.33, Steps to Assure that Disclosure is Fair in the Circumstances, and will not be repeated here.

(b) Explanatory Statements

Section 1101.31(c) states that, where appropriate, the Commission will

accompany the disclosure of information with an explanatory statement that makes the nature of the information clear to the public and that, to the extent practicable, the Commission will accompany the disclosure with any other relevant information in its possession necessary to place the released information in context. Two commenters wanted the final rule changed to make clear that the explanatory statement is not a substitute for the reasonable steps to assure accuracy. These commenters were concerned that the Commission might release information that it had not taken reasonable steps to assure it was accurate and would avoid its section 6(b) obligation by simply including an explanatory statement that the Commission had not taken such a reasonable step. One commenter also noted that disclosure under these circumstances would not be fair.

The Commission never intended to use the explanatory statement instead of taking reasonable steps to assure accuracy. The Commission has revised the final rule to make this clear.

Two commenters suggested that all explanatory statements and other relevant data be provided to the firm for comment. As a matter of policy, the Commission believes it is appropriate, when the accuracy of information is disputed, to furnish such information to firms. Therefore, insofar as it is practical, the Commission will follow this procedure.

One manufacturer suggested that explanatory statements and additional information accompany disclosure in all cases, not just those where it is appropriate or practicable. The Commission believes that this suggestion misconstrues the intention of the Commission, and it declines to adopt this recommendation. There may be situations in which an explanatory statement is unnecessary to place the material in context and thus would be inappropriate. Furthermore, since the Commission has many data bases and sources of information, it cannot and does not conduct an exhaustive search of headquarters and regional office files to assure that every piece of information germane to a proposed information disclosure is included.

One commenter suggested that, when the Commission proposes to release a summary of a firm's comments, the summary be prepared by the firm and not by the Commission staff. This issue was discussed above with respect to § 1101.21 of the rule.

(c) Requests for Identical Information

Proposed § 1101.31(d) stated that, if the Commission had previously disclosed the identical information that it intends to disclose again, it would not customarily take additional steps to assure the accuracy of the information absent some reason to question its accuracy. Four commenters contended that section 6(b) requires the agency to give notice to the firm each time it proposes to disclose the information. One commenter suggested that the Commission qualify the rule and give section 6(b) notice if the manufacturer or private labeler requests it, if there has been a considerable lapse of the time (for example, three years), or if the Commission itself identifies some factor that would warrant requesting section 6(b) comments again. The Commission concurs with the latter view, with some qualifications.

The Commission frequently receives multiple requests for the same material in a very short time span. At present, the Commission generally complies with section 6(b) for each of these requests. However, this process has dissatisfied firms that repeatedly receive the same material and has imposed a significant burden on the Commission staff with no discernable benefit to the manufacturers. It is in the interest of the manufacturing community and the Commission to conserve the resources of both parties necessary to process such multiple requests. Accordingly, at the time a firm receives the initial section 6(b) notification, the notice will inform the manufacturer that requests for identical information will be processed without further notice to the firm unless the firm specifically requests section 6(b) notice for subsequent disclosures. However, if the Commission itself identifies something that warrants soliciting further section 6(b) comments, the Commission will submit the previously disclosed information to the manufacturer for comment, even though a prior disclosure has taken place in accordance with section 6(b). Thus, the circumstances under which the Commission might fail to provide section 6(b) notice and opportunity to comment for identical information disclosures are limited solely to cases in which firms waive their right to provide additional comment and analysis.

(d) Format of disclosure

One commenter did not oppose the provisions of § 1101.31(d), but requested that the exception apply only to information released in a format identical to that in which the Commission previously disclosed the

information. The Commission agrees in part with this comment, since the format of the disclosure (other than summaries of information previously released) or the intended audience may be of significant interest to the firm and may warrant comment. The Commission has therefore revised the final rule to reflect this change.

*Section 1101.32 Reasonable Steps to Assure Information Is Accurate.**(a) General*

Section 1101.32 of the proposed rule set forth certain measures that the Commission believes constitute reasonable steps to assure the accuracy of information. Listed among these were activities performed by the Commission staff or by qualified outside parties that by their nature gave a reasonable assurance that the information generated by the activities was accurate. (For example, an in-depth investigation conducted by a trained Commission investigator in accordance with agency guidelines and directives and laboratory testing performed by qualified engineering or toxicological personnel in accordance with recognized methods.) Thus, when the information to be disclosed is the product of such an activity, the Commission believes it has satisfied the statutory mandate to take reasonable steps to assure accuracy. To comply with section 6(b), the agency will not, therefore, perform a second investigation or second test to verify the accuracy of the original investigation or test results. The Commission believes that following the latter process is clearly beyond the requirements of section 6(b).

The Commission, however, will evaluate the information in light of its own experience and technical expertise and in light of the comments submitted by firms.

The proposed rule treated information developed by qualified outside parties in the same fashion. If, for example, the Commission obtained a fire investigation report performed by a fire department official or received a report summarizing the results of testing performed by an outside laboratory, the Commission would not then perform its own investigation or testing to confirm the accuracy of the information. However, the Commission staff would review the reports in light of its experience and expertise to ascertain whether the investigatory methods or testing techniques were reasonable in the circumstances and whether the person doing the testing or submitting the report was qualified to do so. Such

scrutiny usually occurs when the staff receives the information, rather than at the time the Commission proposes to release it, although it is reviewed at the time of release.

Many commenters stated that simply because a Commission staff member with the requisite training and qualifications operating in accordance with specific directives or protocols performed an activity that generated the information to be disclosed did not mean that the Commission had taken reasonable steps to assure the accuracy of information. These commenters also objected to the Commission's treatment of an outside investigation conducted by a qualified party as a reasonable step to assure accuracy. While the commenters did not identify precisely what they would regard as a reasonable step to assure accuracy, the general thrust of their comments was to require the Commission to do a second investigation or second test to confirm the accuracy of the original information.

The Commission believes that these commenters have misinterpreted the requirements of section 6(b). Nowhere in the statute is there an indication that the Commission must *guarantee* the accuracy of information it proposes to disclose. The Commission is only required to take *reasonable steps*. To follow the process implied by the commenters would impose a standard inconsistent with the language of the statute and its legislative history.

The Commission's analysis of a firm's comments on information, coupled with the Commission's independent review of the material and the fact that the information was generated by an activity that provides an assurance of accuracy, is more than adequate to meet the reasonable step to assure accuracy requirement. The Commission notes that the degree of independent scrutiny that an individual document receives will, in large part, depend on the nature of the document itself; on the specificity and the completeness of the firm's comments; and on the data accompanying those comments.

(b) Investigation by non-CPSC Employees

Several commenters made specific reference to investigations conducted by qualified personnel outside the Commission. One wanted to exclude from disclosure all information prepared by anyone with a significant commercial interest in the information. The Commission finds no basis in the statute for this position. The fact that a person has such an interest does not necessarily call into question the

accuracy of the data or information he or she has prepared. Of course, a firm is free to note in its comments that the preparer has such an interest. Under some circumstances it may be appropriate for the Commission to accompany disclosure with an explanatory statement to that effect.

One commenter suggested that qualified outside parties who give opinions be required to execute affidavits setting forth the opinions and facts upon which their opinions are based. Under this commenter's approach, the information sent to the manufacturer for comment would not be the technical report or investigation report prepared by the individual but the affidavit. The Commission believes that this approach goes far beyond anything contemplated by section 6(b). Section 6(b) neither requires the Commission to create documents nor imposes a trial standard on the Commission by permitting the disclosure of information only when attested to under penalty or perjury. All that section 6(b) requires is that the Commission take reasonable steps to assure accuracy.

(c) Independent Review of Information

One manufacturer's association submitted extensive comments on proposed § 1101.32. This commenter envisioned firms playing an active role in assisting Commission review through their comments. With respect to documents generated by Commission employees or by persons outside the Commission, it suggested that these be reviewed independently within the agency. As the standard of review, the commenter proposed that the scope of such an inquiry would depend upon the nature of the document; upon the need to clarify the information contained in the document and the circumstances of its preparation; upon the existence of other Commission documents relating to the product in question; and upon the qualifications and expertise of the person preparing the documents.

The Commission notes that these criteria are generally consistent with the current practice of the Commission and with the procedures set out in the proposal. Upon receipt, members of the Commission staff routinely review and analyze such information. The Commission believes that the initial review alleviates the necessity for performing the second review suggested by the commenter. The Commission will, however, undertake further review of such information when it receives specific comments that call into question the accuracy of the information.

(d) Criteria for Evaluation of Accuracy

The same commenter also proposed that documents containing undocumented or unsupported conclusions or assertions or containing information superseded by more recent information, refuted by other information in the Commission's files, rejected by the Commission itself, or inconsistent with Commission positions and policies not be released. Further, with respect to documents prepared by parties outside the agency, the commenter suggested that information not be released if the preparer is unqualified to reach the conclusions or if the information is not based on generally accepted methods of analysis and evaluation.

The Commission agrees in part with this comment. Thus, except as discussed below, the Commission will not disclose undocumented or unsupported information, information refuted by other information in the Commission files, or information rejected by the Commission itself. Detailed comments from firms may be quite helpful in evaluating whether persons outside the Commission lacked the necessary qualifications to draw conclusions and whether the information is based on methods of analyses which are reasonable.

However, if information is simply superseded and not contradicted by more recent documents, the Commission will release all relevant material to permit the recipient to evaluate the information fully. Further, the fact that a document may be inconsistent with the Commission's current position or policy regarding the subject discussed in the document will not necessarily bar disclosure. A document may be completely accurate and still be inconsistent with Commission policy. In such a case the thrust of the Commission's examination would be towards ascertaining whether disclosure is fair in the circumstances and whether disclosure of the information in the proper context would be appropriate.

One trade association suggested that the Commission clarify the regulation to indicate that all documents and all statements whose contents are subject to factual verification are subject to section 6(b). This commenter correctly recognized that legal opinion and information of that nature are not susceptible to review for accuracy. The Commission agrees insofar as the information readily permits the public to ascertain the identity of a specific manufacturer and has clarified the regulation accordingly.

(e) Preliminary Hazard Determinations

One commenter suggested as a definition of a reasonable step to assure accuracy: "that level of objective checking which is appropriate to the seriousness of the complaint." This commenter suggested that the more serious an allegation in a complaint, the more active the Commission's investigation should be. To the extent the comment suggests that the more serious a problem identified, the more reasonable steps the Commission must take, the Commission disagrees. As a practical matter, however, virtually all Commission activities are designed to respond to and to evaluate the seriousness of potential hazards that come to its attention. For example, an explosion hazard, if sufficiently serious, typically becomes the subject of laboratory studies, in-depth investigations, and activities of that nature. An allegation, however, that a product emitted a strange odor may never be subject to investigation, absent an indication of a health hazard. Inasmuch as the daily activities of the Commission comport with the comment, the Commission's position that such activities are in themselves reasonable steps to assure accuracy is consistent with that comment.

The same commenter made comments on the method of evaluating preliminary hazard determinations under section 15 of the CPSA. The commenter suggested that the Commission not disclose preliminary determinations of substantial product hazards made by the enforcement staff unless (1) the Commission has made a formal determination of the existence of a substantial product hazard following an opportunity for an adjudicative hearing under section 15 of the CPSA or (2) the preliminary determination is supported by identifiable evidence such as test data, accident reports, or engineering analyses. The commenter further suggested that, even if a preliminary determination was supported by such evidence, it should not be released when the firm has provided the agency with credible and concrete evidence that calls into question the accuracy of the staff's determination.

The Commission agrees with the basic proposition that a preliminary hazard determination is an opinion that must be supported by factual evidence if it is to be disclosed. The Commission also agrees that when a manufacturer or private labeler submits concrete evidence and data that call into question the accuracy of the staff's preliminary determination, it may be appropriate to

withhold the staff's conclusions. There may be a narrow category of cases in which a staff preliminary determination supported by expert opinion based on the performance of tests and analysis of data is disputed by a firm's comments containing material prepared by an opposing expert. In such a case, the Commission does not believe that the existence of the opposing opinion is sufficient in itself to bar release of the staff determination, absent specific comments demonstrating factual inaccuracies in the tests or analysis supporting the determination. In the interest of fairness and to permit the recipient to understand fully the nature of the information, the Commission would disclose both expert opinions, their supporting data and appropriate explanatory statements.

(f) Materials From Private Litigation

One commenter took the position that materials derived from private litigation should not be released unless the Commission takes reasonable steps to confirm their accuracy. For example, it objected to disclosure of the report of an expert witness in the absence of a Commission evaluation confirming the conclusions and analysis of the expert. Further, under this approach, the Commission would not disclose the testimony of an accident victim unless the Commission were familiar with the entire litigation record and the testimony was neither disputed by other evidence in the record nor challenged by the product manufacturer. As justification for this strict position, the commenter contended that the theories and assertions embodied in litigation materials reflect the biases of litigants with a vested interest in advancing a specific point of view. It also pointed out that the conclusions of witnesses or technical experts may be sharply disputed during the course of trial. The commenter feared that if a case were settled before resolution on its merits, conflicts in testimony would remain unresolved and there would be no obvious basis for accepting one litigant's position and rejecting that of the other. The commenter also expressed concern that transcripts of testimony might, at some stage, become isolated from the remainder of the litigation record, thereby causing an unsuspecting reader not to question their accuracy. Finally, it was concerned that recipients of the information would view disclosure by the Commission as giving a Commission imprimatur to the veracity of the information.

At the crux of these comments is the premise that, to release information from private litigation, the Commission

must conclude that one litigant's position is more correct than that of his or her adversary. This goes too far. The Commission believes a sounder approach is to analyze private litigation material in the same manner as it analyzes other information under section 6(b). For example, the Commission will analyze an expert's report to ascertain whether the methodology is professionally acceptable. It will consider whether opinions in the report are supported by appropriate factual data; it will scrutinize the qualifications of the expert; and it will solicit and take into account the manufacturer's comments. Should the manufacturer choose to submit the entire litigation record or desire the Commission to point out that material is or was the subject of a dispute, the Commission will release the entire litigation record or include an appropriate explanatory statement.

The Commission notes that it is incapable of controlling how people handle information after it is disclosed. If a recipient of a document chooses to isolate a segment or even a sentence of a document, the Commission has no control over such conduct, regardless of whether the document was prepared for private litigation or for one of the Commission's regulatory activities. In contrast to information which the Commission affirmatively disseminates, a passive disclosure (such as that resulting from a Freedom of Information Act request) cannot be construed as carrying the agency's endorsement of the information contained therein. Rather than refusing to disclose such information because of the possibility that it might be misconstrued, it is more appropriate to include with the disclosure an explanation setting forth the Commission's neutrality in the matter.

(g) Weight Accorded Firm's Comments

A trade association proposed that the weight which the Commission affords a manufacturer's comments should depend on the specificity, completeness, and credibility of the comments and supporting documentation. The Commission agrees with this general principle and has incorporated it into the final rule. The final rule, however, does not go as far as the commenter desired in this area.

The commenter suggested that, where a firm presents documented, well-reasoned objections to conclusions, observations, analyses test data and other information, the Commission not disclose the information unless its accuracy has been recognized by the Commission in formal findings adopted

in a rulemaking or adjudicative proceeding.

The Commission believes that the commenter's proposal goes beyond the safeguards contained in section 6(b). When taken literally, the commenter's contention that, to be disclosed, disputed information must be the subject of formal consideration by the Commission is inconsistent with the statutory exceptions to section 6(b) contained in section 6(b)(4). Under that section, information disclosed in the course of or concerning rulemaking and adjudicatory proceedings is exempt from the notice and comment requirements of section 6(b) regardless of accuracy. To require the Commission to recognize the accuracy of information by means of an administrative or judicial proceeding before it can be disclosed renders negatory the statutory exception, of section 6(b)(4).

In a more limited application, however, the Commission agrees that it will often be inappropriate to disclose information when comments and supporting documents specifically call into question the accuracy of information. When the indicia of accuracy of the information are as reliable as those provided by the manufacturer in its comments, the Commission believes it appropriate to release all of the information at issue with an explanatory statement noting the manufacturer's objection or contention.

(h) Staff Review of Technical Comments

A manufacturer's association suggested that when the Commission receives technical comments from a manufacturer in response to a section 6(b) notice, the agency should have it reviewed by a knowledgeable, technically qualified, and unbiased individual who did not participate in preparing the information whose accuracy is at issue.

The Commission agrees in part with this comment. The Commission technical staff routinely evaluates technical comments submitted by firms. To the extent practicable, the individuals who review this material are trained or possess sufficient experience to make a careful and reasoned evaluation. Further, where necessary the Commission encourages the technical staff evaluating comments to communicate with the firm to gain a better understanding of its concerns.

The Commission does not believe, however, that a technical person's participation in preparing document or study disqualifies that person from evaluating the material in light of the

manufacturer's comments. On many occasions, the only person in the Commission with the expertise to perform such an evaluation is the person who prepared the information in the first instance. Indeed, it is illogical for the Commission not to assign a person with expertise in a specific subject matter to a project involving that subject matter. Accordingly, the Commission declines to adopt the suggestion that staff be automatically disqualified from reviewing information they prepared, since this could result in a substantial inability within the agency to review many documents for accuracy.

(i) *Review of Qualifications of Agency Employees*

One commenter suggested amending the proposed rule to require the Commission first to determine that the author of an agency-originated investigation or inspection report is qualified to provide authoritative comment on each substantive area contained in the report. The commenter suggested that a detailed check of the employee's personnel record could achieve this result. If that check was not adequate to ascertain the author's qualifications, the commenter would have the Commission take additional steps to assure accuracy.

In the Commission's opinion, this approach goes beyond the mandate and purpose of section 6(b). The structure of the Commission's organization dictates that assignments be given to qualified individuals. The process of hiring and assignment within the agency in itself gives an assurance that the author of a document is qualified to perform the tests or to make the observations contained therein.

The Commission notes, however, that to be released, all observations capable of factual verification must indicate the bases upon which they are made. Unsubstantiated statements or opinions generally will not be disclosed. Thus, in the case of a Commission field investigation, the facts of an incident will be disclosable. Speculation as to the cause of an accident or the existence of a defect will not customarily be disclosed unless the investigator has the independent expertise and factual basis for making the observations or the observations are the product of an evaluation, supported by factual evidence, conducted by some other qualified person.

(j) *Corroboration of Information to be Disclosed*

Under the proposed rule one reasonable step to assure accuracy was to conduct an investigation or obtain a

technical, scientific or other evaluation that corroborated the product information to be disclosed. Such an investigation or evaluation could be performed either by the Commission staff or by qualified outside parties. As an example, if the Commission received a number of reports that a chemical cleaning product had burned consumers as they used the product, the Commission might test the product for corrosiveness. If the test results showed the product to be corrosive, those results might corroborate the reports of burns.

(1) *Definition of Corroboration.* One commenter suggested that the term "corroborate" be dropped or, in the alternative, that corroborative detail be factual and not just suggestive of credibility. The Commission agrees with the latter point, recognizing that the issue of what is adequate corroboration must be evaluated on a case-by-case basis. The Commission believes that a firm will have ample opportunity to comment on the corroborative value of a given study or an investigation when it furnishes comments pursuant to section 6(b) or when it receives ten days notice prior to disclosure of information.

(2) *Corroboration by Investigation.* Three commenters discussed issues involving corroboration by an investigation. One suggested that an unconfirmed product complaint could be released only if the Commission had corroborated the information contained in it and the firm did not object to release. The Commission believes that a corroborating investigation or technical study is a sufficient reasonable step to satisfy the criterion of section 6(b) concerning accuracy. The firm's rights are protected by its opportunity to comment and provide explanatory data. The suggestion that such information only be released if the firm does not object to disclosure goes far beyond the statute and therefore has not been adopted.

Two commenters expressed concern about the potential biases of non-CPSC employees who have performed studies used to corroborate information subject to section 6(b). One suggested that no person with a significant commercial interest in the information should be permitted to corroborate information.

When the Commission receives the reports of investigations or testing performed by non-Commission employees, it routinely assigns its technical staff to evaluate these reports to assure that the methodology used and circumstances surrounding the tests or investigations are adequate to assure that the observations and conclusions, if any, are accurate and based on scientifically accepted procedures or

other safeguards. This process, in itself, provides an assurance of the reliability of the information should it later be used to corroborate the contents of a product complaint, for example. The Commission notes, however, that it rarely has any way to determine the biases or commercial interests, if any, that the preparer might have in the information. It further notes that the existence of a commercial interest would not, in itself, justify withholding a document on accuracy grounds.

(k) *Solicitation of Manufacturer's Opinion of Steps Necessary to Assure Accuracy*

One commenter suggested that to meet the requirement of taking reasonable steps to assure accuracy, the Commission solicit from the manufacturer of the product identified in the information a description of those steps which the firm believes appropriate to verify the accuracy of the information. The Commission believes that its approach is consistent with this comment because the opportunity for a firm to comment in effect allows the firm to advise the Commission of the steps the firm believes are reasonable to assure the accuracy of the information. While the response will often be couched in the negative (*i.e.*, the firm will dispute the adequacy of the steps taken or the accuracy of the information to be disclosed for a variety of reasons), the dispute itself often defines what the firm believes the requisite steps are. If the firm's comments have merit, the Commission is free to conduct additional research or investigation if appropriate or to withhold the information. However, the Commission will not typically solicit firms' recommendations of what steps the agency must take to assure accuracy.

(l) *In-Depth Investigation Reports*

One commenter expressed concern about the disclosure of the Commission's in-depth investigation reports. This commenter stated that in-depth investigation reports frequently contain uniformed opinion about product design and manufacturing processes and pure speculation about injury patterns and product-associated risks. The Commission agrees that it should excise unsubstantiated opinion and speculation from investigation reports prior to public disclosure. The Commission will attempt independently to evaluate reports so as not to disclose unsupported conjecture. However, a firm's comments may provide the only means by which the Commission can ascertain whether information

concerning manufacturing processes and quality assurance procedures is accurate.

(m) Product Complaints

Section 1101.32(a)(3) discussed the procedures the Commission proposed as reasonable steps to assure the accuracy of uninvestigated product complaints or those not substantiated by testing or other technical data. The proposal contemplated three separate elements in the test for accuracy.

(1) *Confirmation.* The Commission proposed to send each complaint back to the complainant with a request that the complainant review it; make corrections or additions to the information, if necessary; and confirm in writing that the information was true and accurate to the best of the complainant's knowledge and belief. The Commission would not disclose a complaint without confirmation unless an investigation or scientific or technical analysis corroborated the complaint. In addition, a confirmation would only be valid if made by a person with first-hand knowledge of the complaint's contents. (Incidents involving young children could be confirmed by the parent or temporary guardian of the child.)

(2) *Transmittal of Complaints to Identified Firms.* While not required to do so by section 8(b), the Commission proposed to send complaints to manufacturers when the Commission receives them. This procedure would also follow the legislative history of section 5 of the CPSA which indicates the Commission is to transmit to manufacturers safety-related information regarding their products. This "early warning" type of notification permits manufacturers to investigate complaints; to make a timely assessment of any potential hazards; and to take remedial action, if appropriate. It also helps a manufacturer who subsequently receives a request for section 8(b) comments on the complaint to make an informed comment.

(3) *Independent Review of Complaints.* The Commission proposed to review complaints independently. The degree of scrutiny depends on the specificity and extent of the firm's comments. Whether or not a firm commented, the Commission proposed to review the complaint's contents to assure that nothing on the face of the complaint raised a question of accuracy.

The provisions of the proposed rule concerning complaints elicited much comment and controversy. Generally, there were two schools of thought. Consumer groups and some manufacturer organizations supported

the confirmation process as a reasonable step to assure accuracy. Some commenters, particularly affected industry, expressed reservations or suggested alterations.

(n) Industry Approaches to Product Complaints

The great majority of industry commenters opposed the confirmation process but expressed two different points of view. One group of commenters opposed the release of any product complaint unless the complaint was the subject of an in-depth investigation or was corroborated by an adequate technical evaluation performed by a trained person. In essence, this group of commenters claimed that section 8(b) requires the Commission to conduct a formal investigation of a complaint before it can be released.

The other group suggested that the Commission use the expertise of firms in deciding whether to release complaints. Under this approach, the Commission would forward a complaint to the manufacturer of the product in question. The manufacturer would then be free to investigate the complaint and forward its results to the Commission, to provide data or a technical analysis regarding the allegations contained in the complaint, or to point out ambiguities and other discrepancies in the complaint. If the Commission desired to release the material, it would be obligated to contact the complainant to obtain answers to any questions raised by the manufacturer.

The issue of the disclosure of product complaints is a matter of statutory interpretation. Those commenters who state that the Commission cannot release a complaint unless it has performed an investigation or technical analysis in effect argue that Congress intended the Commission to establish to a certainty the accuracy of information it releases, whether or not a firm chooses to participate in the disclosure process by providing comments. On the other hand, the approach taken by the other group envisions some level of independent review by the Commission to assure accuracy, but also gives effect to those provisions of section 8(b) which contemplate active participation by the manufacturer in a decision whether to disclose information. The Commission believes that the latter, with some modification, is a better view and more closely comports with the letter and spirit of section 8(b). The comments are discussed in detail below.

(1) *Confirmation.* Almost half the industry commenters objected to the confirmation as a reasonable step to

assure accuracy. The commenters expressed a variety of concerns. Some asserted that information reported by consumers was too subjective while others feared that, absent investigation or technical evaluation, a complaint might subsequently be misused by a person who acquired it from the Commission. Several stated that complaints often contain inaccurate information or are trivial in nature. Others feared that complainants might submit false information to the Commission or file complaints to generate leverage against a manufacturer. Many expressed doubt that confirmation would be effective, claiming that consumers are untrained and too biased to make objective and accurate reports. Others speculated that, with the passage of time, consumers would not be able to provide additional information or provide intelligent confirmation.

Few commenters were able to give concrete examples to support their objections. More important, however, many commenters assumed that every product complaint attributes the cause of an incident to a defect in a product. This fear inspired many of the objections to the confirmation process because the companies feared that releasing an opinion of an untrained consumer attributing the cause of an incident to a defect would subject a product to unjust disparagement.

It is the Commission's view that these fears are unfounded. In the agency's experience, consumers report incidents rather than defects. The great majority of product complaints contain the experiences of consumers or identify potential problems with products that consumers have personally observed. It is true that occasionally a consumer may attribute an incident to a cause or specific defect. The confirmation process, however, is not designed to authenticate that type of information. Rather it is designed as a step to assure the accuracy of factual information by giving the consumer the opportunity to read carefully the information he or she previously submitted to the Commission in light of a request by the government that the consumer review and correct or add to that information, if appropriate. The requirement that the complainant sign and acknowledge the document as true and accurate to the best of his or her belief is designed to impress on consumers the importance of providing accurate information and to encourage them to reflect on the information before returning the signed confirmation to the Commission.

The confirmation process was not intended to result in the wholesale release of information, such as opinions about defects and causation. Such information would only be released if there was a factual basis for the opinion and the consumer was qualified to draw the conclusion. If for example, a consumer attributed a fire in a stove to a defective heating element and there was no factual basis for the statement, and no indication in the complaint that the consumer had the expertise to make that evaluation, or that someone with the requisite expertise had made such an evaluation, as a result of its independent review the Commission would withhold that opinion from the information to be disclosed.

The Commission believes that confirmation is a reasonable step to assure accuracy for a variety of reasons. It has been the agency's experience that consumers generally report incidents accurately. In ten years of conducting in-depth investigations and in the course of litigation the Commission has followed up many complaints. In almost every instance the information initially reported to the Commission proved to be substantially correct upon follow-up. The Commission's experience is identical to that of consumer organizations which, in their comments, pointed out that in their experience complaints were generally accurate, valid, and could be indicative of a hazard. Industry commenters were unable to contradict this experience and failed to provide examples that indicate that consumer complaints are generally so inaccurate or inherently biased that independent investigation or analysis is necessary to assure their accuracy before disclosure.

In February of 1983, the Commission staff conducted a pilot program to determine whether confirmation would be an effective step in complaint handling. The agency returned approximately 500 telephonic reports of complaints and 120 written complaints to the complainants with a request that they read the complaint, make any necessary corrections and additions, and return it signed to the Commission.

The response to the pilot program indicates that consumers do indeed take the time to review the information they submit to the Commission and to edit it where necessary. Almost 55 percent of the complaints were returned to the Commission. Approximately 85 percent of these contained corrections and additions ranging from the correction of typographical and spelling errors to providing diagrams, samples of labels, and even samples of products that were

the subjects of complaints. When corrections were necessary to make information more accurate, consumers made those corrections. Most corrections were, however, of a minor nature. In some cases, the complainants provided the Commission with additional information concerning the corrective actions taken, subsequent experiences with the same product, or the manufacturer's handling of a particular complaint. The Commission believes the results of the pilot project establish the validity of the confirmation process as a reasonable step to assure accuracy and since April 1, 1983, has been obtaining confirmation of complaints as a permanent part of its complaint handling process. Since April 1, 1983, approximately 93 percent of all complaints sent for confirmation have been confirmed.

(2) *Sworn Statements.* A few commenters suggested that the Commission require confirmations to be sworn under oath or submitted in the form of an affidavit. The Commission does not believe that the evidentiary standards applicable to the presentation of evidence at trial govern the section 6(b) reasonable steps to assure accuracy. The Commission's pilot program and the ongoing program since April 1, 1983, to obtain consumer confirmations indicate that the process is an effective and reasonable step to assure accuracy. There is no indication that requiring a statement to be sworn to or notarized (as opposed to the current requirement that complainants acknowledge information to be true and accurate to the best of their knowledge and belief) will significantly increase the accuracy of information contained in complaints. Indeed, requiring a sworn statement might discourage consumer response thus leaving uncorrected information in the Commission's files. Under the current confirmation process, that information is corrected. The Commission therefore declines to adopt this suggestion.

(3) *Notice of Complaints to Manufacturers.* As stated earlier, the Commission recognizes that confirmation itself is not the sole reasonable step to assure accuracy that would justify disclosure. In the proposed rule, the Commission proposed to undertake an independent review of the information. The agency anticipated that receiving specific substantive comments from firms would enhance this review. To facilitate this process the Commission now sends virtually all confirmed and unconfirmed complaints to any identifiable manufacturer, thus permitting the manufacturer to conduct

whatever follow up or analysis it finds appropriate. The Commission believes that if a firm subsequently receives a request for section 6(b) comments on the information, the firm will be better able to furnish detailed substantive comment on the accuracy of the information contained in the complaint. The Commission also anticipates that the manufacturer will often have resolved the problem expressed in the complaint to the satisfaction of the consumer before receiving a request for section 6(b) comments. This fact would be reflected in the manufacturer's comments. Depending on the circumstances, this may result either in withholding the information in the complaint because it is inaccurate or in disclosing the information with a statement describing the successful resolution of the problem.

(4) *Transmittal of Manufacturer's Questions to Consumers.* As indicated above, a trade association suggested that a firm be permitted to provide questions about the completeness, correctness, or plausibility of a complaint. The Commission would then be obligated to transmit the questions to the consumer. A second commenter stated that if a firm commented on the accuracy of information in a complaint, the Commission should force the complainant to respond to the firm's comments.

In many instances specific complaints are not of sufficient interest to the agency to justify following them up. The Commission believes that it would be counter-productive to spend the time and resources necessary to engage in this practice solely to compile the type of file a manufacturer believes desirable under section 6(b). If the Commission receives a manufacturer's comment raising questions about completeness, correctness, or plausibility of a complaint, the final rule gives the agency the discretion to contact the complainant, although the Commission anticipates that it would rarely do so. Should the Commission choose not to transmit the questions, it will evaluate the accuracy of the complaint in light of the questions raised by the firm's comments.

(5) *Requiring That Substantiating Data Accompany Complaints.* One commenter suggested that the Commission require complainants to submit all data substantiating their complaints. The Commission notes that it has no control over what a complainant submits. In the absence of supporting data, the Commission will evaluate the material in light of the firm's comments and according to the

procedures of the final rule. The lack of supporting data may, however, result in the withholding of a product complaint whose accuracy is challenged by a firm, especially where the firm's comments are specific and accompanied by relevant documentation.

(8) *Independent Review in the Absence of Comments.* One commenter suggested that even in the absence of comments from a firm, the Commission has an independent obligation under section 6(b) to assess the accuracy of the information contained in product complaints. The Commission agrees with this proposition. Of course this does not mean that the agency must search its files and direct inquiries to knowledgeable employees to determine whether a complaint is accurate. The Commission considers confirmation by an eyewitness to be a reasonable step to assure accuracy under section 6(b). However, the Commission will also review the complaint to determine whether there are inconsistencies on its face and will delete statements of opinion or belief that are not based upon fact or investigation.

The commenter also suggested that in the absence of comments by a firm, the Commission take steps to assure that the information in a complaint is not inconsistent with other information in the Commission's possession. The Commission believes that this is unreasonable, especially in light of the confirmation procedures and advance notice to manufacturers. Under the commenter's approach, the Commission would have to conduct an exhaustive search of the agency's files every time it receives a request for a complaint.

(7) *Failure of a Complaint to Specify Product Causation.* Noting that product involvement in an incident does not mean the product caused an injury, one commenter suggested that a complaint could only be disclosed if the product in issue had caused or could cause or contribute to an injury. The Commission believes that this is a question of fairness rather than accuracy. If a report of an incident is factually accurate, the fact that it fails to contain some determination concerning causation does not make the report inaccurate.

(8) *Disclaimer of Commission Endorsement of a Complaint.* Two commenters suggested that if a confirmed complaint is disclosed, the Commission should add an explanatory statement indicating that the complaint contained the observations of an individual and did not reflect endorsement or analysis by the Commission. The disclosure of a complaint does not, in itself, represent endorsement by the Commission,

especially when disclosure is in response to an FOIA request. The Commission, however, considers this issue on a case-by-case basis when it takes the reasonable steps to assure the fairness of disclosure under the circumstances.

(9) *Parent Confirmation of Incidents Involving Children.* A few commenters objected to permitting confirmation by the parent or guardian of a child involved in an incident or by a person to whom the child was entrusted on a temporary basis. The basis for this objection was that the parents or guardians themselves were not witnesses to the incident involving the child and thus lacked first-hand knowledge of the events described in the complaint.

Many incidents involving children occur when they are not being directly observed by an adult. Thus, the only individual with first-hand knowledge who would be able to confirm a complaint is the child. It may be impossible for a young child to appreciate the seriousness of the confirmation or the necessity that information be factually correct and complete. The Commission believes that the relationship of the parent or temporary custodian and child is such that children accurately inform their parents or guardians about incidents. Similarly, having the parent confirm the complaint will encourage the parent to discuss the matter with the child more fully to assure that the information in the complaint is accurate. Therefore, while it is true that a parent or guardian may not be an eyewitness to an incident, the Commission believes that the unique circumstances surrounding incidents involving children justify this limited exception to the requirement that confirmations be given by persons with first-hand knowledge. As with all complaints, firms will receive confirmed complaints involving children at an early stage to enable them to investigate and will have the statutory right to submit comments on the accuracy of the complaint when the Commission proposes to disclose it.

Taking any position other than that contained in the final rule would in effect deny the public access to almost all complaints about incidents involving small children. The Commission believes this would not be in the public interest because small children comprise a class of consumers who are least able to protect themselves and deserving of extra attention. Dissemination of information about incidents involving children has the potential to encourage improvements in the safety of children's products and therefore to protect that

particularly vulnerable class of consumers.

(10) *Disclosing Summaries of Information.* Section 1101.32(b)(2) of the proposal stated that the Commission would invite comment from manufacturers or private labelers on the information (or a summary of that information) it sought to disclose. Five commenters objected to the provisions permitting the firm to receive a summary. This comment is addressed in the discussion in the preamble concerning § 1101.21.

Section 1101.33 Reasonable Steps to Assure That Disclosure Is Fair in the Circumstances.

As proposed, § 1101.33 defined four measures as reasonable steps to assure that the disclosure of information is fair in the circumstances: (1) Accompanying the disclosure with the firm's comments unless requested by the firm not to do so; (2) accompanying disclosure with an explanatory statement about the nature of the information and furnishing additional relevant data when appropriate; (3) limiting the form of disclosure to that which is considered appropriate; and (4) delaying disclosure if the circumstances warrant it. Two manufacturers objected to this provision.

(a) Defining When Disclosure Is Unfair

One commenter suggested that until the Commission defined when a disclosure is unfair, it could not establish procedures intended to assure that the release of information is "fair in the circumstances."

Questions of fairness are dependent on the nature of the information to be disclosed, the firm's comments, the circumstances surrounding the proposed disclosure, and the information in the Commission's files. No commenter suggested a viable way of taking into account all these factors in defining when a disclosure is unfair in the circumstances. The Commission therefore declines to adopt the suggestion.

(b) Explanatory Statements; Other Relevant Information

A second commenter stated that the Commission should review the information in light of the firm's comments and other data in its possession and then decide whether the disclosure is fair. The commenter stated that if disclosure is unfair, section 6(b) does not permit disclosure. The commenter, however, also stated that an exculpatory or explanatory statement

would never be sufficient to eliminate unfairness.

The Commission does not agree entirely with this broad comment. There may well be circumstances in which no exculpatory statement or explanatory statement would be sufficient to make fair the release of certain types of information. There are occasions, however, when an explanatory statement that places the information in the proper context minimizes the potential that someone might draw misleading or erroneous conclusions from the data in a manner which might make disclosure unfair. In those situations, the Commission believes an explanatory statement is a reasonable step to assure fairness of disclosure. This determination must be made on a case-by-case basis, taking into account the factors identified above.

One commenter suggested that every information disclosure should be accompanied by an explanatory statement and any other relevant information in the Commission's files. The proposed rule stated that the Commission would generally accompany disclosure of information with an explanatory statement and, when practicable, the Commission would disclose other relevant information. There may however be circumstances in which no explanatory statement is necessary or no other relevant information in the Commission's possession exists. The Commission therefore declines to adopt the sweeping suggestion presented by this commenter. (This comment also is discussed above under § 1101.31 to the preamble.)

Another commenter suggested that it also might be appropriate, when dealing with a specific product, to furnish information on the entire product category from the NEISS system data base. The Commission agrees that it sometimes may be appropriate to disclose a summary of the Commission's research about a product category as a whole in addition to the information about a specific product. To do this in every case, however, is neither practical nor required by statute, just as searching the files of the agency for every piece of relevant data may be impractical in terms of time and resources and not necessarily related to insuring that a release is fair. Further, the Commission may be unable to determine what additional information should be provided or what is necessary to place the material in context. For example, if the Commission receives a Freedom of Information Act request for a specific report prepared by a person outside the

Commission that is one of a series of reports, the Commission may not have the means to determine the existence of the other documents. The Commission, in part, must rely upon manufacturers and private labelers to identify in their comments which additional materials the firm believes may be relevant to placing a proposed disclosure in context.

(c) Use of Disclaimer With Consumer Complaints and NEISS Data

Two commenters discussed the fairness of disclosing specific types of information. One wanted the Commission to add a disclaimer when it proposed to release confirmed consumer complaints to the effect that the Commission has not investigated the complaint and does not adopt or endorse the statements of the complainant. The Commission agrees that an explanatory statement of this nature may be appropriate when a confirmed complaint is disclosed. The Commission also agrees with a second comment that it may be appropriate to accompany every dissemination of NEISS data with an explanatory statement describing the nature of the NEISS data and will do so when appropriate. The Commission notes that it already does this when it disseminates computerized NEISS information.

One firm expressed concern that the inclusion of an explanatory statement by the Commission may create "hearsay" problems. Presumably this commenter views an explanatory statement by the Commission as an inherently unreliable second-hand comment on the nature of information. To accept this comment would create a situation in which the Commission would almost never be able to take steps to assure that fairness of a disclosure. The Commission does not believe that such an approach comports with the statutory scheme of section 6(b) and, therefore, has not revised the final rule to preclude disclosure with explanatory statements.

Four commenters suggested that the Commission submit all explanatory statements to the manufacturer for review prior to disclosure. The Commission will provide such statements to manufacturers who submit claims of inaccuracy at the time the Commission notifies the manufacturers under section 6(b)(3) of its intention to disclose information over their objections. The Commission, however, does not view furnishing explanatory statements as required or as a second notification and opportunity to comment under section 6(b).

(d) Fairness of Disclosing Adverse Staff Determinations

A trade association submitted comments on the fairness of disclosing five specific types of information. It claimed that it would always be unfair to disclose staff determinations that a product contained a defect or was in violation of a standard or regulation issued under one of the acts the Commission administers unless the Commission itself had reviewed and formally adopted the determination of the staff. As justification, the association stated that there was a danger that members of the public would conclude that the Commission itself, as opposed to the staff, had made a finding that products are unsafe or unlawful and that a disclaimer would be insufficient to correct any potential damage because the disclaimer would rarely accompany further distribution of the documents.

(1) *Products in Violation of the Law.* Information concerning a product in violation of the law falls within the exceptions to section 6(b)(1) contained in section 6(b)(4). Under that section, when the Commission has reason to believe that a prohibited act involving a product has occurred, section 6(b)(1)-(3) do not apply to information concerning that product. The Commission has reason to believe a prohibited act has occurred at the time its enforcement staff assembles sufficient information to demonstrate the existence of a violation. Such staff determinations and the underlying information are not subject to sections 6(b)(1)-(3), and the Commission declines to adopt the suggestion that they be forwarded to the Commission for consideration and approval before they can be released.

The Commission notes that this approach also conflicts with the present delegations of authority to the Associate Executive Director for Compliance and Administrative Litigation, to the General Counsel, and to the Commission's Regional Office Directors to determine whether a violation of law has taken place. These delegations, properly made pursuant to section 27(b)(9) of the CPSA, 15 U.S.C. 2067(b)(9), enable those individuals to seek timely corrective action of violations. Under the commenter's approach, if the agency desired to release information about a product in violation of the law, the delegations designed to permit the staff to correct violations of the law in the most expeditious manner would have to be rescinded to permit the Commission to review in the first instance each staff determination that a prohibited act has

occurred, a process at odds with the delegations of authority and with the public interest. The Commission, therefore, declines to adopt this suggestion dealing with disclosure of information concerning prohibited acts.

(2) *Staff Preliminary Determinations of Hazard.* The Commission also believes that, subject to section 6(b)(5), 15 U.S.C. § 2055(b)(5) a staff preliminary determination that a product contains a defect which could create a substantial product hazard is releasable if it is supported by specific factual evidence and if the disclosure is placed in the proper context. The speculation that at some unspecified and unknowable stage, the material may be misused is not sufficient to justify withholding it on the ground of unfairness. Rather, an explanatory statement placing the material in perspective is a reasonable step to assure the fairness of disclosure. Such a statement would point out that the information disclosed was not the subject of a formal Commission determination but only represented views of the staff. If a firm contested the preliminary determination, that fact would also be noted in the statement. In addition, the form used by the staff that reflects its preliminary determination will be clearly identified as a staff preliminary determination of hazard. This should further assure no confusion about the nature of this document.

Once released, the Commission cannot control either how people use material or the selective editing of documents. The statute only places an obligation on the Commission to take reasonable steps to assure accuracy and fairness before it discloses information; there is no requirement that the Commission take steps to assure that any subsequent disclosure of material by a recipient meets the statutory criteria. If a firm believes that any subsequent dissemination is unfair or misleading that issue should be raised with the party making the dissemination.

(3) *Settlement Discussions; Closed Meetings.* A trade association suggested that information reflecting the substance of closed meetings or the negotiation of settlements not be disclosed on fairness grounds. It noted that much of this information is submitted pursuant to section 15 of the CPSA to facilitate the agency's obtaining of voluntary, timely, and effective corrective action. Of necessity, this process requires candid discussion and negotiation to reach agreement, often involving the submission of additional evidence and material to permit the staff to evaluate

the adequacy of a proposed corrective action.

The Commission believes that when a manufacturer makes a legitimate claim of confidentiality for minutes or notes of settlement negotiations, draft settlement agreements, and items of that nature, it would generally not be fair in the circumstances to disclose such material after the case is resolved. The rule, therefore, has been revised to state that disclosure of information concerning settlement negotiations and other activities of that nature is not fair in the circumstances where the firm has provided information to facilitate prompt remedial action; has a reasonable expectation of confidentiality for that information; or the firm reasonably expects that notes of settlement negotiations and drafts of settlement agreements will be held in confidence.

A firm's section 15 (b) report would not per se be treated as a document prepared to facilitate settlement. Such a report will customarily be handled in accordance with the requirements of sections 6(b)(5) and 6(b)(1).

(4) *Preliminary Test or Investigation Results.* The proposed rule permitted the release of preliminary test or investigation results. In the interest of fairness, the rule provided that the Commission might postpone disclosing the information until an investigation, analysis, or test of a product was completed, rather than releasing the information piecemeal.

A trade association stated that disclosing the preliminary results of an investigation or test will always be unfair unless there is a compelling need to inform the public of the information. The commenter contended that preliminary results of investigations or tests are often ambiguous and difficult to interpret and that the premature disclosure of test results might needlessly alarm consumers and unjustly harm the reputations of firms.

This approach is too sweeping. Preliminary test results often are innocuous or even favorable to a product. They may be reliable indicators of what the final results will be. The decision to release such results requires a case-by-case analysis. In its section 6 (b) analysis of preliminary data, the Commission will not only evaluate claims of inaccuracy but also will weigh the potential danger of misleading or unduly alarming the public with preliminary results. The Commission will consider the firm's comments on the alleged danger; and any disclosure of such test results will include an

appropriate explanatory statement, if necessary.

(5) *Attorney Work Product Material.* One commenter recommended that attorney work product and other attorney-client privilege material furnished to the Commission to facilitate the Commission's investigation of a particular product not be disclosed when the manufacturer advises the Commission of the confidential nature of the information in question. The commenter claimed that such a disclosure would be unfair in the circumstances. The Commission agrees and has revised the final rule accordingly.

(6) *Automatic Disclosure of Firm's 6(b) Comments.* One commenter took issue with a provision of the proposed rule stating that the Commission would automatically disclose a firm's comments under section 6(b), unless the firm specifically requests confidential treatment. The commenter stated that, for the section 6(b) process to be effective, manufacturers must be free candidly to identify information that is inaccurate or misleading and to explain how disclosure will harm their businesses. The commenter noted that section 6(b) comments the Commission receives may contain explicit descriptions and explanations of documents or materials that a manufacturer considers to be inaccurate or unfair. The commenter contended that the decision-making process contemplated by section 6(b) would be frustrated if competitors, plaintiffs' attorneys or other adversaries of firms could use the FOIA to obtain a manufacturer's section 6(b) comments. In this commenter's view, such disclosure would have a chilling effect on the inclination of a firm to comment candidly on a proposed information disclosure. To resolve this problem, the commenter suggested that the Commission adopt a routine policy of withholding comments unless the firm specifically authorizes disclosure. This stands in contrast to the proposed policy of disclosing the comments unless the manufacturer specifically requests they be withheld.

The Commission intends to follow the general policy of disclosing comments unless the manufacturer specifically requests they be withheld. It is a relatively simple matter for a manufacturer submitting comments to request simultaneously that the comments be withheld. Sometimes, however, a firm may claim confidentiality for information contained in its comments that does not fall into the traditional trade secret or

confidential commercial information category of nondisclosable information.

It is possible that honoring such a request for confidentiality could create an anomaly in which accurate information would not be disclosable under section 6(b) because disclosure of the firm's comments would be the only way to assure that the disclosure was fair in the circumstances. Disclosure of a firm's comments on information is often necessary to place the information in the proper context. Sometimes those comments 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; sometimes a manufacturer's comments correct minor inaccuracies although the overall substance of the information to be disclosed is accurate. Adopting a blanket policy that a firm's comments are always to be held in confidence would unnecessarily block the release of information, even though the Commission has taken the requisite reasonable steps to assure that the information is accurate and disclosure would be reasonably related to effectuating one or more purposes of the statutes the Commission administers.

The Commission believes that section 6(b) should not be construed to permit a firm to frustrate the disclosure of information simply by making a blanket claim of confidentiality for the information contained in its comments. Should such an occasion arise, the Commission will notify the manufacturer that disclosure of its comments is necessary to effectuate a fair disclosure of all of the information. The manufacturer will have the opportunity to summarize its comments or to provide an edited version. If the firm consents to release without its accompanying comments, the Commission will maintain the comments in confidence. Should the firm refuse to permit the release of its comments, the Commission will release the information that the comments address with an explanatory statement that the manufacturer furnished data necessary to place the information in context but did not consent to its disclosure. When the comments also dispute accuracy, the manufacturer will, of course, receive notice prior to disclosure under section 6(b)(3).

§101.34 Reasonable Steps to Assure Information Release Is "Reasonably Related to Effectuating the Purposes of the Acts" the Commission Administers.

Section 101.34 of the proposed rule attempted to describe the reasonable steps the Commission would take to

assure that disclosure is reasonably related to effectuating one or more of the purposes of the acts administered by the Commission. In section 2 of the CPSA, 15 U.S.C. 2051, those purposes are broadly enumerated as: (1) To protect the public against unreasonable risks of injury associated with consumer products; (2) to assist consumers in evaluating the comparative safety of consumer products; (3) to develop uniform safety standards for consumer products and to minimize conflicting state and local regulations; and (4) to promote research and investigation into the causes and prevention of product related deaths, illnesses, and injuries. In addition, section 5 of the CPSA, 15 U.S.C. 2054, requires the Commission to collect, investigate, analyze, and disseminate injury data and information relating to the causes and prevention of death, injury and illnesses associated with consumer products and to conduct continuing studies and investigations of deaths, injuries, diseases, other health impairments, and economic losses resulting from accidents involving consumer products. Further, section 25(c) of the CPSA, 15 U.S.C. 2074(c), requires the Commission to make available to the public all reports on research projects, demonstration projects, and other related activities.

(a) General Principle of Public's Right to Know

The Commission's proposed rule focused on two general principles. First, the Commission would look to the specific purposes of the acts it administers; to the general principles embodied in the CPSA and its legislative history that the public has a right to know about the activities of the Commission; and to the purpose of the Freedom of Information Act, which establishes a general right of the public to have access to information in the government's possession. Second, the Commission proposed to review information in accordance with these three considerations and to make its disclosure decision based on whether the release of the information when taken as a whole would be reasonably related to effectuating one or more of these purposes.

Several commenters objected to this provision. Three wanted the Commission to set forth the explicit steps it would take to assure that disclosure effectuates the purposes of statutes administered by the Commission. Several commenters also objected to the Commission's stated intention in the proposed rule to review information in light of the purposes of the Freedom of Information Act. These

commenters took the position that in *Consumer Product Safety Commission v. GTE Sylvania, Inc.*, 447 U.S. 120 (1980), the Supreme Court interpreted section 6(b) as a statute requiring information to be withheld under Exemption 3 of the FOIA and thus supersedes the Freedom of Information Act requirements that information be released. These commenters suggested the Commission only look at the purposes of the Consumer Product Safety Act and not to the purposes of the FOIA in deciding whether to disclose information. Similarly, one commenter stated that using the rational of public oversight of the Commission's activities to justify release of information is only warranted where the Commission is in the course of a regulatory or adjudicatory proceeding or investigation. That commenter suggested that only in such instances would a disclosure be related to effectuating the purposes of the Act insofar as oversight of the Commission's activities is concerned.

The Commission partly accepts these comments but does not adopt the sweeping position taken by the commenters. While section 6(b) is an Exemption 3 statute, it does not extinguish the right to obtain information under the Freedom of Information Act. The final rule, therefore, points out that the Commission will look first to the purposes of the statutes it administers in determining whether a disclosure of information is reasonably related to effectuating the purposes of the Acts. In the event of a close question, the Commission will defer to policies of the Freedom of Information Act and will construe the Exemption 3 aspect of section 6(b) narrowly.

The same is true of public oversight to the Commission's activities. If a close question arises as to whether disclosure is reasonably related to effectuating a specific purpose of the statutes, the Commission will defer to the intent of the CPSA that there be public oversight of its activities under all the statutes in determining whether to release the material.

(b) Motives of FOIA Requesters

Several commenters suggested that the reasonable step to assure that disclosure is reasonably related to the effectuation of a purpose of the CPSA requires the Commission to determine the motive of a Freedom of Information Act requester for obtaining the material and the purposes for which the requester seeks the information. These commenters contended that releases

under the Freedom of Information Act are different from Commission-initiated disclosures.

The commenters took the position that if there is no stated purpose or motive in a FOIA request, the Commission could not ascertain whether the release of material would be reasonably related to effectuating a purpose of the Act. They conclude therefore that the Commission would be required to withhold the material from disclosure.

These commenters also suggested that when the Commission is able to ascertain the motivation and purpose of a FOIA requester, the criteria for disclosure should be based on an analysis of whether the requester sought the information for purely a private purpose (such as competing with another firm or developing evidence for use in private litigation) or for a purpose which would contribute to the Commission's performance of its statutory functions (such as a consumer group evaluating the relative safety of different products or a trade association commenting on the technical basis for a proposed safety standard).

The Commission disagrees that analysis of the motivation and purpose of a FOIA requester is a prerequisite for resolving the question of whether the release of information would be reasonably related to effectuating the purposes of the Acts.

The commenter's position is directly contrary to case law under the FOIA. Further to adopt it could encourage FOIA requesters to misrepresent the reasons for their requests to the Commission; would require the agency to perform what would be, at best, a subjective analysis of the nexus of the requester's purpose to the purposes of the act; and would result in information being made public to those who express the "right" reasons and being withheld from those with "improper" motives.

In essence the commenters contend that the disclosure itself must affect a purpose of the act rather than simply being reasonably related to such effectuation. The Commission disagrees with this position. Virtually all of the information maintained by the Commission is generated or obtained to support activities designed to effectuate the purposes enumerated in section 2 of the CPSA and in the transferred acts. For example, research reports are often prepared to assist the Commission in evaluating the risk of injury associated with specific products. Reports of consumer complaints and of in-depth investigations are maintained to provide the Commission with an assessment of the relative risk of injury associated with products. Section 5 of the CPSA

expresses Congressional intent that information prepared or maintained in the course of the Commission's activities to accomplish the statutory purposes also be disseminated to the public. Thus, when information is generated or obtained in the course of Commission activities which effectuate the purposes of the CPSA or the transferred acts, dissemination of that information is reasonably related to effectuating the purposes of the acts and, indeed, may be required by section 5. Accordingly, as a reasonable step to assure that disclosure is reasonably related to effectuation of purposes, the Commission will review information subject to a proposed disclosure to determine whether it was prepared or is maintained as part of a Commission activity which is designed to accomplish the statutory purposes. If so, the Commission will disseminate the information in the absence of specific information demonstrating that the information is sought for a purpose inconsistent with the statutory purposes.

Section 1101.41 Statutory Exceptions—Generally.

Sections 1101.41–1101.46 of the proposed rule described and interpreted the section 6(b)(4) exceptions to the requirements of sections 6(b)(1) through (3). These include information disclosures concerning a product against which the Commission has filed an imminent hazard action or which the Commission has reason to believe violates a prohibited act section of one of the acts it administers. Information in the course of or concerning a rulemaking or an adjudicatory proceeding or any other administrative or judicial proceeding under the acts the Commission administers is also exempt from the section 6(b)(1)–(3) procedures.

Five commenters claimed that the Commission's interpretation of the scope of these exceptions was too broad and requested that the Commission construe the exceptions narrowly.

One commenter noted that the statutory exceptions generally should be read to apply only to dissemination of information that is reasonably related to the subject matter of a particular proceeding and that is necessary to inform the public about the proceeding. The Commission generally agrees with the first part of this statement and has incorporated it into § 1101.41(a) of the final rule. The statute, however, does not limit the exceptions to information necessary to inform the public; the Commission therefore, declines to adopt the second suggestion.

Another commenter correctly noted that, in the absence of a judicial or administrative proceeding, section 6(a)

of the CPSA still applies to information exempt from section 6(b)(1) through (3). According to the commenter, firms must have the opportunity to make claims of confidentiality for such information that the statute provides each firm with one opportunity to make such claims, while the Commission agrees, this comment does not concern section 6(b) and therefore requires no further discussion. The specific comments on the exceptions to sections 6(b)(1)–(3) and the Commission's responses are discussed below.

Section 1101.42 Imminent Hazard Exception.

Section 1101.42 of the proposed rule discussed the imminent hazard exception to section 6(b). One commenter suggested that disclosures of information under this exception be restricted to information necessary to enable the public to understand the nature of the hazard. The Commission believes that the statutory language is not as restrictive as the commenter suggests. Section 6(b)(4) permits the Commission to disclose information about any consumer product against which the Commission has filed an imminent hazard action under section 12 of the CPSA without complying with sections 6(b)(1) through (b)(3). Under the commenter's interpretation, testimony and legal documents such as motions, pleadings, interrogatories, and other discovery requests would not be disclosable without going through the section 6(b) comment process even though they contained information about the consumer product which was the subject of the imminent hazard action and were a matter of public record. Accordingly, the Commission declines to adopt this suggestion but will limit disclosure to information reasonably related to the product that is the subject of the imminent hazard action.

The same commenter took the position that section 6(b) would apply to disclosure of information after the termination of the imminent hazard action, either by withdrawal of the Commission's complaint or by resolution of the suit in the firm's favor. This commenter argued that termination of such a suit ends the need to alert the public and that disclosure of information generated during the proceeding might be unfair if the Commission had previously informed the public that the product was imminently hazardous and the manufacturer subsequently prevailed in the action. The scenario postulated by the commenter is more a matter of procedural fairness rather than

a section 6(b) issue, since it assumes that the Commission would release information already on the public record relating to the alleged hazard without explaining the resolution of the case. The Commission has, however, modified the final rule in the following way. Upon completion of an imminent hazard action, that information which is contained in the Commission's files and has not been disclosed during the litigation or which has been filed *in camera* with the court would become subject to section 6(b). However, information contained in documents filed with the court during the action can continue to be disclosed without compliance with section 6(b). The rationale for this approach is clear. If not filed *in camera*, such documents are part of the official record of the proceeding and remain publicly available through the court after termination of the proceeding. The Commission finds nothing in the CPSA showing that Congress intended section 6(b) to require the Commission to take the unprecedented step of retrieving such documents from the court and holding them in secrecy upon termination of the proceeding. To accept the commenter's view would create the anomaly that the Commission itself could not disclose such information without compliance with section 6(b) but could refer requesters to the court, where the information would be available without restriction.

The Commission believes that the more rational view is that once documents concerning a product that is the subject of an imminent hazard action are made public, section 6(b) does not apply to subsequent disclosures of those documents by the Commission. The Commission, however, has decided not to accord the same status to documents in the Commission's possession that concern a product for which it has filed an imminent hazard action and that it has not made publicly available. The Commission has decided that these documents are more similar to documents prepared during the course of other Commission's activities which are routinely subject to section 6(b) and, therefore, will be treated accordingly.

Section 1101.43 Prohibited Acts Exception

Section 1101.43 contained the exceptions applicable to information concerning products which the Commission has reasonable cause to believe are in violation of one of the acts it administers. One commenter claimed that this exception applies only to acts prohibited under the CPSA since the

statute expressly refers to prohibited acts under section 19 of the CPSA and not to the transferred acts. The Commission recognizes that the text of section 6(b)(4) refers expressly to section 19 of the CPSA. However, section 6(d)(1) of the CPSA states that for the purposes of section 6(b) "the term Act means Consumer Product Safety Act, the Flammable Fabrics Act, the Poison Prevention Packaging Act and the Federal Hazardous Substances Act." In view of this provision, the Commission interprets the prohibited act exception to section 6(b) to apply to all the statutes administered by the Commission.

(a) Probable Cause

Three commenters suggested that this exemption requires an administrative finding of probable cause by the Commission supported by specific and detailed evidence. This approach is more stringent than required by section 6(b)(4). Section 6(b)(4) explicitly applies when the Commission has reasonable cause to believe a product is in violation of one of the prohibited acts. The reasonable cause to believe standard is lower than the probable cause standard. Accordingly, the Commission declines to adopt the suggestion concerning probable cause.

(b) Formal Finding Not Required

The Commissioners are not required to make a formal finding that there is reasonable cause to believe a prohibited act has occurred before the section 6(b) exception applies. Section 27(b)(9) of the CPSA authorizes the Commission to delegate any of its functions or powers (other than that to issue subpoenas) to any officer or employee of the Commission. Among the delegations currently authorized are delegations to the directors of its Regional Offices to determine when violations of the acts administered by the Commission have occurred and to make recommendations for legal action to the Office of the General Counsel and the Directorate for Compliance and Administrative Litigation. The Regional Office directors are also authorized to notify firms that their products are in violation of the law and to seek corrective action. Similarly, the Office of the General Counsel is empowered to initiate injunctive or seizure and condemnation actions in cooperation with the Justice Department. In each of these examples reasonable cause to believe a violation has occurred is present, but the finding is not reviewed by the Commissioners. Accordingly, the Commission declines to adopt the suggestion that the Commissioners review such a

determination in every instance, although in some cases such review may be appropriate.

The Commission has reason to believe a violation of one of the acts it administers has occurred when a duly authorized officer or member of its staff has reviewed the evidence supporting the existence of a violation and has determined that a product is in violation of one of the acts administered by the Commission. The Commission notes that disclosure of information to the public under this circumstance will be rare, absent the filing of a civil action or administrative complaint or the closing of the case, since the records compiled in support of such a case generally are investigatory records customarily exempt from disclosure under Exemption 7 of the FOIA.

(c) Listing Events that Constitute Reason to Believe a Violation has Occurred

One commenter requested that the Commission list all events that might trigger the prohibited acts exception. In support of this request, the commenter correctly noted that the Commission's second draft of the proposed rule identified the filing of a complaint (either administratively or in a federal district court) as an occasion in which the Commission clearly has reason to believe a prohibited act has occurred. The Commission agrees that such a filing requires reasonable cause to believe that a violation has taken place. However, as discussed above, filing is not a prerequisite for the section 6(b)(4) exceptions to apply. The Commission has not adopted this recommendation.

Section 1101.44 Rulemaking Proceeding Exception

Section 1101.44 contained the exception for rulemaking proceedings. Only three commenters raised issues about this section. One suggested that the exception should not be construed to mean that all product specific or generic information concerning the safety of a product class is releasable without restriction once rulemaking has begun. This commenter suggested that there be a direct correlation between the information to be released and the subject matter of the proceeding in order for the exemption to come into play. In the proposal the Commission limited release of information to information in the course of or concerning the rulemaking proceeding. The Commission believes this accomplishes the commenter's objective.

One commenter suggested that the exemption apply only to information in

the public record. The Commission agrees with this comment and has amended the rule to provide that it applies to information in the public record and supporting documentation.

One commenter suggested that, if the Commission elects not to publish a rule or to terminate a rulemaking proceeding without formal action, the statutory exceptions cease to apply. Section 6(b)(4) refers to information "in the course of or concerning" a rulemaking proceeding. If the Commission elects not to take action or decides that a rule is inappropriate, information not yet made public may not be "in the course" of a rulemaking proceeding. The information generated prior to such termination, however, is "in the course" of and/or "concerns" the rulemaking proceeding and, therefore, would still be exempt from section 6(b)(1) through (b)(3). The Commission declines therefore to adopt the commenter's recommendation.

Section 1101.45 Adjudicatory Proceeding Exception.

The same commenter made the same suggestion with regard to proposed § 1101.45. The commenter contended that if an adjudicatory proceeding terminates without action or with a decision in favor of the respondent, the section 6(b)(4) exemption no longer applies. Once again the Commission points out that the failure to act or a decision in favor of a firm may result in information not yet made public not being "in the course" of the adjudicative proceeding. However, information filed during the proceeding is "in the course" of and/or "concerns" the proceeding and is therefore still covered by the section 6(b)(4) exemption.

One commenter suggested that when the Commission releases information in the course of an adjudicatory proceeding, it accompany release with a disclaimer indicating that the exemption's applicability does not assure the accuracy of the information. This is more a matter of procedural fairness than a section 6(b) matter. Thus, the final rule does not address it.

In order to assure there is no uncertainty concerning the scope of this exception, the Commission points out that the following information and/or documents come within this exemption: (1) Evidence offered (whether or not received into evidence) during the course of the administrative proceeding; (2) discovery materials filed in the case docket maintained in 6(b)(1) through (b)(3). The Commission declines therefore to adopt the commenter's recommendation.

Section 1101.45 Adjudicatory Proceeding Exception.

The same commenter made the same suggestion with regard to proposed § 1101.45. The commenter contended that if an adjudicatory proceeding terminates without action or with a decision in favor of the respondent, the section 6(b)(4) exemption no longer applies. Once again the Commission points out that the failure to act or a decision in favor of a firm may result in information not being "in the course" of the adjudicative proceeding. However, information filed during the proceeding "concerns" the proceeding and is therefore still covered by the section 6(b)(4) exemption.

One commenter suggested that when the Commission releases information in the course of an adjudicatory proceeding, it accompany release with a disclaimer indicating that the exemption's applicability does not assure the accuracy of the information. This is more a matter of procedural fairness than a section 6(b) matter. Thus, the final rule does not address it.

Section 1101.46 Other Administrative or Judicial Proceeding Exception.

Section 6(b)(4)(B) contains an exception to the requirements of sections 6(b)(1) through (b)(3) for information in the course of or concerning other administrative or judicial proceedings under the acts administered by the Commission. Section 1101.46 of the proposed rule enumerated those proceedings which the Commission believed were covered by this exception. Among these were petition proceedings, proceedings to grant the Office of the Secretary, provided to the Presiding Officer, or exchanged among the parties; (3) documents referenced in the list and summary of documentary evidence required by the Commission's Rules of Practice for Adjudicative Proceedings, 16 CFR 1025.11(b); and (4) any other documents or information that may be filed in the case docket maintained in the Office of the Secretary, provided to the Presiding Officer, or exchanged among the parties. Information and/or documents are "exchanged among the parties" if they are provided by one party to another, even if not provided to all parties to the administrative proceeding (e.g., exchanged between complaint counsel and one of several respondents). In addition, the Commission interprets this exemption to apply to information and/or documents provided by and exchanged among parties, participants, and intervenors. See 16 CFR 1025.17.

Section 1101.46 Other Administrative or Judicial Proceeding Exception.

Section 6(b)(4)(B) contains an exception to the requirements of sections 6(b)(1) through (b)(3) for information in the course of or concerning other administrative or judicial proceedings under the acts administered by the Commission. Section 1101.46 of the proposed rule enumerated those proceedings which the Commission believed were covered by this exception. Among these were petition proceedings, proceedings to grant exemptions from rules, proceedings to issue subpoenas or general or special orders, proceedings to quash or limit such subpoenas or orders, judicial and administrative proceedings to which the Commission is a party, and proceedings to retract inaccurate and misleading information under section 6(b)(7). Several commenters objected to many of these categories.

(a) Petition Proceedings

Seven commenters objected strongly to the exemption for petition proceedings. All took the position that a proceeding to grant or to deny a petition is not a "proceeding" as that term is commonly used in administrative law. All contended that the exception for a petition proceeding was too broad because, upon the filing of a petition, all information in the agency's files dealing with the subject matter of the petition would be releasable without compliance with section 6(b). One noted that this might have the effect of freeing virtually all information in the possession of the Commission from the protections afforded by section 6(b), since most of the agency's regulatory actions are initiated by petitions.

The basis for the petition exception appears in the legislative history of the 1981 amendments to the Consumer Product Safety Act. The Conference Report accompanying the Omnibus Budget Reconciliation Act of 1981 (H.R. Rep. No. 208, 97th Cong., 1st Sess. 1, 879, reprinted in 1981 U.S. CODE CONG. & AD. NEWS 396, 1232) specifically identifies proceedings to grant or deny petitions and proceedings in which motions are filed to quash or limit subpoenas or special or general orders as examples of proceedings that fall within the section 6(b)(4) exception for other administrative proceedings. Given the legislative history, it is clear that Congress intended the statutory exceptions to extend to petition proceedings. The final rule therefore remains unchanged from the proposed rule on this issue.

Moreover the Commission believes that the commenters misconstrued this exception and therefore their fears are unfounded. Information releasable during a petition proceeding without complying with section 6(b) is limited to that information contained or referenced in any staff briefing paper on the petition. Thus, the material that is releasable without complying with section 6(b) in response to a FOIA request for information in the course of a petition proceeding would be the petition itself, staff briefing papers, and the supporting documentation. Absent incorporation in such a briefing paper, other information in the Commission's files would still be subject to section 6(b).

(b) Exemptions, Special or General Orders, Subpoenas, Retractions

Several commenters objected to the identification in the proposed rule of information in the course of or concerning a proceeding to grant an exemption from a substantive rule, to issue a subpoena or general or special order, to quash or limit a special or general order or subpoena, or to retract inaccurate and misleading information as being exempt from section 6(b). These commenters took the position that such activities are not proceedings in the customary administrative sense and therefore the information concerning such proceedings should not be exempt from section 6(b). One commenter was concerned that exempting information in the course of a proceeding to issue a subpoena or special or general order would prematurely expose a firm to a detrimental information release without notice.

The Commission disagrees with these commenters. Each of these proceedings is either expressly referenced in or is of a nature almost identical to those listed in the legislative history as the types of other administrative and judicial proceedings Congress intended to exempt from section 6(b). Accordingly, the Commission's interpretation of the extent of the section 6(b)(4) exception is reasonable.

(c) Administrative or Judicial Proceedings to Which CPSC Is a Party

Two commenters took the position that the exemption for administrative or judicial proceedings to which the Commission is a party applies only to proceedings under the Consumer Product Safety Act or the transferred acts. These commenters therefore contended that the exception does not apply to private litigation to which the Commission is a party. The Commission's position on this issue is

discussed above fully in § 1101.11(d) of the preamble.

Section 1101.52 Retraction Procedures

Section 1101.52 of the proposed rule set forth the procedures the Commission proposed to follow in determining whether retraction of an inaccurate and misleading statement was appropriate and, if so, the method by which such statement would be retracted. The Commission received only three comments on retraction. One suggested that the proposed rule contain a presumption that any disclosure to which a firm has objected and which was inaccurate is adverse. This commenter objected to the requirement in the proposed rule that a firm provide information as to why it believed such a disclosure reflected adversely on the safety of the consumer product in issue. The commenter contended that a manufacturer should not be forced to quantify the harm associated with disclosure before the Commission would consider a retraction.

(a) Quantifying Harm

The Commission agrees that it often may be difficult to quantify the harm which might result from disclosure of inaccurate and misleading material. The Commission therefore will entertain a request for retraction even though a firm is unable to quantify such harm. The firm however must still provide the Commission with an explanation of how the information is inaccurate or misleading and how it reflects adversely on the safety of the product or the practices of the manufacturer. The Commission notes, however, that information quantifying harm would be invaluable in determining the scope of a retraction statement, if appropriate, and the audience to which such a statement should be addressed. Accordingly, the Commission expects manufacturers to provide such information when it is available.

(b) Scope of Dissemination of Retraction

Section 1101.52(d) stated that the Commission would publish a retraction in a manner equivalent to that in which the original disclosure was made. One commenter suggested that sometimes it might be appropriate for a retraction to be disseminated more widely than the original inaccurate and misleading material. In support of this proposition, the commenter pointed to the legislative history contained in the House Report which noted that there "may be circumstances where equity requires fuller disclosure of the Commission's mistakes in order to repair the damage to any manufacturer of the product

which may have resulted from publication of the inaccurate information." The Commission agrees with this manufacturer's comment and has revised the rule accordingly.

(c) Information Needed to Support Retraction Request

The same commenter took the position that the Commission's rule should encourage firms to include as much information as possible in retraction requests. The commenter pointed out, however, that it may not always be possible to provide all the information required by the proposed rule. Accordingly, the commenter requested that the final rule state that the information specified in § 1101.52 be provided if it is available but that the absence of full information will not prevent the Commission from taking prompt action on the firm's retraction request.

The Commission agrees with this comment and has revised the rule to require the firm to provide information that is reasonably available. However, if the Commission requests that a manufacturer explain the absence of the information, the Commission expects the firm to be able to demonstrate a reasonable effort to obtain the missing information.

(d) Commission Action on Retraction Request

Section 1101.52(d) stated that the Commission would act expeditiously on any request for retraction. Two commenters requested that the Commission include a specific time frame in its rule. One commenter advocated a 10 day period while a second advocated a 30 day period unless unusual circumstances necessitated a longer period. The Commission believes that a 30 working day period is reasonable. The revised rule therefore includes a provision specifying the Commission will act on a retraction request within 30 working days unless good cause exists to extend the time for acting.

Section 1101.61 Information Submitted Pursuant to Section 15(b) of the CPSA

Section 6(b)(5) of the CPSA prohibits the Commission from disclosing to the public information submitted pursuant to section 15(b) of the CPSA respecting a consumer product unless the Commission has issued an administrative complaint under section 15(c) or (d) of the CPSA, has accepted in writing a remedial settlement agreement dealing with such a product, or has obtained the consent of the person who

submitted the information to disclose it. The section further exempts from its prohibition public disclosure of information concerning a consumer product which is the subject of a section 12 action, or which the Commission has reasonable cause to believe is in violation of a prohibited act section of one of the acts it administers, or information in the course of or concerning a judicial proceeding.

The Commission's proposed rule extended this protection to all information submitted by a firm pursuant to section 15, including that submitted after the filing of an initial report under section 15(b). Similarly, the proposed rule implicitly recognized that, upon the occurrence of one of the specified events, section 6(b)(1) would still apply to any information disclosure (unless that disclosure fell within one of the statutory exceptions of section 6(b)(4)).

Two commenters expressed fear that the protections provided by section 6(b)(5) were diluted by a reference in the proposed rule to the other general provisions of the section 6(b) rule. While the commenters did not specifically point to matters which might, in their view, jeopardize the statutory protections, the Commission believes that revisions in other sections of the final rule address their concerns.

(a) Remedial Settlement Agreements

One commenter suggested that the types of "remedial settlement agreements" which would remove the statutory prohibition on disclosure of information be limited to recalls or similar voluntary public actions. The Commission declines to accept this proposal. 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 public notification program. The nature and extent of such an undertaking however does not change the fact that it is a remedial settlement agreement. Accordingly, the Commission declines to restrict the rule in this manner.

One commenter suggested that the rule be amended to include the term "voluntary corrective action program" in the provision dealing with remedial settlements. The voluntary corrective action program undertaken by manufacturers who have reported pursuant to 15(b) is a remedial settlement agreement. The Commission does not believe that the rule requires an amendment to reflect this fact.

(b) Information Independently Obtained or Prepared by the Commission

Three commenters objected to the provisions of the proposed rule which stated that section 6(b)(5) does not apply to information independently obtained or prepared by the Commission staff. These commenters contend that there is no statutory basis for this exclusion, and one expressed fear that the Commission would attempt to release information submitted pursuant to section 15(b) by contending that the staff independently obtained it.

Both the statute and Congressional intent point to the opposite conclusion. The statute specifically exempts only that information submitted pursuant to section 15(b). Section 15(b) requires firms to report to the Commission information which reasonably supports the conclusion that a product either does not comply with an applicable consumer product safety rule or contains a defect which could create a substantial hazard. Information independently obtained or prepared by the Commission is, by definition, not submitted by the firm.

The Congressional purpose of prohibiting public disclosure of information submitted pursuant to section 15(b) is clear. The exemption is designed to encourage firms to make a free and candid disclosure of all relevant information concerning a noncomplying product or a potential substantial product hazard without fear of premature release to the public in a fashion which jeopardize the firm's or product's reputation. The possibility of premature release could inhibit full disclosure and lead to a delay in obtaining corrective action. In contrast, most instances in which the Commission is forced to generate such information occur because the firm fails to submit information pursuant to section 15(b). The policies which support withholding information submitted by manufacturers do not apply to staff generated information.

Thus, the Commission does not believe Congress intended to permit firms to shirk their obligation to report under section 15(b) and then to assert the privilege of nondisclosure when the Commission proposes to disclose the information obtained independently or prepared by its staff. Such information, however, is subject to section 6(b).

(c) Scope of Information Subject to Section 6(b)(5)

Two commenters suggested that the rule be amended to extend the statutory protection of section 6(b)(5) to information identified by the firm or treated by the staff as being submitted

pursuant to section 15(b). In support of this position, the commenters pointed out that many firms report product hazards to the Commission but are reluctant to acknowledge that their products contain defects which may present a substantial product hazard. To avoid this concession, firms often disclaim any legal obligation to report under section 15(b). The commenters note that the Commission staff nevertheless treats such reports as being filed under section 15.

The Commission agrees that this comment has merit. The Commission's rules setting forth the requirements for reporting expressly envision situations in which firms are permitted to make such disclaimers while reporting to the Commission (16 CFR 1115.12(a)). The final rule, therefore, has been revised to take into account this concern.

Section 1101.71 Delegation of Authority—Information Group.

Section 1101.71 of the proposed rule delegated the Commission's authority to render decisions on the release of information subject to section 6(b) to an Information Group composed of the General Counsel and the Secretary of the Consumer Product Safety Commission or their designees. The rule required designees to be senior staff members.

Seven parties commented on this aspect of the proposed rule. Four supported the delegation to the Information Group. Two of these suggested that the group include the head of the Commission's Directorate for Engineering and Sciences, inasmuch as the decision whether to release a document under section 6(b) often involves highly technical issues. One wanted the delegation limited to the Secretary and General Counsel with no subdelegation to senior staff members while another supported the delegations in the proposed rule as long as the rule contained a system for administrative appeal.

Three other commenters took the position that the delegation to the Information Group was improper. One incorrectly claimed that the legislative history of the 1981 amendments to section 6(b) directed the Commission to establish the system of administrative appeal. (The 1981 amendments only direct the Commission to establish an internal system for the review of issues of accuracy under section 6(b)(6), which applies to Commission initiated disclosures.)

All commenters, however, suggested that there be an appeal as of right to the Commission from a decision of the

Information Group. One commenter noted that this procedure would implement the statutory safeguards and that it expected such appeals to be rarely taken.

At the outset, the Commission disagrees with the contention that its delegation of authority to the Information Group is illegal. Section 27(b)(9) of the Consumer Product Safety Act authorizes the Commission to delegate any of its functions (other than the power to issue subpoenas) to any officer or employee of the Commission. Accordingly, the delegation to the Information Group is statutorily authorized.

Subsequent to the publication of the proposed rule, the Commission has had the opportunity to process many requests for disclosure of information subject to section 6(b). It has become apparent that, in some cases, the existence of the Information Group facilitates processing the requests while in other cases the Information Group is unnecessary. The Commission has therefore revised § 1101.71 in the following manner. Proposed section 6(b) information disclosures will be processed according to the same internal procedure utilized to process other documents prepared by the staff. The evaluation of section 6(b) information disclosures at the staff level will include, if appropriate, consultation with the technical or enforcement staff to assure that the information in question is evaluated for accuracy in the fullest possible manner. After such evaluation, the initial recommendation of the staff member working on a section 6(b) information disclosure will be reviewed by his or her supervisor and forwarded to the Secretary of the Commission, if no comments were received in response to a request for section 6(b) comments, or to the General Counsel if comments were received. The General Counsel and Secretary may delegate the authority to approve or reject recommendations to senior level employees in their respective offices. The General Counsel is also given the discretion to empanel an Information Group to consider specific disclosure matters or specific classes of disclosures. This process will assure that section 6(b) matters receive senior level management review.

With regard to administrative appeal, the decision of the General Counsel or the Secretary shall be final agency action. The Commission notes that, because of the statutory right to bring suit within the 10 working day period prior to disclosure where a firm objects to disclosure on accuracy grounds, a

firm's interests are not prejudiced by making a decision of the Secretary or General Counsel final agency action. However, the General Counsel, the Secretary or the Information Group (if one is empaneled) has the discretion to refer a section 6(b) matter to the Commission for a policy decision or, for good cause shown by a firm, to transmit a proposed section 6(b) disclosure disputed by the firm to the Commission for decision. This will insure that significant policy issues and substantive issues of accuracy and fairness can be reviewed by the Commission.

The requirement for showing good cause will eliminate *pro forma* frivolous appeals which the Commission has encountered in some Freedom of Information Act cases. If administrative appeals to the Commission were allowed as a matter of right, upon receipt of the ten working day notice of proposed disclosure, the firm could file an appeal that would have to be acted upon by the Commission prior to disclosure of the information. An administrative appeal of this nature could be nothing more than a tactic to delay disclosure. The Commission has therefore included in the final rule the requirement of showing good cause in support of a request that a section 6(b) matter to the Commission. Nevertheless, it shall be the decision of the General Counsel, the Secretary, or the Information Group whether to transmit a matter to be referred to the Commission.

Appendix A: Letter to Persons Who Make Product Complaints.

Appendix A of the proposed rule contained an example of a letter to be sent to persons who make product complaints to request that they confirm the complaints. One commenter recommended that the letter request the recipient to have the confirmation notarized. As discussed earlier, the Commission does not believe that this is a necessary step to comply with section 6(b) and has declined to adopt the suggestion.

A second comment suggested that the letter include a statement indicating that the person submitting the complaint may be questioned by the Commission or other interested parties and that submitters should be required to include their name in the complaint letter and make it available for release. The Commission believes that transmitting a complaint to the manufacturer of a product will have the same result as notifying the consumer that he or she may be questioned and has therefore not revised the letter. The Commission also routinely asks complainants for permission to disclose their identities.

Section 25(c) of the CPSA, 15 U.S.C. § 2074(c), however, prohibits the Commission from disclosing the identity of injured persons contained in accident or investigation reports. The failure to agree to disclosure does not *per se* render a complaint non-releasable. Rather the complaint will be evaluated in accordance with the procedures set forth in §§1101.32, 1101.33, and 1101.34.

The same commenter suggested the copy of the confirmation as well as the original complaint be forwarded to the manufacturer of the product subject to the complaint. The commenter claims that this will provide the manufacturer with the opportunity to take expeditious remedial action. The Commission is already following this practice. The Commission would note that it has deleted Appendix A from the final rule since it is unnecessary for the implementation of section 6(b).

Although the section 6(b) rule is an "interpretive" rule, the Commission and its staff will follow the provisions of the rule.

Regulatory Flexibility Analysis

In accordance with Section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Commission certifies that this regulation will not have a significant economic impact upon a substantial number of small entities. Section 6(b) of the Consumer Product Safety Act itself may have economic impact on small business because this statute affects all business entities, regardless of size. Section 6(b) as enacted and subsequently amended demonstrates Congressional concern and intent that statutory safeguards be established and followed by the Commission in fulfilling its purpose of collecting and disseminating accurate product safety information. The final regulation merely enumerates the Commission's policy concerning the factors which are balanced in determining whether public disclosure of information is appropriate under section 6(b) and whether the statutory safeguards of that section have been satisfied. The final regulation, however, will have no economic impact on small business, either beneficial or negative beyond that which results from the statutory provision.

A certification that the regulation will not have a significant impact on small businesses has been provided to the Chief Counsel for Advocacy of the Small Business Administration.

Environmental Considerations

The final rule below does not fall within any of the categories of Commission activities described in 16

CFR 1021.5(b) which have the potential for producing environmental effects, and which, therefore, require environmental assessments, and, in some cases, environmental impact statements. The Commission does not believe that the final rule contains any unusual aspects which may produce effects on the human environment, nor can the Commission foresee any circumstances in which the rule proposed below may produce such effects. For this reason, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 16 CFR Part 1101

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

Conclusion

Therefore, the Commission amends Title 16 Chapter II of the Code of Federal Regulations by adding a new Part 1101 to Subchapter B, reading as set forth below.

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

Subpart A—Background

Sec.

- 1101.1 General background.
- 1101.2 Scope.

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

- 1101.11 General application of provisions of Section 6(b)(1).
- 1101.12 Commission must disclose information to the public.
- 1101.13 Public ability to ascertain readily identity of manufacturer or private labeler.

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

- 1101.21 Form of notice and opportunity to comment.
- 1101.22 Timing: request for time extensions.
- 1101.23 Providing less than 30 days notice before disclosing information.
- 1101.24 Scope of comments Commission seeks.
- 1101.25 Notice of intent to disclose.
- 1101.26 Circumstances when the Commission does not provide notice and opportunity to comment.

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

Sec.

- 1101.31 General requirements.
- 1101.32 Reasonable steps to assure information is accurate.

- 1101.33 Reasonable steps to assure information release is fair in the circumstances.
- 1101.34 Reasonable steps to assure information release is "reasonably related to effectuating the purposes of the Acts" the Commission administers.

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

- 1101.41 Generally.
- 1101.42 Imminent hazard exception.
- 1101.43 Prohibited acts exception.
- 1101.44 Rulemaking proceeding exception.
- 1101.45 Adjudicatory proceeding exception.
- 1101.46 Other administrative or judicial proceeding exception.

Subpart F—Retraction

- 1101.51 Commission interpretation.
- 1101.52 Procedure for retraction.

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

- 1101.61 Generally.
- 1101.62 Statutory exceptions to Section 6(b)(5) requirements.
- 1101.63 Information submitted pursuant to Section 15(b) of the CPSA.

Subpart H—Delegation of Authority to Information Group

- 1101.71 Delegation of authority.
- Authority: Sec. 6(b) of Pub. L. 92-573, 80 Stat. 1212, as amended by Pub. L. No. 97-35, 95 Stat. 703-25, 15 U.S.C. 2055(b); 5 U.S.C. 553.

Subpart A—Background

§ 1101.1 General background.

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

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

(1) Generally, section 6(b)(1) requires the Commission to provide manufacturers or private labelers with advance notice and opportunity to comment on information the Commission proposes to release, if the

public can readily ascertain the identity of the firm from the information. Section 6(b)(1) also requires the Commission to take reasonable steps to assure that the information is accurate and that disclosure is fair in the circumstances and reasonably related to effectuating the purposes of the Acts administered by the Commission. Disclosure of information may not occur in fewer than 30 days after notice to the manufacturer or private labeler unless the Commission finds the public health and safety requires a lesser period of notice. Exceptions to these requirements are established in section 6(b)(4). Additional limitations on the disclosure of information reported to the Commission under section 15(b) of the CPSA are established in section 6(b)(5).

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

(3) Section 6(b)(3) authorizes manufacturers and private labelers to bring lawsuits against the Commission to prevent disclosure of product-specific information after the firms have received the notice specified.

(c) *Internal Clearance Procedures.* Section 6(b)(6) requires the Commission to establish internal clearance procedures for Commission initiated disclosures of information that reflect on the safety of a consumer product or class of products, even if the information is not product specific. This rule does not address section 6(b)(6) because the Commission has internal clearance procedures in its directives system. (Directive 1450.2 "Clearance Procedures for Commission Staff to Use in Providing Information to the Public," April 27, 1983.

§ 1101.2 Scope.

Section 6(b) and these rules apply to information concerning products subject to the CPSA, 15 U.S.C. 2051-2085, and to the four other acts the Commission administers (transferred acts). These transferred acts are the Flammable Fabrics Act, 15 U.S.C. 1191-1204 (FFA); the Poison Prevention Packaging Act of 1970, 15 U.S.C. 1471-1476 (PPPA); the Federal Hazardous Substances Act, 15 U.S.C. 1261-1276 (FHSA); and the Refrigerator Safety Act, 15 U.S.C. 1211-1214 (RSA). See section 6(b)(1) of the CPSA, 15 U.S.C. 2055(d)(1).

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

§ 1101.11 General application of provisions of Section 6(b)(1).

(a) *Information Subject to Section 6(b)(1).* To be subject to the notice and analysis provisions of section 6(b)(1), information must meet all the following criteria:

(1) The information must pertain to a specific product which is either designated or described in a manner which permits its identity to be ascertained readily by the public.

(2) The information must be obtained, generated or received by the Commission as an entity or by individual members, employees, agents, contractors or representatives of the Commission acting in their official capacities.

(3) The Commission or its members, employees, agents or representatives must propose to disclose the information to the public (see § 1101.12).

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

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

(1) Information described in the exclusions contained in section 6(b)(4) of the CPSA (see Subpart E of this rule).

(2) Information the Commission is required by law to make publicly available. This information includes, for example, Commission notifications to foreign governments regarding certain products to be exported, as required by section 18(b) of the CPSA, 15 U.S.C. 2068(b); section 14(d) of the FHSA, 15 U.S.C. 1273(d); and section 15(c) of the FFA, 15 U.S.C. 1202(c). (See the Commission's Export Policy Statement, 16 CFR Part 1017.)

(3) Information required to be disclosed to the President and Congress pursuant to section 27(j) of the CPSA, 15 U.S.C. 2076(j).

(4) Press releases issued by firms.

(5) Information filed or presented in administrative proceedings or litigation to which the Commission is a party and which is not expressly subject to the section 6(b)(4) exceptions.

§ 1101.12 Commission must disclose information to the public.

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

(a) Members, employees, agents, representatives and contractors of the Commission, in their official capacity.

(b) State officials who are commissioned officers under section 29(a)(2) of the CPSA, 15 U.S.C. 2078(a)(2), to the extent that the Commission furnishes them information necessary for them to perform their duties under that section. Such officials may not release to the public copies of such information unless the Commission has complied with section 6(b) or the information falls within an exception to section 6(b).

(c) Members of a Commission Chronic Hazard Advisory Panel established under section 28 of the CPSA; 15 U.S.C. 2077. However, disclosures of information by such a Panel are subject to section 6(b).

(d) The persons or firms to whom the information to be disclosed pertains, or their legal representatives.

(e) The persons or firms who provided the information to the Commission, or their legal representatives.

(f) Other Federal agencies or state or local governments to whom accident and investigation reports are provided pursuant to section 29(e) of the CPSA, 15 U.S.C. 2078(e). However, as required by that section, employees of Federal agencies or state or local governments may not release to the public copies of any accident or investigation report made under the CPSA by an officer, employee or agent of the Commission unless CPSC has complied with the applicable requirements of section 6(b).

(g) The Chairman or ranking minority member of a committee or subcommittee of Congress acting pursuant to committee business and having jurisdiction over the matter which is the subject of the information requested.

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

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

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

§ 1101.21 Form of notice and opportunity to comment.

(a) *Notice may be oral or written.* The Commission will generally provide to manufacturers or private labelers written notice and opportunity to comment on information subject to section 6(b)(1). However, when the Commission makes a public health and safety finding pursuant to section 6(b)(1) of the CPSA, the Commission may determine that it is necessary to provide the notice and opportunity to comment orally, either in person or by telephone.

(b) *Content of notice.* The Commission will provide the manufacturer or private labeler with:

(1) Either the actual text of the information to be disclosed or, if appropriate, a summary of the information.

(2) A general description of the manner in which the Commission will disclose the information, including any other relevant information the Commission intends to include with the disclosure. If the Commission advises that the form of disclosure will be by press release, for example, the Commission need not provide further notice to disclose a summary of the press release.

(3) A request for comment with respect to the information, including a request for explanatory data or other relevant information for the Commission's consideration.

(4) A statement that, in the absence of a specific request by a firm that its comments be withheld from disclosure, the Commission will release to the public the firm's comments (or a summary thereof prepared by the firm or, if the firm declines to do so, by the Commission).

(5) A statement that a request that comments be withheld from disclosure will be honored.

(6) Notice that the firm may request confidential treatment for the information, in accordance with section 6(a)(3) of the Consumer Product Safety Act, 15 U.S.C. 2055(a)(3) [see § 1101.24(b)].

(7) A statement that no further request for comment will be sought by the Commission if it intends to disclose the identical information in the same format, unless the firm specifically requests the opportunity to comment on subsequent information disclosures.

(8) The name, address, and telephone number of the person to whom comments should be sent and the time

when any comments are due (see § 1101.22).

§ 1101.22 Timing: request for time extensions.

(a) *Time for comment.* (1) Generally firms will receive a minimum of twenty (20) calendar days from the date of the letter in which the Commission transmits the notice to furnish comments to the Commission. Firms that receive requests for comments by mail will receive an additional three (3) days to comment to account for time in the mail.

(2) Upon his or her own initiative or upon request, the Freedom of Information Officer may provide a different amount of time for comment, particularly for firms that receive voluminous or complex material. In addition, the Commission may find that the public health and safety requires a lesser period of notice and may require a response in a shorter period of time (see § 1101.24).

(b) *No response submitted.* (1) If 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).

(2) Unless the Commission finds that the public health and safety requires a lesser period of notice (see § 1101.23), the Commission will not disclose the information in fewer than 30 days after providing a manufacturer or private labeler notice and opportunity to comment.

(c) *Requests for time extension.* (1) Requests for extension of time to comment on information to be disclosed must be made to the person who provided the Commission's notice and opportunity to comment. The request for time extension may be either oral or written. An oral request for a time extension must be promptly confirmed in writing.

(2) Requests for extension of time must explain with specificity why the extension is needed and how much additional time is required.

(3) The Commission will promptly respond to requests for extension of time.

§ 1101.23 Providing less than 30 days notice before disclosing information.

There are two circumstances in which the Commission may disclose to the public information subject to section 6(b)(1) in a time less than 30 days after providing notice to the manufacturer or private labeler.

(a) *Firm agrees to lesser period or does not object to disclosure.* The Commission may disclose to the public information subject to section 6(b)(1) before the 30-day period expires when, after receiving the Commission's notice and opportunity to comment, the firm involved agrees to the earlier disclosure; notifies the Commission that it has no comment; or notifies the Commission that it does not object to disclosure.

(b) *Commission finding a lesser period is required.* Section 6(b)(1) provides that the Commission may find that the public health and safety requires a lesser period of notice than the 30 days advance notice that section 6(b)(1) generally requires. The Commission may determine that the public health and safety requires less than 30 days advance notice, for example, to warn the public quickly because individuals may be in danger from a product hazard or a potential hazard, or to correct product safety information released by third persons, which mischaracterizes statements made by the Commission about the product or which attributes to the Commission statements about the product which the Commission did not make.

(c) *Notice of finding.* The Commission will inform a manufacturer or private labeler of a product which is the subject of a public health and safety finding that the public health and safety requires less than 30 days advance notice either orally or in writing, depending on the immediacy of the need for quick action; and the Commission will publish the finding in the *Federal Register*. Disclosure may be made concurrently with the filing of the *Federal Register* notice and need not await its publication. However, where applicable, before releasing information, the Commission will comply with the requirements of section 6(b)(1) and (2) by giving the firm the opportunity to comment on the information, either orally or in writing depending on the immediacy of the need for quick action, and by giving the firm advance notice before disclosing information claimed by a manufacturer or private labeler to be inaccurate (see § 1101.25).

§ 1101.24 Scope of comments Commission seeks.

(a) *Comment in regard to the information.* The section 6(b) opportunity to comment on information is intended to permit firms to furnish information and data to the Commission to assist the agency in its evaluation of the accuracy of the information. A firm's submission, therefore, must be specific and should be accompanied by

documentation, where available, if the comments are to assist the Commission in its evaluation of the information. Comments of a general nature, such as general suggestions or allegations that a document is inaccurate or that the Commission has not taken reasonable steps to assure accuracy, are not sufficient to assist the Commission in its evaluation of the information or to justify a claim of inaccuracy. The weight accorded a firm's comments on the accuracy of information and the degree of scrutiny which the Commission will exercise in evaluating the information will depend on the specificity and completeness of the firm's comments and of the accompanying documentation. In general, specific comments which are accompanied by documentation will be given more weight than those which are undocumented and general in nature.

(b) *Claims of Confidentiality.* If the manufacturer or private labeler believes the information involved cannot be disclosed because of section 6(a)(2) of the CPSA, 15 U.S.C. 2055(a)(2), which pertains to trade secret or other confidential material, the firm may make claims of confidentiality at the time it submits its comments to the Commission under this section. Such claims must identify the specific information which the firm believes to be confidential or trade secret material and must state with specificity the grounds on which the firm bases its claims. (See Commission's Freedom of Information Act regulation, 16 CFR Part 1015, particularly 16 CFR 1015.18.)

(c) *Requests for Nondisclosure of Comments.* If a firm objects to disclosure of its comments or a portion thereof, it must notify the Commission at the time it submits its comments. If the firm objects to the disclosure of a portion of its comments, it must identify those portions which should be withheld.

§ 1101.25 Notice of intent to disclose.

(a) *Notice to manufacturer or private labeler.* In accordance with section 6(b)(2) of the CPSA, if the Commission, after following the notice provisions of section 6(b)(1), determines that information claimed to be inaccurate by a manufacturer or private labeler in comments submitted under section 6(b)(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 it intends to disclose the information not less than 10 working days after the date of the receipt of notification by the firm. The notice of

intent to disclose will include an explanation of the reason for the Commission's decision, copies of any additional materials, such as explanatory statements and letters to Freedom of Information Act requesters, which were not previously sent to the firm.

(b) *Commission finding a lesser period is required.* The Commission may determine that the public health and safety requires less than 10 working days advance notice of its intent to disclose information claimed to be inaccurate. For example, the Commission may determine it is necessary to warn the public quickly because individuals may be in danger from a product hazard or a potential hazard, or to correct product safety information released by third persons, which mischaracterized statements made by the Commission about the product or which attributes to the Commission statements about the product which the Commission did not make.

(c) *Notice of findings.* The Commission will inform a manufacturer or private labeler of a product which is the subject of a public health and safety finding that the public health and safety requires less than 10 days advance notice either orally or in writing, depending on the immediacy of the need for quick action; and the Commission will publish the finding in the *Federal Register*. Firms will be notified in advance of the date and time, if possible, at which the Commission intends to disclose the information. Disclosure may be concurrently with the filing of the *Federal Register* notice and need not await its publication. The *Federal Register* notice prepared under section 6(b)(2) may be submitted simultaneously with or after a *Federal Register* notice prepared under section 6(b)(1) (see § 1101.23(c)).

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

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

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

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

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

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

§ 1101.3 General requirements.

(a) *Timing of decisions.* The Commission will attempt to make its decision on disclosure so that it can disclose information in accordance with section 6(b) as soon as is reasonably possible after expiration of the statutory thirty day moratorium on disclosure.

(b) *Inclusion of comments.* In disclosing any information under this section, the Commission will include any comments or other information submitted by the manufacturer or private labeler unless the manufacturer or private labeler at the time it submits its section 6(b) comments specifically requests 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.

(c) *Explanatory statements.* Where appropriate, the Commission will accompany the disclosure of information subject to this subpart with an explanatory statement that makes the nature of the information disclosed clear to the public. Inclusion of an explanatory statement is in addition to, and not a substitute for, taking reasonable steps to assure the accuracy of information. To the extent it is practical the Commission will also accompany the disclosure with any other relevant information in its possession that places the released information in context.

(d) *Information previously disclosed.* If the Commission has previously disclosed, in accordance with section 6(b)(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.

§ 1101.32 Reasonable steps to assure information is accurate.

(a) The Commission considers that the following types of actions are reasonable steps to assure the accuracy of information it proposes to release to the public:

(1) The Commission staff or a qualified person or entity outside the Commission (e.g., someone with requisite training or experience, such as a fire marshal, a fire investigator, an electrical engineer, or an attending physician) conducts an investigation or an inspection which yields or corroborates the product information to be disclosed; or

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

(3) The Commission staff provides the information to be disclosed to the person who submitted it to the Commission for review and, if necessary, correction, and the submitter confirms the information as accurate to the best of the submitter's knowledge and belief, provided that:

(i) The confirmation is made by the person injured or nearly injured in an incident involving the product; or

(ii) The confirmation is made by a person who, on the basis of his or her own observation or experience, identifies an alleged safety-related defect in or problem with such a product even though no incident or injury associated with the defect or problem may have occurred; or

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

(iv) The confirmation is made by an individual with requisite training or experience who has investigated and/or determined the cause of deaths, injuries or safety-related incidents involving such a product. Such persons would include, for example, a fire marshal, a fire investigator, an electrical engineer,

an ambulance attendant, or an attending physician; or

(v) The confirmation is made by a parent or guardian of a child involved in an incident involving such a product, or by a person to whom a child is entrusted on a temporary basis.

(b) The steps set forth below are the steps the Commission will take to analyze the accuracy of information which it proposes to release to the public.

(1) The Commission will review each proposed disclosure of information which is susceptible of factual verification to assure that reasonable steps have been taken to assure accuracy in accordance with § 1101.32(a).

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

(3) If the Commission receives no comments or only general, undocumented comments claiming inaccuracy, the Commission will review the information in accordance with § 1101.32(a) and release it, generally without further investigating its accuracy if there is nothing on the face of the information that calls its accuracy into question.

(4) If a firm comments on the accuracy of the information the Commission proposes to disclose, the Commission will review the information in light of the comments. The degree of review by the Commission and the weight accorded a firm's comments will be directly related to the specificity and completeness of the firm's comments on accuracy and the accompanying documentation. Documented comments will be given more weight than undocumented comments. Specific comments will be given more weight than general comments. Further steps may be taken to determine the accuracy of the information if the Commission determines such action appropriate.

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

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

(1) The Commission will accompany information disclosed to the public with the manufacturer's or private labeler's comments unless the manufacturer or private labeler asks in its section 6(b) comments that its comments or a

designated portion thereof not accompany the information.

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

(3) The Commission will limit the form of disclosure to that which it considers appropriate in the circumstances. For example, the Commission may determine it is not appropriate to issue a nationwide press release in a particular situation and rather will issue a press release directed at certain localities, regions, or user populations.

(4) The Commission may delay disclosure of information in some circumstances. For example, the Commission may elect to postpone an information release until an investigation, analysis or test of a product is complete, rather than releasing information piecemeal.

(b) The Commission will not disclose information when it determines that disclosure would not be fair in the circumstances. The following are examples of disclosures which generally would not be fair in the circumstances.

(1) Disclosure of information furnished by a firm to facilitate prompt remedial action or settlement of a case when the firm has a reasonable expectation that the information will be maintained by the Commission in confidence.

(2) Disclosure of notes or minutes of meetings to discuss or negotiate settlement agreements and of drafts of documents prepared during settlement negotiations, where the firm has a reasonable expectation that such written materials will be maintained by the Commission in confidence.

(3) Disclosure of the work-product of attorneys employed by a firm and information subject to an attorney/client privilege, if the Commission has obtained the information from the client or the attorney, the attorney or client advises the Commission of the confidential nature of the information at the time it is submitted to the Commission, and the information has been maintained in confidence by the client and the attorney.

(4) Disclosure of a firm's comments (or a portion thereof) submitted under section 6(b)(1) over the firm's objection.

§ 1101.34 Reasonable steps to assure information release is "Reasonably Related to Effectuating the Purposes of the Acts" the Commission administers.

(a) The steps set forth below are the steps the Commission has determined are reasonable to take to assure that the disclosure of information to the public effectuates the purposes of the Acts it administers.

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

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

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

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

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

§ 1101.41 Generally.

(a) *Scope.* This Subpart describes and interprets the exceptions to the requirements of section 6(b)(1)–(b)(3) that are set forth in section 6(b)(4). These exceptions apply to (1) information about a product reasonably related to the subject matter of an imminent hazard action in federal court; (2) information about a product which the Commission has reasonable cause to believe violates the prohibited act

section of one of the acts the Commission administers and the information is reasonably related to the alleged violations; (3) information in the course of or concerning a rulemaking proceeding; or (4) information in the course of or concerning an adjudicatory, administrative or judicial proceeding.

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

§ 1101.42 Imminent hazard exception.

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

(b) *Scope of exception.* This exception applies once the Commission has filed an action under section 12 of the CPSA, 15 U.S.C. 2061, in a United States district court. Once the exception applies, information may be disclosed to the public 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).

§ 1101.43 Prohibited acts exception.

(a) *Statutory provision.* Section 6(b)(4)(A) provides that the requirements of section 6(b)(1) do not apply to public disclosure of information about any consumer product which the Commission has reasonable cause to believe is in violation of a "prohibited act" section under any of the statutes administered by the Commission.

(b) *Scope of exception.* This exception applies once the Commission has "reason to believe" there has occurred a violation of sections 19(a) (1), (2), and (5) or (10) of the CPSA which pertains to a consumer product. This exception also applies once the Commission has "reasonable cause to believe" there has occurred a "prohibited act" pertaining to a product regulated under the transferred acts. Once the exception applies, the Commission may disclose information to the public without following the requirements of section

6(b)(1) if the information concerning the product is reasonably related to the violative practice or condition.

§ 1101.44 Rulemaking proceeding

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

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

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

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

§ 1101.45 Adjudicatory proceeding exception.

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

of or concerning . . . [an] adjudicatory proceeding . . . under this Act."

(b) *Scope of exception.* This exception applies once the Commission begins an administrative adjudication under the CPSA. The Commission will also apply the exception to any administrative adjudicatory proceeding under FHSA, FAA, or PPPA. An adjudicatory proceeding begins with the filing of a complaint under section 15(c) or (d), 17(a)(1) or (3), or 20 of the CPSA (15 U.S.C. 2064(c) or (d), 2066(a)(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 exchanged during discovery filed or in testimony given in such proceedings, and may therefore, include information generated before the adjudication began.

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

§ 1101.46 Other administrative or judicial proceeding exception.

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

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

(1) A proceeding to act on a petition to start a rulemaking proceeding. This proceeding begins with the filing of a petition and ends when the petition is denied or, if granted, when the rulemaking proceeding begins.

Information subject to the exception for petition proceedings is the petition itself and the supporting documentation, and information subsequently compiled by the staff and incorporated or referenced in the staff briefing papers for and recommendation to the Commission.

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

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

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

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

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

(7) A proceeding to obtain a retraction from the Commission pursuant to Subpart F of these rules. This proceeding begins with the filing with the Secretary of the Commission of a request for retraction and ends when the request is denied or, if granted, when the information is retracted.

(c) *In the course of or concerning.* The phrase "in the course of or concerning" shall have the same meaning as set forth in either § 1101.44 (c) and (d) or § 1101.45 (c) and (d), whichever is applicable.

Subpart F—Retraction

§ 1101.51 Commission Interpretation.

(a) *Statutory provisions.* Section 6(b)(7) of the CPSA provides: If the Commission finds that, in the administration of this Act, it has made public disclosure of inaccurate or misleading information which reflects

adversely upon the safety of any consumer product or class of consumer products, or the practices of any manufacturer, private labeler, distributor, or retailer of consumer products, it shall, in a manner equivalent to that in which such disclosure was made, take reasonable steps to publish a retraction of such inaccurate or misleading information.

(b) *Scope.* Section 6(b)(7) applies to inaccurate or misleading information only if it is *adverse*—i.e., if it reflects adversely either on the safety of a consumer product or on the practices of a manufacturer, private labeler, distributor or retailer. In addition, the Commission will apply section 6(b)(7) to information about products, and about manufacturers and private labelers of products, the Commission may regulate under any of the statutes it administers. Section 6(b)(7) applies to information already disclosed by the Commission, members of the Commission, or the Commission employees, agents, contractors or representatives in their official capacities.

§ 1101.52 Procedure for retraction.

(a) *Initiative.* The Commission may retract information under section 6(b)(7) on the initiative of the Commission, upon the request of a manufacturer, private labeler, distributor, or retailer of a consumer product, or upon the request of any other person in accordance with the procedures provided in this section.

(b) *Request for retraction.* Any manufacturer, private labeler, distributor or retailer of a consumer product or any other person may request a retraction if he/she believes the Commission or an individual member, employee, agent, contractor or representative of the Commission has made public disclosure of inaccurate or misleading information, which reflects adversely either on the safety of a product with which the firm deals or on the practices of the firm. The request must be in writing and addressed to the Secretary, CPSC, Washington, D.C. 20207.

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

(1) The information disclosed for which retraction is requested, the date on which the information was disclosed, the manner in which it was disclosed, who disclosed it, the type of document (e.g., letter, memorandum, news release) and any other relevant information the firm has to assist the Commission in identifying the information. A photocopy of the disclosure should accompany the request.

(2) A statement of the specific aspects of the information the firm believes are inaccurate or misleading and reflect adversely either on the safety of a consumer product with which the firm deals or on the firm's practices.

(3) A statement of the reasons the firm believes the information is inaccurate or misleading and reflects adversely either on the safety of a consumer product with which the firm deals or on the firm's practices.

(4) A statement of the action the firm requests the Commission to take in publishing a retraction in a manner equivalent to that in which disclosure was made.

(5) Any additional data or information the firm believes is relevant.

(d) *Commission action on request.* The Commission will act expeditiously on any request for retraction within 30 working days unless the Commission determines, for good cause, that a longer time period is appropriate. If the Commission finds that the Commission or any individual member, employee, agent contractor or representative of the Commission has made public disclosure of inaccurate or misleading information that reflects adversely either on the safety of the firm's product or the practices of the firm, the Commission will publish a retraction of information in a manner equivalent to that in which the disclosure was made. If the Commission finds that fuller disclosure is necessary, it will publish a retraction in the manner it determines appropriate under the circumstances.

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

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

§ 1101.61 Generally.

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

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

of the section 15 report. However, the Commission may disclose information submitted pursuant to section 15(b) in accordance with section 6(b)(1)-(3) if:

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

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

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

§ 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 Section 1101.42);

(2) Information about a consumer product which the Commission has reasonable cause to believe is in violation of a "prohibited act" section under any of the statutes administered by the Commission (see Section 1101.43); or

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

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

(a) Section 6(b)(5) applies only to information provided to the Commission by a manufacturer, distributor, or retailer which is identified by the manufacturer, distributor or retailer, or treated by the Commission staff as being submitted pursuant to section 15(b).

(b) Section 6(b)(5)'s limitation also applies to the portions of staff generated documents that contain, summarize or analyze such information submitted pursuant to section 15(b).

(c) Section 6(b)(5) does not apply to information independently obtained or prepared by the Commission staff.

Subpart H—Delegation of Authority to Information Group

§ 1101.71 Delegation of authority.

(a) *Delegation.* Pursuant to section 27(b)(9) of the CPSA 15 U.S.C. 2076(b)(9) the Commission delegates to the General Counsel or his or her senior staff designees, the authority to render all decisions under this Part concerning the release of information subject to section 6(b) when firms have furnished section 6(b) comment except as provided in paragraph (b). The Commission also delegates to the Secretary of the Commission, or his or her senior staff designee, authority to make all decisions under this Part concerning the release of information under section 6(b) when firms have failed to furnish section 6(b) comment or

have consented to disclosure except as provided in paragraph (b) of this section. The General Counsel shall have authority to establish an Information Group composed of the General Counsel and the Secretary of the Commission or their designees who shall be senior staff members.

(b) *Findings not deleted.* The Commission does not delegate its authority—

(1) To find, pursuant to section 6(b)(1) and § 1101.23(b) of this Part, that the public health and safety requires less than 30 days advance notice of proposed disclosures of information.

(2) To find, pursuant to section 6(b)(2) and § 1101.25(b) of this Part, that the public health and safety requires less than ten (10) days advance notice of its intent to disclose information claimed to be inaccurate;

(3) To decide whether it should take reasonable steps to publish a retraction of information in accordance with section 6(b)(7) and § 1101.52 of this Part.

(c) *Final agency action; Commission decision.* A decision of the General Counsel or the Secretary or their designees shall be a final agency decision and shall not be appealable as of right to the Commission. However, the General Counsel or the Secretary may in his or her discretion refer an issue to the Commission for decision.

Dated: December 21, 1983.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

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