PART 1102—PUBLICLY AVAILABLE CONSUMER PRODUCT SAFETY INFORMATION DATABASE

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Subpart A—Background and Definitions

§ 1102.2 Purpose.

This part sets forth the Commission's interpretation, policy, and procedures with regard to the establishment and maintenance of a Publicly Available Consumer Product Safety Information Database (also referred to as the "Database") on the safety of consumer products and other products or substances regulated by the Commission.

§ 1102.4 Scope.

This part applies to the content, procedure, notice, and disclosure requirements of the Publicly Available Consumer Product Safety Information Database, including all information published therein.

§ 1102.6 Definitions.

(a) Except as specified in paragraph (b) of this section, the definitions in section 3 of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2052) apply to this part.

(b) For purposes of this part, the following definitions apply:

(1) *Additional information* means any information that the Commission determines is in the public interest to include in the Publicly Available Consumer Product Safety Information Database.

(2) *Consumer product* means a consumer product as defined in section 3(a)(5) of the CPSA, and also includes any other products or substances regulated by the Commission under any other acts it administers.

(3) *Harm* means injury, illness, or death, or risk of injury, illness, or death, as determined by the Commission.

(4) *Mandatory recall notice* means any notice to the public required of a firm pursuant to an order issued by the Commission under section 15(c) of the CPSA.

(5) *Manufacturer comment* means a comment made by a manufacturer or private labeler of a consumer product in response to a report of harm transmitted to such manufacturer or private labeler.

(6) *Publicly Available Consumer Product Safety Information Database,* also referred to as the Database, means the database on the safety of consumer products established and maintained by the CPSC as described in section 6A of the CPSA.

(7) *Report of harm* means any information submitted to the Commission through the manner described in § 1102.10(b), regarding an injury, illness, or death, or a risk of injury, illness, or death, as determined by the Commission, relating to the use of a consumer product.

(8) *Submitter of a report of harm* means any person or entity listed under § 1102.10(a) that submits a report of harm.

(9) *Voluntary recall notice* means any notice to the public by the Commission relating to a voluntary corrective action, including a voluntary recall of a consumer product, taken by a manufacturer in consultation with the Commission.

Subpart B—Content Requirements

§ 1102.10 Reports of harm.

(a) *Who may submit.* The following persons or entities may submit reports of harm:

(1) *Consumers* of the product about which a report of harm is submitted and family members or legal guardians submitting firsthand knowledge on the consumer's behalf about a particular incident;

(2) *Local, State, or Federal government agencies* including municipal government agencies, school systems, social services, child protective services, state attorneys general, and all executive and independent federal agencies as defined in Title 5 of the United States Code who in their official capacity directly obtain verifiable information about a particular incident;

(3) *Health care professionals* including medical examiners, coroners, physicians, nurses, physician's assistants, hospitals, and chiropractors who in their professional capacity interact with an injured consumer and thereby obtain firsthand or personally verifiable information about a particular incident;

(4) *Child service providers* including day care centers, day care providers, pre-kindergarten school, and child care providers who in their professional capacity interact with an injured child and thereby obtain firsthand or personally verifiable information about a particular incident; and

(5) *Public safety entities* including police, fire, ambulance, emergency medical services, federal, state, and local law enforcement entities, and other public safety officials who in their official capacity interact with injured consumers and thereby obtain firsthand or personally verifiable information about a particular incident.

(b) *Manner of submission*. To be entered into the Database, reports of harm must be submitted to the CPSC using one of the following methods:

(1) Internet submissions through the CPSC's Internet website on an electronic incident report form specifically developed to collect such information.

(2) Telephonic submissions through a CPSC call center, where the information is entered on the electronic incident form.

(3) Electronic mail directed to the Office of the Secretary at info@cpsc.gov, or by facsimile at 301-504-0127, provided that the submitter completes the incident report form available for download on the CPSC's Internet website specifically developed to collect such information.

(4) Written submissions to the Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814-4408. The Commission will accept only those written reports of harm that use the incident report form developed for the CPSC's Internet website; or

(5) Other means the Commission subsequently makes available.

(c) *Size limit of reports of harm.* The Commission may, in its discretion, limit the data size of reports of harm, which may include attachments submitted, where such reports of harm and attachments may negatively impact the technological or operational performance of the system.

(d) *Minimum requirements for publication*. Subject to §§ 1102.24 and 1102.26, the Commission will publish in the Publicly Available Consumer Product Safety Information Database reports of harm containing all of the following information:

(1) *Description of the consumer product*. The description of the consumer product must, at a minimum, include a word or phrase sufficient to distinguish the product as a consumer product, a component part of a consumer product, or a product or substance regulated by the Commission. To better assist consumers in evaluating the comparative safety of consumer products, the description should also seek to provide enough details to distinguish the reported product from other, similar products on the market and earlier or later versions of the same product. In addition then, a description of a consumer product shall include at least two of the following pieces of information: the name, including the brand name of the consumer product (where that is different from the manufacturer or private labeler name), model, serial number, date of manufacture (if known) or date code, UPC code, price paid, retailer, or any other descriptive information about the product.

(2) *Date of purchase.* The approximate date the item was purchased and whether it was new or used at the time of purchase.

(3) *Identity of the harmed consumer.* The first and last name of every person whose injury is the subject of the report of harm.

(4) *Identity of the manufacturer or private labeler.* The name of one or more manufacturers or private labelers of the consumer product. In addition to a firm name,

identification of a manufacturer or private labeler may include a mailing address, phone number, or electronic mail address.

(5) *Description of the harm.* A brief narrative description of any illness, injury, or death, or risk of illness, injury, or death related to use of the consumer product. Examples of a description of harm or risk of harm include: death, asphyxiation, lacerations, burns, abrasions, contusions, fractures, choking, poisoning, suffocation, amputation, or any other narrative description relating to a bodily harm or risk of bodily harm. Incident reports that relate solely to the cost or quality of a consumer product, with no discernable bodily harm or risk of bodily harm, do not constitute "harm" for purposes of this part. A description of harm may, but need not, include the severity of any injury and whether any medical treatment was received. Descriptions of harm should be reasonably specific and not speculative.

(6) *Incident date*. The date, or an approximate date, on which the incident occurred.

(7) *Incident location.* The city and state where the incident occurred.

(8) *Category of submitter*. Indication of which category the submitter is in (*i.e.*, consumers, government agencies, *etc*.) from § 1102.10(a).

(9) *Contact information*. The submitter's first name, last name, complete mailing address, and either a telephone number or an email address, unless the submitter affirmatively states that he or she has neither, to allow for efficient and timely contact regarding a report of harm, when necessary. In addition, the submitter must provide the harmed consumer's first name, last name, complete mailing address, and either a telephone number or an email address, unless the submitter affirmatively states that the submitter was not able to obtain such information. Although this information will not be published in the Database, it is required information for the report of harm.

(10) *Verification*. A submitter of a report of harm must affirmatively verify that he or she has reviewed the report of harm, and that the information contained therein is true and accurate to the best of the submitter's knowledge, information, and belief. Verification procedures for each method of submission will be specified.

(11) *Consent.* A submitter of a report of harm must consent to publication of the report of harm in the Database if he or she wants the information to be included in the Database.

(e) *Additional information requested on report of harm.* The minimum requirements (at § 1102.10(d)) for publication of a report of harm in the Database do not restrict the Commission from adding other categories of required information in the future.

(f) *Information not published.* The Commission will exclude the following information provided in a report of harm from publication in the Database:

(1) Name and contact information of the submitter of a report of harm;

(2) Harmed consumer's name and contact information;

(3) Photographs that in the determination of the Commission are not in the public interest, including photographs that depict a person or injury, or constitute an invasion of personal privacy based on the Privacy Act of 1974, Public Law 93-579 as amended, or for which the subject of the picture has not provided written consent.

(4) Medical records;

(5) Confidential information as set forth in § 1102.24;

(6) Materially inaccurate information as set forth in § 1102.26;

(7) Information in a report of harm that a submitter wishes to retract; and/or

(8) Any other information submitted on or with a report of harm, the inclusion of which in the Database, the Commission determines is not in the public interest. The Commission shall

consider whether the information is related to a product safety purpose served by the Database, including whether or not the information helps Database users to:

(i) Identify a consumer product;

(ii) Identify a manufacturer or private labeler of a consumer product;

(iii) Understand a harm or risk of harm related to the use of a consumer product; or

(iv) Understand the relationship between a submitter of a report of harm and the harmed consumer.

(g) *Reports of harm from persons under the age of 18.* The Commission will not accept any report of harm submitted by or about anyone under the age of 18 without consent of the parent or legal guardian of that person.

(h) *Incomplete reports of harm.* Any information received by the Commission related to a report of harm that does not meet the requirements for submission or publication will not be published, but will be maintained for internal use.

(i) *Official records of the Commission.* All reports of harm that are submitted to the Commission become official records of the Commission in accordance with 16 CFR § 1015.1. Alteration (or disposition) of any such records will only be in accordance with the procedures specified in this part.

§ 1102.12 Manufacturer comments.

(a) *Who may submit.* A manufacturer or private labeler may submit a comment related to a report of harm if the report of harm identifies such manufacturer or private labeler and/or identifies its consumer product brand by name.

(b) *How to submit.* A manufacturer or private labeler may submit comments to the CPSC using one of the following methods:

(1) A manufacturer or private labeler who registers with the Commission as described in § 1102.20(f) may submit comments through a manufacturer portal maintained on the CPSC's Internet website;

(2) A manufacturer or private labeler may submit comments by electronic mail, directed to the Office of the Secretary at info@cpsc.gov; or

(3) A manufacturer or private labeler may submit written comments directed to the Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814-4408.

(c) *What must be submitted.* Subject to §§ 1102.24 and 1102.26, the Commission will publish manufacturer comments related to a report of harm transmitted to a manufacturer or private labeler in the Database if such manufacturer comment meets the following requirements:

(1) *Manufacturer comment relates to report of harm*. The manufacturer or private labeler's comment must relate to information contained in a specific report of harm that identifies such manufacturer or private labeler and/or its consumer product brand by name and that is published in the Database.

(2) *Unique identifier*. A manufacturer comment must state the unique identifier provided by the CPSC.

(3) *Verification.* A manufacturer or private labeler must verify that it has reviewed the report of harm and the comment related to the report of harm and that the information contained in the comment is true and accurate to the best of the firm's knowledge, information, and belief.

(4) *Request for publication*. When a manufacturer or private labeler submits a comment regarding a report of harm, it may request that the Commission publish such comment in the Database. A manufacturer or private labeler must affirmatively request publication of the comment, and consent to such publication in the Database, for each comment submitted to the CPSC.

(d) *Information published*. Subject to §§ 1102.24 and 1102.26, the Commission will publish a manufacturer comment and the date of its submission to the CPSC in the Database if the comment meets the minimum requirements for publication as described in paragraph (c) of this section.

(e) *Information not published.* The Commission will neither publish in the Database consents and verifications associated with a manufacturer comment, nor portions of a comment that a manufacturer requests not to be published.

§ 1102.14 Recall notices.

All information presented in a voluntary or mandatory recall notice that has been made available to the public shall be accessible and searchable in the Database.

§ 1102.16 Agency developed information.

All information developed or considered by the CPSC in an investigation that leads to a decision not to issue a recall that has been made available to the public shall be accessible and searchable in the Database.

§ 1102.18 Additional information.

In addition to reports of harm, manufacturer comments, and recall notices, the CPSC shall include in the Database any additional information it determines to be in the public interest, consistent with the requirements of section 6(a) and (b) of the CPSA. Under this heading, for example, the Commission could determine it to be in the public interest to publish specific product safety information received from professional engineers, product safety investigators, consumer advocates, trade associations, attorneys, or observers of a consumer product being used.

Subpart C—Procedural Requirements

§ 1102.20 Transmission of reports of harm to the identified manufacturer or private labeler.

(a) *Information transmitted.* Except as provided in paragraphs (a)(1) through (a)(4) of this section, the Commission will transmit all information provided in a report of harm, provided such report meets the minimum requirements for publication in the Database, to the manufacturer or private labeler identified in a report of harm. The following information will not be transmitted to a manufacturer or private labeler:

(1) Name and contact information for the submitter of the report of harm, unless such submitter provides express written consent (for example, by checking a box on the report of harm form) to provide such information to the manufacturer or private labeler;

(2) Name and contact information for the consumer who was injured or nearly injured by the product, if different from the submitter;

(3) Photographs that depict a person or an injury or that will not be published in the database for any other reason;

(4) Medical records.

(b) *Limitation on use of contact information.* A manufacturer or private labeler who receives name and contact information for the submitter of a report of harm and/or for an injured or nearly injured consumer must not use or disseminate such information to any other party for any other purpose other than verification of information contained in a report of harm. Verification of information contained in a report of harm must not include activities such as sales, promotion, marketing, or any other commercial purpose. Verification of information contained in a report of harm may include verification of the:

(1) Identity of the submitter and/or the injured or nearly injured consumer, including name, location, contact information, age, and gender;

(2) Brand name of the consumer product, including serial or model number, UPC code, date code, color, size, price paid, or place of purchase;

(3) Approximate date of purchase and age of product at time of purchase;

(4) Manufacturer or private labeler of the consumer product;

(5) Harm or risk of harm related to the use of the consumer product;

(6) Description of the incident related to use of the consumer product;

(7) Date or approximate date and location of the incident;

(8) Category of submitter;

(9) Whether the report is duplicative of a report already in the Database and/or related to a report filed separately with the company about the same incident; and/or

(10) Any other aspect of a report of harm related to a minimum requirement for publication under § 1102.10(d) or to additional information requested in a report of harm under § 1102.10(e).

(c) *Timing*. To the extent practicable, the Commission will transmit a report of harm to the manufacturer, the private labeler, or both where applicable within five business days of submission of the completed report of harm. If the Commission cannot determine who the manufacturer or private labeler is, then it will not post the report of harm on the public Database but will maintain the report for internal agency use. Examples of other circumstances that may arise that may make transmission of the report of harm impracticable within five business days include:

(1) The manufacturer and/or private labeler are out of business with no identifiable successors;

(2) The submitter misidentified a manufacturer or private labeler;

(3) The report of harm contained inaccurate or insufficient contact information for a manufacturer or private labeler; or

(4) The Commission cannot locate valid contact information for a manufacturer or private labeler.

(d) *Method of transmission*. The Commission will use the method of transmission and contact information provided by the manufacturer or private labeler. The Commission will transmit reports of harm to a manufacturer or private labeler who has registered with the Commission as described in paragraph (f) of this section. If a manufacturer or private labeler has not registered with the Commission, the Commission will send reports of harm through the United States mail to the firm's principal place of business, unless the Commission selects another equally effective method of transmission.

(e) *Requests for inclusion in Database.* A manufacturer or private labeler may request the Commission to include its comments in the Database. However, a manufacturer or private labeler may also make comments to the Commission about the confidentiality, material inaccuracy, or other aspects of a report of harm without those comments being included in the Database.

(f) *Size limits of manufacturer comments*. The Commission may, in its discretion, limit the data size of comments, which may include attachments submitted, where such comments and attachments may negatively impact the technological or operational performance of the system.

(g) *Manufacturer registration*. Manufacturers and private labelers may register with the Commission to select a preferred method for receiving reports of harm which identify such firm as the manufacturer or private labeler. Manufacturers and private labelers that choose to register with the Commission must:

(1) Register with the Commission through a process identified for such registration;

(2) Provide and maintain updated contact information for the firm, including the name of the firm, title of a person to whom reports of harm should be directed, complete mailing address, telephone number, electronic mail address, and website address (if any); and

(3) Specify a preferred method to receive reports of harm that identify the firm as the manufacturer or private labeler of a consumer product.

§ 1102.24 Designation of confidential information.

(a) For purposes of this section, "confidential information" is considered to be information that contains or relates to a trade secret or other matter referred to in 18 U.S.C. § 1905 or that is subject to 5 U.S.C. § 552(b)(4).

(b) A manufacturer or private labeler identified in a report of harm and who receives a report of harm from the CPSC may review such report of harm for confidential information and request that portions of the report of harm be designated as confidential information. Each requester seeking such a designation of confidential information must by a preponderance of the evidence:

(1) Specifically identify the exact portion(s) of the report of harm claimed to be confidential and the precise redaction(s) requested;

(2) Explain why the identified information is confidential including under which statutory provision the claim falls;

(3) State whether the information claimed to be confidential has ever been released in any manner to a person who was not an employee or in a confidential relationship with the company, or otherwise legally obligated to maintain the confidentiality of the information;

(4) State whether the information so specified is commonly known within the industry or is readily ascertainable by outside persons with a minimum of time and effort;

(5) If known to the requester, state the company's relationship with the injured or nearly injured consumer and/or submitter of the report of harm; state how the submitter of the report of harm might have come to be in possession of the information requested for designation as confidential;

(6) Confirm that the person submitting the request for designation as confidential information is authorized to assert claims of confidentiality on behalf of the manufacturer or private labeler concerned.

(c) *Manner of submission*. Requests for designation of confidential information may be submitted in the same manner as manufacturer comments as described in § 1102.12(b). A request for designation of confidential information should be conspicuously marked or submitted on a special form to be made available by the Commission.

(d) *Timing of submission*. If a request for confidential designation is submitted before a report of harm is published, the Commission shall withhold a report of harm from publication in the Database until it makes a determination regarding confidential designation and redacts any and all information it agrees to designate as confidential.

(e) *Commission determination of confidentiality*. If the Commission determines that information in a report of harm is confidential, the Commission shall:

(1) Notify the manufacturer or private labeler which information it agrees to designate as confidential;

(2) Redact such confidential information in the report of harm; and

(3) Publish the report of harm in the Database without such confidential information.

(f) *Commission determination of no confidentiality*. If the Commission determines that a report of harm does not contain confidential information, the Commission shall:

(1) Notify the manufacturer or private labeler; and

(2) Publish the unredacted report of harm in the Database.

(3) In the event that a report of harm was already published and a court overturns the Commission's determination of no confidentiality, the Commission shall immediately redact the confidential information from the Database.

(g) *Removal of confidential information.* As stated at 6A(c)(1)(C)(iii) of the CPSA, to seek removal from the Database of information requested for designation as confidential that was published in the Database following a Commission determination of no confidentiality, a manufacturer or private labeler may bring an action in the district court of the United States in the district in which the complainant resides, or has its principal place of business, or in the U.S. District Court for the District of Columbia. If such an action is brought, the Commission may, at its discretion, temporarily remove the report of harm from the Database while the action is pending. In addition, if a request for confidential designation is submitted after a report of harm has already been published in the Database, the Commission may, at its discretion, temporarily remove the report of harm from the Database while the Commission makes a determination regarding the designation of confidential information.

§ 1102.26 Determination of materially inaccurate information.

(a) For purposes of this section, the following definitions apply:

(1) *Materially inaccurate information in a report of harm* means information that is false or misleading and relates to a matter which would likely affect a reasonable consumer's decision making about the product, including:

(i) The identity of the submitter or harmed consumer;

(ii) The description of the consumer product;

(iii) The identity of the manufacturer or private labeler;

(iv) The harm or risk of harm related to use of the consumer product;

(v) The description of how the incident occurred;

(vi) The approximate incident date and location;

(vii) The category of submitter; or

(viii) Any other aspect of a report of harm related to a minimum requirement for publication under § 1102.10(d) or to additional information requested in a report of harm under § 1102.10(e).

(2) *Materially inaccurate information in a manufacturer comment* means information that is false or misleading and relates to a matter which would likely affect a reasonable consumer's decision making about the product, including:

(i) The identity of the submitter or harmed consumer;

(ii) The description of the consumer product;

(iii) The identity of the firm or firms responsible for the importation, manufacture, distribution, sale, or holding for sale a consumer product;

(iv) The harm or risk of harm, related to use of the consumer product;

(v) The status of a Commission, manufacturer, or private labeler investigation and whether the manufacturer or private labeler is engaging in a corrective action;

(vi) Whether the manufacturer has taken, or promised to take, any other action with regard to the product; or

(vii) Any other aspect of a report of harm related to a minimum requirement for publication under § 1102.10(d) or to additional information requested in a report of harm under § 1102.10(e).

(b) *Request for determination of materially inaccurate information*. Any manufacturer, private labeler, or submitter of a report of harm reviewing a report of harm or manufacturer comment pertaining to it, either before or after publication in the

Database, may request that the report of harm or manufacturer comment, or portions of such report of harm or manufacturer comment, be excluded from the Database or corrected by the Commission because it contains materially inaccurate information. Each requester seeking an exclusion or correction must by a preponderance of the evidence:

(1) State the unique identifier of the report of harm or manufacturer comment to which the request for a determination of materially inaccurate information pertains;

(2) Specifically identify the exact portion(s) of the report of harm or the manufacturer comment claimed to be materially inaccurate;

(3) State the basis for the belief that such information is materially inaccurate;

(4) Provide evidence, which may include documents, statements, electronic mail, Internet links, photographs, or any other evidence, sufficient for the Commission to make a determination that the specified information is materially inaccurate;

(5) State what relief the requester is seeking: exclusion of the entire report of harm or manufacturer comment; redaction of specific information; correction of specific information; or the addition of information to correct the material inaccuracy;

(6) If possible, state how an alleged material inaccuracy may be corrected without removing or excluding an entire report of harm or manufacturer comment;

(7) Confirm that the person submitting the allegation of material inaccuracy is authorized to make claims of material inaccuracy on behalf of the manufacturer or private labeler concerned (or, in the case of a claim of material inaccuracy made against a manufacturer's comment, confirm that the person submitting the allegation is the submitter of the original report of harm); and

(8) In the case of a manufacturer or private labeler, state what portion of its comments, if any, it requests to be included in the Database.

(c) *Manner of submission.*

(1) *Manufacturers and private labelers*. A manufacturer or private labeler may request a Commission determination of materially inaccurate information related to a report of harm in the same manner as described in § 1102.12(b). Such requests should be conspicuously marked or submitted on a special form to be made available by the Commission.

(2) *All other requests*. All other requests for a Commission determination of materially inaccurate information contained in a report of harm or manufacturer comment must be submitted to the CPSC using one of the methods listed below. The request seeking a Commission determination of materially inaccurate information may be made through:

(i) *Electronic mail*. By electronic mail directed to the Office of the Secretary at info@cpsc.gov; or

(ii) *Paper-Based.* Written submission directed to the Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814-4408.

(d) *Timing of submission*. A request for a Commission determination regarding materially inaccurate information may be submitted at any time. If a request for determination of materially inaccurate information is submitted prior to publication of a report of harm in the Database, the Commission will post the report within 10 days of transmitting it to the manufacturer or private labeler if the Commission has made its

determination during that time. Absent a request for determination, the Commission will publish reports of harm on the tenth business day after transmitting a report of harm. As per 6A(b)(1), if the Commission is not able to make a determination before the 10-day period ends, the Commission will withhold publication of the report of harm until it makes a determination. Once it makes a determination, the Commission will proceed under (f) as soon as practicable. The Commission will address requests for determination of material inaccuracy for reports of harm or comments already published in the database as soon as practicable.

(e) *Assistance with defense.* No request for a determination of materially inaccurate information should be made by any person who does not intend in good faith, and so certifies in writing, to assist the Commission in the defense of any judicial proceeding that thereafter might be brought to compel the disclosure of information that the Commission has determined to be materially inaccurate information.

(f) *Notice.*

(1) The Commission shall notify a party requesting a determination regarding materially inaccurate information under (4)(A) of its determination and method of resolution before publishing the report of harm.

(2) The Commission shall notify a party requesting a determination regarding materially inaccurate information under (4)(B) of its determination and method of resolution upon resolving such request.

(g) *Commission determination of material inaccuracy before publication*. If the Commission determines that information in a report of harm or manufacturer comment is materially inaccurate before it is published in the Database, the Commission shall:

(1) Decline to add the materially inaccurate report of harm or manufacturer comment to the Database;

(2) Correct the materially inaccurate information, and, if the minimum requirements for publication as set forth in §§ 1102.10(d) and 1102.12(c) are met, publish the report of harm or manufacturer comment in the Database; or

(3) Add information to the report of harm or the manufacturer comment to correct the materially inaccurate information, and—if the minimum requirements for publication as set forth in §§ 1102.10(d) and 1102.12(c) are met—publish the report of harm or manufacturer comment in the Database.

(h) *Commission determination of material inaccuracy after publication.* If the Commission determines, after an investigation, that specified information in a report of harm or manufacturer comment is materially inaccurate after the report of harm or manufacturer comment has been published in the Database, the Commission shall, no later than seven business days after such determination:

(1) Remove the report of harm or manufacturer comment from the Database, including any associated documents, photographs, or comments;

(2) Correct the information, and—if the minimum requirements for publication as set forth in §§ 1102.10(d) and 1102.12(c) are met—maintain the report of harm or manufacturer comment in the Database; or

(3) Add information to the report of harm or the manufacturer comment to correct the materially inaccurate information, and—if the minimum requirements for publication as set forth in §§ 1102.10(d) and 1102.12(c) are met—maintain the report of harm or manufacturer comment in the Database.

(i) *Commission discretion*. In exercising its discretion whether to remove, correct, or add information to correct materially inaccurate information contained in a report of harm or manufacturer comment, the Commission shall be guided by its statutory purposes of protecting the public against unreasonable risks of injury and assisting consumers in evaluating the comparative safety of consumer products accurately.

(j) *Commission determination of no material inaccuracy*. If the Commission determines that specified information in a report of harm or manufacturer comment does not contain materially inaccurate information, the Commission will:

(1) Notify the requester of its determination; and

(2) Publish the report of harm or manufacturer comment, if not already published, in the Database if the minimum requirements set forth in §§ 1102.10(d) and 1102.12(c) are met.

(k) *Commission action in absence of request.* The Commission may review a report of harm or manufacturer comment for materially inaccurate information on its own initiative, following the same notice and procedural requirements set forth in paragraphs (g) through (i) of this section.

(l) *Appeals from initial denials; reconsideration by the General Counsel*

(1) When the General Counsel has denied a request for designation of confidentiality or determination of material inaccuracy in whole or in part, the requester may, within 10 days of its receipt, appeal the denial to the General Counsel of the Consumer Product Safety Commission.

(2) The General Counsel, upon reconsideration, will act upon an appeal within 10 working days of its receipt. The time limitations on an appeal begin to run as of the time an appeal is received by the Office of the Secretary and date stamped.

(3) After reviewing the appeal, the General Counsel will reconsider his/her initial denial. If the General Counsel upon reconsideration determines the requested information is confidential or materially inaccurate, an appeal as to the information determined will be considered moot; and the Secretary will so inform the requester and submitter of the information. If the General Counsel decides to affirm the initial denial, in whole or in part, the General Counsel will decide the appeal within 10 days.

(4) The General Counsel shall have the authority to grant or deny all appeals. In unusual or difficult cases the General Counsel may, in his/her discretion, refer an appeal to the Commissioners for determination.

(5) The General Counsel's action on appeal shall be in writing, shall be signed by the General Counsel, and shall constitute final agency action. A denial in whole or in part of a request for determination on appeal shall set forth the reasons relied upon. A denial in whole or in part shall also inform the requester of his/her right to seek judicial review of the Commission's final determination in a United States district court, as specified in 6A (c)(2)(C)(iii).

(6) If no response is made to the requester within 10 working days, the requester may consider his/her administrative remedies exhausted and seek judicial relief in a United States district court. When no response can be made within the applicable time limit, the General Counsel shall inform the requester of the reason for the delay, of the

date by which a response may be expected, and of the requester's right to seek judicial review as specified in 6A (c)(2)(C)(iii).

(7) Copies of all appeals and copies of all actions on appeal shall be furnished to and maintained in a public file by the Secretary.

§ 1102.28 Publication of reports of harm.

(a) *Timing.* Subject to §§ 1102.10, 1102.24, and 1102.26, the Commission will publish reports of harm that meet the requirements for publication in the Database. The Commission will publish reports of harm as soon as practicable, but not later than the tenth business day after such report of harm is transmitted to the manufacturer or private labeler by the CPSC—unless a determination of confidentiality or material inaccuracy is still pending at that time.

(b) *Exceptions*. The Commission may publish a report of harm that meets the requirements of § 1102.10(d) in the Database beyond the 10 business day time frame set forth in paragraph (a) of this section if the Commission determines that a report of harm misidentifies or fails to identify all manufacturers or private labelers. Such information must be corrected through the procedures set forth in § 1102.26 for materially inaccurate information in a report of harm. Once a manufacturer or a private labeler has been identified correctly, the time frame set forth in paragraph (a) of this section shall apply.

§ 1102.30 Publication of manufacturer comments.

Timing. Subject to §§ 1102.12, 1102.24, and 1102.26, the Commission will publish in the Database manufacturer comments submitted in response to a report of harm that meet the minimum requirements set forth in § 1102.12(c). This publication will occur at the same time as

the report of harm is published or as soon thereafter as practicable. Examples of circumstances that may make it impracticable to publish a manufacturer comment at the same time as a report of harm include, but are not limited to:

(1) The Commission did not receive the comment until the publication date of the report of harm and the comment does not request a determination of material inaccuracy;

(2) The Commission did not receive the comment until after the report of harm was placed in the Database; or

(3) The Commission is reviewing a manufacturer comment for materially inaccurate information on its own initiative.

Subpart D—Notice and Disclosure Requirements

§ 1102.42 Disclaimers.

The Commission does not guarantee the accuracy, completeness, or adequacy of the contents of the Publicly Available Consumer Product Safety Information Database, particularly with respect to the accuracy, completeness, or adequacy of information submitted by persons outside of the CPSC. The Database will contain a notice to this effect that will be prominently and conspicuously displayed on every page of the Database and on every page of any documents that are printed from the Database, including with an electronic watermark that cannot be removed from the document.

§ 1102.44 Applicability of sections 6(a) and (b) of the CPSA.

(a) *Generally*. Sections 6(a) and 6(b) of the CPSA shall not apply to the submission, disclosure, and publication of information provided in a report of harm that meets the minimum requirements for publication in § 1102.10(d) in the Database.

(b) *Limitation on construction*. Section 1102.44(a) shall not be construed to exempt from the requirements of sections 6(a) and 6(b) of the CPSA information received by the Commission pursuant to:

(1) Section 15(b) of the CPSA; or

(2) Any other mandatory or voluntary reporting program established between a retailer, manufacturer, or private labeler and the Commission.