

Consumer Product Safety Commission

§ 1101.44

§ 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 Section 6(b)(4)(A) exception.

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

(b) *Scope of exception.* This exception applies once the Commission has “reasonable cause to believe” there has occurred a violation of any consumer product safety rule or provision under the Consumer Product Safety Act (15 U.S.C. 2051 *et seq.*) or similar rule or provision of any other act enforced by the Commission. Once the exception applies, the Commission may disclose information to the public without following the requirements of section 6(b)(1) if the information concerning the product is reasonably related to the violation.

[73 FR 72335, Nov. 28, 2008]

§ 1101.44 Rulemaking proceeding exception.

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

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

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

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