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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 Improvement Act of 2008, Public Law 110-314, 122 Stat. 3016, enacted August 14, 2008, amends section 6 of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2051 *et seq.* Specifically, the amendments shorten the time periods for notice and opportunity to comment on public disclosure of product-specific information, broaden the statutory exceptions to section 6(b), and eliminate the **Federal Register** publication requirement the Commission previously had to follow when it made a finding that the public health and safety required public disclosure within a lesser period of notice than that is required by section 6(b)(1). The Commission is issuing this rule to reflect the newly-enacted statutory amendments on public disclosure of product-specific information.

DATES: These amendments are effective November 28, 2008.

FOR FURTHER INFORMATION CONTACT: Patricia Kennedy Vieira, Attorney, Office of the General Counsel, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504-7623, pvieira@cpsc.gov.

SUPPLEMENTARY INFORMATION: On August 14, 2008 the Consumer Product Safety Improvement Act (CPSIA) became law. The CPSIA amends section 6 of the Consumer Product Safety Act by shortening the time from 30 to 15 days in Section 6(b) of the CPSA for notice and opportunity to comment on information prior to the Commission's disclosure to the public of certain product-specific information. The statutory amendments also shorten the time from 10 to five days in which the Commission must notify a company of its intention to disclose information over its objection. The amendments shorten the time for notice and opportunity to comment under section 6(b) where the Commission publishes a finding that the public health and safety

requires public disclosure in less than 15 days. The amendments eliminate the requirement to publish such finding in the **Federal Register**.

The amendments also broaden the scope of the exceptions in section 6(b). First, the amendments provide an additional exception to the definition of the term "public" to exclude any federal, state, local, or foreign government agency pursuant to section 29(f) of the CPSIA. The regulatory definition of "public" has been changed to reflect the additional exclusion. The amendments broaden the exception under 6(b)(4) for information not covered by section 6(b) of the CPSA where the Commission has reasonable cause to believe the product is in violation of any consumer product safety rule or provision under the CPSA or similar rule or provision of any other act enforced by the Commission. Finally, the amendments also broaden the exception under section 6(b)(5) for information provided under Section 15(b) of the CPSA where the Commission publishes a finding that the public health and safety requires public disclosure within a lesser period of notice than is required by section 6(b)(1). The amendments eliminate the requirement that the Commission publish such health and safety finding in the **Federal Register**. Existing regulatory provisions are inconsistent with the statutory amendments to section 6(b) under the CPSIA and, therefore, the Commission is amending the regulatory provisions of section 6 to reflect these statutory changes.

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) authorizes an agency to dispense with certain notice procedures for a rule when it finds "good cause" to do so. 5 U.S.C. 553(b)(3)(B). Specifically, under 5 U.S.C. 553(b)(3)(B), the requirement for notice and an opportunity to comment does not apply when the agency, for good cause, finds that those procedures are "impractical, unnecessary, or contrary to the public interest." The statutory changes reflected in these amendments are imposed by the CPSIA and are not discretionary with the Commission. The Commission has no authority to make changes to the CPSIA provisions, and therefore could not make any changes in response to public comments. Accordingly, the Commission hereby finds that notice and an opportunity to comment on these amendments are unnecessary.

The amendments became effective by statutory enactment (August 14, 2008). Accordingly, the Commission is publishing these amendments to its

regulations to make them consistent with the statutory provisions.

Effective Date

The amendments are effective immediately upon their publication in final form in the **Federal Register**, and cover all requests for information received by the Commission since August 14, 2008.

Impact on Small Business

Because these clauses are mandated by statute and not discretionary with the Commission, these amendments are not subject to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

Environmental Considerations

The amendments are not subject to the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.*, because they incorporate a statutory requirement not subject to agency discretion.

List of Subjects in 16 CFR Part 1101

Administrative practice and procedure, Business and Industry, Consumer protection, Reporting and recordkeeping requirements.

■ Accordingly, 16 CFR part 1101 is amended as follows:

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

■ 1. The authority citation for part 1101 is revised to read as follows:

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

§ 1101.1 [Amended]

■ 2. Section 1101.1(b)(1) is amended as follows:

- a. Remove the number "30" and add, in its place "15."
- b. Remove the word "finds" and add, in its place "publishes a finding that."
- 3. Section 1101.2 is revised to read as follows:

§ 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). These provisions are now

applicable to the Virginia Graeme Baker Pool and Spa Safety Act, 15 U.S.C. 8003(a); and the Children's Gasoline Burn Prevention Act § 2(a), Public Law 110-278, 122 Stat. 2602 (July 17, 2008).

■ 4. Section 1101.12 is amended by adding new paragraph (h) to read as follows:

§ 1101.12. Commission must disclose information to the public.

* * * * *

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

§ 1101.21 [Amended]

■ 5. In the third sentence of § 1101.21(a), remove the words "makes a public health and safety finding" and add, in its place "publishes a finding that the public health and safety requires a lesser period of notice."

§ 1101.22 [Amended]

■ 6. Section 1101.22 is amended as follows:

■ a. In paragraph (a)(1) remove the words "a minimum of twenty (20)" and add, in its place "ten (10)."

■ b. In the second sentence of paragraph (a)(2) remove the word "find" and add, in its place "publish a finding."

■ c. In paragraph (b)(2) remove the word "finds" and add, in its place "publishes a finding."

■ d. In paragraph (b)(2) remove the number "30" and add, in its place "15."

■ 7. Section 1101.23 is amended as follows:

■ a. Revise the heading to read follows:

■ b. In the introductory paragraph remove the number "30" and add, in its place "15."

■ c. In paragraph (a) remove the number "30" and add, in its place "15."

■ d. In paragraph (b) remove the number "30" and add, in its place "15" wherever it appears.

■ e. In the first sentence of paragraph (b) remove the word "find" and add, in its place "publish a finding."

■ f. In the second sentence of paragraph (b) remove the word "determine" and add, in its place "find."

■ g. Revise paragraph (c) to read as follows:

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

* * * * *

(c) *Notice of finding.* The Commission will inform a manufacturer or private labeler of a product which is the subject of a public health and safety finding that the public health and safety requires

less than 15 days advance notice either orally or in writing, depending on the immediacy of the need for quick action. 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).

■ 8. Section 1101.25 is amended as follows:

■ a. In paragraph (a) remove the words "10 working" and add, in its place "5."

■ b. In paragraph (b) remove the words "10 working" and add, in its place "5."

■ c. Revise paragraph (c) to read as follows:

§ 1101.25 Notice of intent to disclose.

* * * * *

(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 5 days advance notice either orally or in writing, depending on the immediacy of the need for quick action.

§ 1101.31 [Amended]

■ 9. In § 1101.31(a) remove the word "thirty" and add, in its place "fifteen."

■ 10. Section 1101.41(a) is revised to read as follows:

§ 1101.41 Generally.

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

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

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

(3) Information in the course of or concerning a rulemaking proceeding; or

(4) information in the course of or concerning an adjudicatory, administrative or judicial proceeding.

* * * * *

■ 11. Section 1101.43 is revised to read as follows:

§ 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.

■ 12. Section 1101.61 is amended by adding a new paragraph (b)(4) to read as follows:

§ 1101.61 Generally.

* * * * *

(b) * * *

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

* * * * *

■ 13. Section 1101.62(a)(2) is revised to read as follows:

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

(a) * * *

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

* * * * *

§ 1101.71 [Amended]

■ 14. Section 1101.71(b) is amended as follows:

■ a. In paragraph (b)(1) remove the number "30" and add, in its place "15."

■ b. In paragraph (b)(2) remove the words "ten (10)" and add, in its place "five (5)."

Dated: November 20, 2008.

Todd A. Stevenson,

Secretary, Consumer Product Safety
Commission.

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**24 CFR Parts 5, 91, 880, 882, 883, 884,
886, 891, 903, 960, 982, and 983**

[Docket No. FR-5056-I-01]

RIN 2577-AC65

HUD Programs: Violence Against Women Act Conforming Amendments

AGENCY: Office of the Secretary.

ACTION: Interim rule.

SUMMARY: This interim rule conforms HUD's regulations to the self-implementing provisions of the statutory protections for victims of domestic violence, dating violence, sexual assault, and stalking provided by the Violence Against Women Act (VAWA), as recently amended. These new protections apply to families applying for or receiving rental assistance under HUD's public housing and tenant-based and project-based Section 8 programs. The primary objectives of VAWA are to reduce violence against women and to protect the safety and confidentiality of victims of domestic violence and abuse.

DATES: *Effective Date:* December 29, 2008.

Comments Due Date: January 27, 2009.

ADDRESSES: Interested persons are invited to submit comments regarding this interim rule. There are two methods for comments to be submitted as public comments and to be included in the public comment docket for this rule. Additionally, all submissions must refer to the above docket number and title.

1. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410-0500.

2. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at www.regulations.gov. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare

and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the www.regulations.gov Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on the site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Information Relay Service at 1-800-877-8339. Copies of all comments submitted are available for inspection and downloading at www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: For information about HUD's Public Housing program, please contact Nicole Faison, Director, Office of Public Housing Programs, Office of Public and Indian Housing, Room 4226, telephone number 202-708-0744. For information about the Office of Public and Indian Housing's Section 8 Tenant-Based program, please contact Danielle Bastarache, Director, Housing Voucher Management and Operations, Office of Public and Indian Housing, Room 4210, telephone number 202-402-5264. For information about the Office of Housing's Section 8 Project-Based program, please contact Gail Williamson, Director, Housing Assistance Policy Division, Office of Housing, Room 6138, telephone number 202-402-2473. The address for all of the above offices is the Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500. The above-listed telephone numbers are not toll-free numbers. Persons with hearing or speech impairments may access the numbers through TTY by calling the toll-free

Federal Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

The Violence Against Women Act of 1994 (VAWA 1994) was enacted as Title IV of the Violent Crime Control and Enforcement Act of 1994 (Pub. L. 103-322, approved September 13, 1994), codified at 42 U.S.C. 13931 *et seq.* VAWA 1994 was not applicable to HUD programs. VAWA 1994 was applicable to other federal agencies and authorized grants to prevent crime in public transportation and assist victims of sexual assault, and included provisions to maintain the confidentiality of domestic violence shelters and addresses of abused persons.

On January 5, 2006, President Bush signed into law the Violence Against Women and Department of Justice Reauthorization Act of 2005 (Pub. L. 109-162), and, on August 28, 2006, the President signed into law technical corrections to the Violence Against Women and Department of Justice Reauthorization Act of 2005 (Pub. L. 109-271) (collectively, "VAWA 2005"). Except as provided in Section 4 of the technical corrections law, VAWA 2005 became effective upon enactment of the law on January 5, 2006. Section 4 of the technical corrections law delayed the effectiveness of certain provisions to the commencement of Fiscal Year (FY) 2007, none of which are directly applicable to this rule.

VAWA 2005 reauthorizes and substantially amends VAWA 1994 for FYs 2007 through 2011, and, among other things, consolidates major law enforcement grant programs, makes amendments to criminal and immigration laws, and makes amendments to other statutes, including certain HUD statutes, to support and strengthen efforts to combat domestic violence and other forms of violence against women. The provisions of VAWA 2005, as amended in 2006, that are applicable to HUD programs are found in Title VI entitled "Housing Opportunities and Safety for Battered Women and Children." Section 601 of VAWA 2005 amends VAWA 1994 to add a new Subtitle N to VAWA 1994 entitled "Addressing the Housing Needs of Victims of Domestic Violence, Dating Violence, Sexual Assault, and Stalking."

The VAWA 2005 amendments that are applicable to HUD public housing and tenant-based and project-based Section 8 programs are self-implementing. Accordingly, this rule makes conforming amendments to those programs to keep HUD's regulations