

## Consumer Product Safety Commission

## § 1101.31

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 pro-

vide 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

#### § 1101.31 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.