

CPSC Considering Changes to Public Disclosure Rules

January 23, 2014

On January 14, the Consumer Product Safety Commission (“CPSC” or “Commission”) published proposed changes to the rules that restrict the Commission’s ability to disclose information about a consumer product to the public (either on its own or in response to a Freedom of Information Act request) without first notifying the manufacturer. In the Briefing Package, the CPSC Staff explains that the proposed changes are based on the principles of transparency and efficiency, as well as analysis of past practice and technological changes that have occurred since the rules were first adopted in 1983. The three Commissioners are scheduled to vote on whether to officially propose the changes on February 5.

Section 6(b) of the Consumer Product Safety Act requires that the CPSC give a company at least 15 days’ notice before publishing any information that could identify the company as the manufacturer of a product. The Commission issued rules pursuant to Section 6(b), which list the specific types of information that do and do not require notification and describe the notification process. In the draft rule, the CPSC proposes to:

- Remove the requirement that the Commission provide advance notice if there is a question whether the public could readily identify the manufacturer;
- Remove the requirement that the Commission provide notice if it republishes information previously disclosed, even if requested by the company;
- Permit disclosure of information designated as “attorney work product” or protected by attorney-client privilege; and
- Allow companies to designate that information submitted in response to a 6(b) request be withheld from disclosure.

Additionally, the CPSC currently does not need to provide notice for: (1) information about a consumer product that the CPSC has reasonable cause to believe is in violation of any consumer product safety statute or rule; (2) information required to be made publicly available by law; (3) information required to be disclosed to the President and Congress; (4) company press releases; and (5) information presented in CPSC litigation or administrative proceedings. The draft proposed rule adds to that list and, if adopted, would not require notification for: (1) information contained in a report of harm posted on the product safety information database; (2) publicly available information, such as news reports and information generally available on the internet; and (3) any information substantially the same as information previously disclosed (currently, such information must be identical). The draft proposed rule also would explicitly state that, in a response to a disclosure notification, conclusory, unsupported statements that comments must be withheld will not justify nondisclosure.

We will continue to track the proposed rule and keep you apprised of any important developments.