

# CPSC Pushes Forward with Changes to Public Disclosure Rules

February 26, 2014

As we [reported](#) last month, the Consumer Product Safety Commission (“CPSC” or “Commission”) is considering 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. The Commission voted 2-1 to approve the proposed rule, as amended, and published the [revised proposal](#) in the Federal Register today.

Significantly, the Commission has backed away from its initial proposal and no longer proposes to remove the requirement that the CPSC provide advance notice if there is a question whether the public could readily identify the manufacturer. However, the Notice of Proposed Rulemaking (“NPRM”) retains several changes that would affect companies’ ability to prevent the disclosure of their information.

In particular, the NPRM, if finalized, would:

- Remove the requirement that the Commission provide notice if it republishes information previously disclosed, even if requested by the company;
- Require that companies requesting that their comments be withheld from disclosure provide a rationale, such as an applicable statutory or regulatory basis, supporting such non-disclosure;
- Permit disclosure of information designated as “attorney work product” or protected by attorney-client privilege; and
- In addition to existing exceptions, not require notification for (1) information contained in a report of harm posted on the product safety information base, (2) publicly available information, and (3) information substantially the same as information previously disclosed.

We recommend that companies evaluate how these proposed changes could affect their business and consider providing comments by April 28, 2014.