for confidential information and request that portions of the report of harm be designated as confidential information. Each requester seeking such a designation of confidential information bears the burden of proof and must:

(1) Specifically identify the exact portion(s) of the report of harm claimed to be confidential;

(2) State whether the information claimed to be confidential has ever been released in any manner to a person who was not an employee or in a confidential relationship with the company;

(3) State whether the information so specified is commonly known within the industry or is readily ascertainable by outside persons with a minimum of time and effort;

(4) If known, state the company's relationship with the victim and/or submitter of the report of harm and how the victim and/or submitter of the report of harm came to be in possession of such allegedly confidential information;

(5) State how the release of the information would be likely to cause substantial harm to the company's competitive position; and

(6) State whether the person submitting the request for treatment as confidential information is authorized to make claims of confidentiality on behalf of the person or organization concerned.

(c) *Manner of submission*. Requests for designation of confidential information may be submitted in the same manner as manufacturer comments as described in §1102.12(b). A request for designation of confidential treatment must be conspicuously marked.

(d) *Timing of submission*. In order to ensure that the allegedly confidential information is not placed in the database, a request for designation of confidential information must be received by the Commission in a timely manner prior to the 10th business day after the date on which the Commission transmits the report to the manufacturer or private labeler. If a request for confidential treatment is submitted in a timely fashion, the Commission will either make a determination on the claim prior to posting on the 10th business day after transmittal to the manufacturer or, as a matter of policy, redact the allegedly confidential information from a report of harm before publication in the Database until it makes a determination regarding confidential treatment.

(e) *Assistance with defense*. No request to redact confidential information from a report of harm pursuant to 5 U.S.C. 552(b)(4) should be made by any person who does not intend in good faith, and so certifies in writing, to assist the Commission in the defense of any judicial proceeding that thereafter might be brought to compel the disclosure of information that the Commission has determined to be a trade secret or privileged or confidential commercial or financial information.

(f) *Commission determination of confidentiality*. If the Commission determines that information in a report of harm is confidential, the Commission shall:

(1) Notify the manufacturer or private labeler;

(2) Redact such confidential information in the report of harm; and

(3) Publish the report of harm in the Database without such confidential information.

(g) *Commission determination of no confidentiality*. If the Commission determines that a report of harm does not contain confidential information, the Commission shall:

(1) Notify the manufacturer or private labeler; and

(2) Publish the report of harm, if not already published, in the Database.

(h) *Removal of confidential information*. As stated at 6A(c)(1)(C)(iii) of the CPSA, to seek removal of alleged confidential information that has been published in the Database, a manufacturer or private labeler may bring an action in the district court of the United States in the district in which the complainant resides, or has its principal place of business, or in the U.S. District Court for the District of Columbia.

§1102.26 Determination of materially inaccurate information.

(a) For purposes of this section, the following definitions apply:

(1) *Materially inaccurate information in a report of harm* means information that is false or misleading, and which is so substantial and important as to affect a reasonable consumer's decision making about the product, including:

(i) The identification of a consumer product;

(ii) The identification of a manufacturer or private labeler;

(iii) The harm or risk of harm related to use of the consumer product; or

(iv) The date, or approximate date on which the incident occurred.

(2) *Materially inaccurate information in a manufacturer comment* means information that is false or misleading, and which is so substantial and important as to affect a reasonable consumer's decision making about the product, including:

(i) The description of the consumer product;

(ii) The identity of the firm or firms responsible for the importation, manufacture, distribution, sale, or holding for sale of a consumer product;

(iii) The harm or risk of harm related to the use of a consumer product;

(iv) The status of a Commission, manufacturer, or private labeler investigation;

(v) Whether the manufacturer or private labeler is engaging in a corrective action and whether such action has not been approved by the Commission; or

(vi) Whether the manufacturer has taken, or promised to take, any other action with regard to the product.

(b) *Request for determination of materially inaccurate information.* Any person or entity reviewing a report of harm or manufacturer comment, either before or after publication in the Database, may request that the report of harm or manufacturer comment, or portions of such report of harm or manufacturer comment, be excluded from the Database or corrected by the Commission because it contains materially inaccurate information. Each requester seeking an exclusion or correction bears the burden of proof and must:

(1) State the unique identifier of the report of harm or manufacturer comment to which the request for a determination of materially inaccurate information pertains;

(2) Specifically identify the exact portion(s) of the report of harm or the manufacturer comment claimed to be materially inaccurate;

(3) State the basis for the allegation that such information is materially inaccurate;

(4) Provide evidence, which may include documents, statements, electronic mail, Internet links, photographs, or any other evidence, sufficient for the Commission to make a determination that the designated information is materially inaccurate;

(5) State what relief the requester is seeking: Exclusion of the entire report of harm or manufacturer comment; redaction of specific information; correction of specific information; or the addition of information to correct the material inaccuracy;

(6) State whether and how an alleged material inaccuracy may be corrected without removing or excluding an entire report of harm or manufacturer comment; and

(7) State whether the person submitting the allegation of material inaccuracy is authorized to make claims of material inaccuracy on behalf of the person or organization concerned.

(c) *Manner of submission—*

(1) *Length of request and expedited review.* The Commission strongly recommends requesters seeking an expedited review of claims of materially inaccurate information to limit the length of the request described in §1102.26(b) to no more than five pages, including attachments, to allow for the expedited review of the request. Regardless of length, all submissions will be reviewed.

(2) *Manufacturers and private labelers.* A manufacturer or private labeler may request a Commission determination of materially inaccurate information related to a report of harm in the same manner as described in §1102.12(b). Such requests should be conspicuously marked.

(3) *All other requests.* All other requests for a Commission determination of materially inaccurate information contained in a report of harm or manufacturer comment made by any other person or firm must be submitted to the CPSC using one of the methods listed below. The request seeking a

Commission determination of materially inaccurate information may be made through:

(i) *Electronic mail.* By electronic mail directed to the Office of the Secretary at *info@cpsc.gov;* or

(ii) *Paper-based.* Written submission directed to the Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814–4408.

(d) *Timing of submission.* A request for a Commission determination regarding materially inaccurate information may be submitted at any time. If a request for determination of materially inaccurate information is submitted prior to publication of a report of harm in the Database, the Commission cannot withhold the report of harm from publication in the Database until it makes a determination. Absent a determination, the Commission will publish reports of harm on the tenth business day after transmitting a report of harm to the manufacturer or private labeler.

(e) *Assistance with defense.* No request for a determination of materially inaccurate information should be made by any person who does not intend in good faith, and so certifies in writing, to assist the Commission in the defense of any judicial proceeding that thereafter might be brought to compel the disclosure of information that the Commission has determined to be materially inaccurate information.

(f) *Notice.* The Commission shall notify the person or firm requesting a determination regarding materially inaccurate information of its determination and method of resolution after resolving such request.

(g) *Commission determination of material inaccuracy before publication.* If the Commission determines that information in a report of harm or manufacturer comment is materially inaccurate information before it is published in the Database, the Commission shall:

(1) Decline to add the materially inaccurate information to the Database;

(2) Correct the materially inaccurate information, and, if the minimum requirements for publication as set forth in §§1102.10(d) and 1102.12(c) are met, publish the report of harm or manufacturer comment in the Database; or

(3) Add information to the report of harm or the manufacturer comment to correct the materially inaccurate information, and, if the minimum requirements for publication as set forth in §§1102.10(d) and 1102.12(c) are met, publish the report of harm or manufacturer comment in the Database.

(h) *Commission determination of material inaccuracy after publication.* If the Commission determines, after an investigation, that the requested designated information in a report of harm or manufacturer comment contains materially inaccurate information after the report of harm or manufacturer comment has been published in the Database, the Commission shall, no later than seven business days after such determination:

(1) Remove the information determined to be materially inaccurate from the Database, including any associated documents, photographs, or comments;

(2) Correct the information, and, if the minimum requirements for publication as set forth in §§1102.10(d) and 1102.12(c) are met, maintain the report of harm or manufacturer comment in the Database; or

(3) Add information to the report of harm or the manufacturer comment to correct the materially inaccurate information, and, if the minimum requirements for publication as set forth in §§1102.10(d) and 1102.12(c) are met, maintain the report of harm or manufacturer comment in the Database.

(i) *Commission discretion.*

(1) In exercising its discretion to remove, correct, or add information to correct materially inaccurate information contained in a report of harm or manufacturer comment, the Commission shall preserve the integrity of information received for publication in the Database whenever possible. Subject to §§1102.10(d) and 1102.12(c), the Commission shall favor correction, and the addition of information to correct, over exclusion of entire reports of harm and manufacturer comments, where possible.

(2) *Expedited determinations.* Where a manufacturer has filed a request for a

correction or exclusion within the recommended page limit in §1102.26(c)(1), the Commission shall attempt, where practicable, to make an expedited determination of a claim of material inaccuracy. Given the requirement of section 6A of the CPSA that reports of harm be published, the Commission will publish reports of harm on the tenth business day after transmitting a report of harm, where the Commission has been unable to make a determination regarding a claim of material inaccuracy prior to the statutorily mandated publication date. In such instances, the Commission will make any necessary correction, exclusion, or addition not later than seven business days after making a determination that there is materially inaccurate information in the report of harm. Manufacturer comments will be published at the same time as the report of harm is published, or as soon thereafter as practicable.

(j) *Commission determination of no material inaccuracy*. If the Commission determines that the requested information in a report of harm or manufacturer comment does not contain materially inaccurate information, the Commission will:

(1) Notify the requester of its determination; and

(2) Publish the report of harm or manufacturer comment, if not already published, in the Database if it meets the minimum requirements set forth in §§1102.10(d) and 1102.12(c).

(k) *Commission action in absence of request*. The Commission may review a report of harm or manufacturer comment for materially inaccurate information on its own initiative, following the same notice and procedural requirements set forth in paragraphs (g) through (j) of this section.

§1102.28 Publication of reports of harm.

(a) *Timing*. Subject to §§1102.10, 1102.24, and 1102.26, the Commission will publish reports of harm that meet the requirements for publication in the Database. The Commission will publish reports of harm as soon as practicable, but not later than the tenth business day after such report of harm is transmitted to the manufacturer or private labeler by the CPSC.

(b) *Exceptions*. The Commission may publish a report of harm that meets the requirements of §1102.10(d) in the Database beyond the 10-business-day time frame set forth in paragraph (a) of this section if the Commission determines that a report of harm misidentifies or fails to identify all manufacturers or private labelers. Such information must be corrected through the procedures set forth in §1102.26 for materially inaccurate information in a report of harm. Once a manufacturer or a private labeler has been identified correctly, the time frame set forth in paragraph (a) of this section shall apply.

§1102.30 Publication of manufacturer comments.

Timing. Subject to §§1102.12, 1102.24, and 1102.26, the Commission will publish in the Database manufacturer comments submitted in response to a report of harm that meet the minimum requirements set forth in §1102.12(c). This publication will occur at the same time as the report of harm is published or as soon thereafter as practicable. An example of a circumstance that may make it impracticable to publish a manufacturer comment at the same time as a report of harm includes when the Commission did not receive the comment until on or after the publication date of the report of harm.

Subpart D—Notice and Disclosure Requirements

§1102.42 Disclaimers.

The Commission does not guarantee the accuracy, completeness, or adequacy of the contents of the Consumer Product Safety Information Database, particularly with respect to the accuracy, completeness, or adequacy of information submitted by persons outside of the CPSC. The Database will contain a notice to this effect that will be prominently and conspicuously displayed on the Database and on any documents that are printed from the Database.