April 3, 2023

U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

Submitted via Regulations.gov

Re: Docket No. CPSC-2014-0005 Information Disclosure under the Consumer Product Safety Act

Comments in Response to the Consumer Product Safety Commission's Supplemental Proposed Rulemaking on Public Disclosure of Product Safety Information

The National Association of Consumer Advocates (NACA), a national non-profit association of attorneys and advocates actively engaged in promoting a fair and open marketplace that forcefully protects the rights of consumers, submits these comments in response to the Consumer Product Safety Commission's Supplemental Proposed Rulemaking on Information Disclosure under Section 6(b) of the Consumer Product Safety Act. We strongly believe that Congress should act to repeal Section 6(b) entirely. However, in the absence of congressional action, we welcome the CPSC's proposed changes to modernize the existing regulation implementing Section 6(b) to maximize efficiency and transparency. In today's age of mass data collection and rapid dissemination, there is little reason for the laws to force CPSC to abide by a secrecy clause and delay the public release of vital safety information.

Section 6(b) wrongly puts consumer safety at risk and gives powerful industry players too much control

Secrecy hurts consumers. When products in the consumer marketplace are known to be unsafe, the public should be alerted as soon as possible to minimize the risk of harm. In all cases, the physical safety of the public should be prioritized over the concerns of the company that produced the unsafe product. Yet, Section 6(b) does the opposite and essentially allows companies to control what information the CPSC can release.

Under Section 6(b) the CPSC is required to notify companies about what information it plans to release about an unsafe product and give them an opportunity to comment. The CPSC must then respond to any concerns a company raises about the disclosure and the company may also sue

the CPSC to prevent the disclosure. This requirement applies to nearly all public disclosures of information including Freedom of Information Act requests. As a result, crucial safety information may be withheld for years as it goes through the 6(b) process. While the CPSC does technically have the ability to override a company's concerns and release information anyway, the threat of potential lawsuit typically prevents this.

Seven consumer groups submitted comments to the CPSC previously in 2014 which outlined several examples of unsafe products that the CPSC did not disclose information about in a timely manner due to 6(b) considerations.[1] With no changes to Section 6(b) or the implementing regulation in the past nine years, there is no reason to think that the state of consumer safety disclosure has improved at all. Consumers are very likely still blindly purchasing and using dangerous products due to the shroud of secrecy Section 6(b) forces the CPSC to operate in.

It makes little sense for Section 6(b) to exist in the modern data collection and disclosure landscape

When the Consumer Product Safety Act in 1972, the current state of rapid electronic communication and mass data dissemination was inconceivable. Even in the nine years since the CPSC's initial 2014 proposed rulemaking to update Section 6(b), massive changes have occurred in how information is collected and shared. Many of the same companies that would use Section 6(b) to block disclosure are also harvesting and selling data about their customers with limited oversight. When consumer data is already so heavily circulated and often poorly guarded, it is illogical and hypocritical to trap information about something as important and urgent as product safety under so many layers of approval and protection.

Further, consumers, publications, and other sources are also freely sharing information online about consumer products, including potential safety issues. In the 2014 comments, consumer groups pointed to a comparison between the CPSC's and Consumer Reports' 2007 evaluation of consumer lead testing kits. The CPSC did not disclose the names of any of the kits it tested, which would be essential information for consumers looking to purchase the product. However, Consumer Reports disclosed the names of all of the products it tested.[2] Compared to 2007, exponentially more information is being disseminated about consumer products to the point where Section 6(b)'s goals are rendered futile. No matter what information the CPSC officially releases, it will already have been preceded by crowdsourced, unvetted reviews and complaints. Allowing the CPSC to bypass the secrecy provision would actually cut through the noise and reduce consumer uncertainty.

The CPSC seems to have recognized this to an extent by clarifying an exception to 6(b) for reports of harm posted on SaferProducts.gov. However, the online landscape is vast and

[1] See e.g. Comments of U.S. PIRG, Docket No. CPSC– 2014-0005, NPR Re CPSA Section 6(b), available at https://www.regulations.gov/comment/CPSC-2014-0005-0021.
[2] Id.

constantly expanding. While we welcome this small change, it still is not enough to provide much-needed transparency or fulfill the CPSC's mission.

Similarly, the other changes that the CPSC has proposed, both in the 2014 rulemaking and in the current supplemental rulemaking are largely minor tweaks to the Section 6(b) framework that do not fundamentally change its increasingly indefensible secrecy requirements. We appreciate the CPSC's work to modernize how it communicates with covered companies and all attempts to ensure maximum transparency under the existing circumstances. Moving forward, if Congress does not act to repeal Section 6(b), we hope the CPSC will continue to find opportunities within its authorities to refine its processes to be as efficient and effective as possible.

Thank you for the opportunity to comment. If you have any questions or concerns, please contact Sophia Huang, Sophia @ consumeradvocates.org.