

Subpart A—Procedures for Investigations, Inspections and Inquiries

§ 1605.1 Purposes, delegation, finding and how initiated.

(a) An investigation under these rules is an undertaking by the Commission to obtain information for the purposes of enforcing or determining compliance with the Flammable Fabrics Act (15 U.S.C. 1191 et seq.) (“FFA”); the regulations, rules, standards, and orders promulgated thereunder; and those sections of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) (“FTCA”) which are relevant to the enforcement and administration of the Flammable Fabrics Act. The term investigation includes, but is not limited to inspections (§1605.2); investigational hearings (§1605.6); and inquiries, employing orders of access (§1605.4), subpoenas (§1605.5), depositions (§1605.7), written interrogatories (§1605.9), and general or special orders (§1605.10).

(b) An inspection as described in §1605.2 is initiated when the Commission or its delegee authorizes the issuance of a written notice of inspection (hereinafter notice), described in §1605.2(c). Investigations and inquiries will be initiated by the Commission in such manner as it deems proper.

(c) The Commission hereby delegates to the Associate Executive Director for Compliance and Enforcement, the Director of the Enforcement Division, the Solicitor, and the Directors of Area Offices, the power to initiate inspections in the same manner as the Commission.

(d) Finding. The Commission found on November 3, 1977 pursuant to section 30(d) of the Consumer Product Safety Act, as amended (“CPSA”) (15 U.S.C. 2079(d)) that the risk of injury associated with products regulated under the Flammable Fabrics Act cannot be eliminated or reduced to a sufficient extent by the issuance of procedures for investigations, inspections and inquiries under the Flammable Fabrics Act and the Federal Trade Commission Act (15 U.S.C. 41 et seq.). This finding is made to eliminate any confusion and uncertainty that may exist concerning the scope of the Commission’s statutory authority under

the Flammable Fabrics Act and Federal Trade Commission Act to conduct inspections and collect samples. The Commission is supplementing the authority granted to it under the FFA and FTCA with its powers under the CPSA while retaining the procedural safeguards and requirements of all of these acts. Accordingly, the Commission issues these rules pursuant to sections 16 and 27 of the CPSA (15 U.S.C. 2065 and 2076) and makes them applicable to products regulating under the FFA.

§ 1605.2 Conduct and scope of inspections.

(a) After an inspection is initiated as set forth in §1605.1, an officer or employee duly designated by the Commission shall issue the notice. Upon presenting such notice, along with appropriate credentials, to the person, or agent-in-charge of the sole proprietorship, partnership, or corporation to be inspected, the Commission officer or employee may seek, for the purposes set forth in §1605.1 (a):

(1) To enter, at reasonable times, any factory, warehouse, or establishment in which a product, fabric, or related material is manufactured, processed, packaged, tested or to which it is delivered or in which it is held in connection with its importation, introduction, distribution, transportation, receipt, and/or sale in commerce;

(2) To enter any conveyance being used to transport, deliver, or hold any such product, fabric, or related material in connection with its importation, introduction, distribution, transportation, receipt, and/or sale in commerce;

(3) To inspect at all reasonable times, in a reasonable manner, and within reasonable limits, any factory, warehouse, establishment, or conveyance described in paragraph (a) (1) and (2) of this section and all appropriate records, reports, books, documents and papers including, but not limited to, those relating to production, inventory, testing, distribution, sale, transportation, importation, or receipt of any product, fabric, or related material and all pertinent equipment, materials, substances, products, fabrics, related materials, containers, packages and

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packaging, and labels, and labeling therein:

(4) To have access to and copy at all reasonable times: (i) All records, reports, books, documents, papers, or labeling required by the Commission to be established, made, or maintained; (ii) all documents showing or relating to the production inventory, testing, distribution, sale, transportation, importation, or receipt of any product, fabric, or related material; and (iii) all other appropriate records, reports, books, documents, papers, packages and packaging, and labels and labeling;

(5) To obtain: (i) Information, both oral and written, concerning the production, inventory, testing, distribution, sale, transportation, importation or receipt of any product, fabric or related material and the organization, business, conduct, practices, and management of any person, sole proprietorship, partnership, or corporation being inspected and its relation to any other person, sole proprietorship, partnership, or corporation; (ii) samples of items, materials, substances, products, fabrics, related materials, containers, packages and packaging, labels and labeling, and have the same analyzed, tested, or examined; and (iii) information, both oral and written, concerning any matter referred to in these rules.

(b) A separate notice shall be given for each inspection, but a notice shall not be required for each entry made during the course of the same inspection. Each such inspection shall be commenced at a reasonable time and be completed within a reasonable time.

(c) The notice of inspection shall include: the name and address of the person, sole proprietorship, partnership, or corporation being inspected; the name and title of the inspector; the date and time of the anticipated entry; pertinent extracts from the statutory provisions upon which the right to access is based; pertinent extracts from the statutory provisions upon which the penalties for refusal of access are based; pertinent extracts from § 1605.2 of these rules setting forth the authority of inspectors and the types of information and items they are authorized to obtain; a statement which sets forth the purposes of the inspection and the nature of the information and items to

be obtained and/or copied; and a statement that those from whom information is requested should state whether any of the information submitted is believed to contain or relate to a trade secret or other matter which should be considered by the Commission to be confidential in accordance with section 4(c) of the Flammable Fabrics Act (15 U.S.C. 1193(c)) and whether any of the information is believed to be entitled to exemption from disclosure by the Commission under the provisions of the Freedom of Information Act (5 U.S.C. 552) or section 6(f) of the Federal Trade Commission Act (15 U.S.C. 46(f)). Any statement asserting this claim of confidentiality must be in writing, and any request for exemption of the information from disclosure must be made in accordance with the Commission's Freedom of Information Act regulations, 16 CFR part 1015, 42 FR 10490, February 22, 1977 or as amended.

(d) If upon being presented with a notice, the person, or agent-in-charge of the sole proprietorship, partnership, or corporation being inspected fails to allow access to documentary evidence for the purpose of inspecting and making copies of such evidence, the inspector shall notify that individual that he or she may be in violation of the law and subject to the penalties therein and immediately thereafter refer such individual to the appropriate provisions of the notice which set forth such penalties. If the individual still refuses to comply, in whole or in part, with the authorized request for access, the inspector shall leave the premises; and the Commission shall take such action as it deems appropriate. If the person in charge refuses to accept the notice upon its presentation, the inspector shall affix the notice to a public entrance way on the premises.

§ 1605.3 Compulsory processes and the service thereof.

(a) In addition to or in lieu of authorizing the issuance of a notice, the Commission may elect to use any of the following means to initiate investigations, inspections, or inquiries to obtain information for the purposes set forth in § 1605.1(a):

- (1) Orders for Access;
- (2) Subpoenas;