

Consumer Product Safety Commission

§ 1605.4

- (3) Investigational Hearings;
- (4) Depositions;
- (5) Written Interrogatories; and
- (6) General or special Orders.

(b) Service of notice in connection with any of the compulsory processes enumerated in §1605.3(a) shall be effected as follows:

(1) By personal service upon the person, or agent-in-charge of the sole proprietorship, partnership, or corporation being investigated, inspected, or inquired of; or

(2) By mail (registered or certified) or delivery to the last known residence or business address of anyone being investigated, inspected, or inquired of.

(c) The date of service of any form of compulsory process shall be the date on which the document is mailed, or delivered in person, whichever is applicable. Whenever a party is required or permitted to do an act within a prescribed period after service of a document and the document is served by mail, three (3) days shall be added to the prescribed period.

(d) These rules shall be referred to in any form of compulsory process served upon a person, sole proprietorship, partnership, or corporation.

(e) Anyone submitting information in response to any of the compulsory processes referred to in §1605.4(a) hereof 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 (15 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.

§ 1605.4 Orders for access.

(a) In the event an inspection pursuant to §1605.2 herein is refused, in whole or in part, or prior to any such inspection, the Commission may issue an order requiring any person, sole proprietorship, partnership, or corporation to allow access to a duly-designated officer or employee of the Commission for the purpose of conducting an inspection. Such order will be issued by the Commission upon the demonstration by the staff of a justifiable need to gain access. Inspections conducted after service of an order for access shall be conducted in accordance with the procedures provided in §1605.2.

(b) After issuance of an order for access, the staff may, upon request of the recipient of the order, agree to modify the order to limit its scope, impose conditions or extend the time for compliance. If an agreement cannot be voluntarily reached, the recipient of the order may file a motion to limit or quash the order. Any such motion shall set forth the reasons why the order should be limited or quashed; and may be accompanied by memoranda, affidavits, or other documents submitted in support of the motion. Unless a different period of time for filing a motion is specified in the order, the motion must be received in the Office of the Secretary of the Commission within ten calendar days after the order is mailed or delivered in person to such person, sole proprietorship, partnership, or corporation unless the Commission, upon a showing of good cause, grants an extension of time within which to file a motion to limit or quash an order of access.

(c) Upon receipt of a motion to limit or quash the order for access, the Office of the Secretary shall immediately notify and transmit a copy of the motion to Associate Executive Director for Compliance and Enforcement or the General Counsel, as appropriate. Unless a different period of time is specified in the order, the Associate Executive Director for Compliance and Enforcement or General Counsel shall file an answer with the Office of the Secretary within ten calendar days after receipt of a copy of the motion. A copy of the answer shall be served upon the moving party or the counsel of the moving

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party. No reply to the answer will be permitted.

(d) All motions to limit or quash shall be ruled upon by the Commission. The Office of the Secretary shall serve the decision on the motion to limit or quash the order of access upon the moving party or the counsel of the moving party and shall furnish a copy of the decision to the Associate Executive Director for Compliance and Enforcement or the General Counsel, as appropriate. The decision on the motion to limit or quash shall be the final decision on the matter. Motions for reconsideration will not be received.

§ 1605.5 Subpoenas.

(a) The Commission may issue to any person, sole proprietorship, partnership, or corporation a subpoena requiring the production of documentary evidence (subpoena duces tecum) and/or the attendance and testimony of witnesses (subpoena ad testificandum) relating to any matter under investigation. The Commission hereby delegates to the Associate Executive Director for Compliance and Enforcement, the Director of the Enforcement Division, the Solicitor, or the General Counsel, depending upon which officer is involved with the subpoena, the power to negotiate and approve the terms of satisfactory compliance with such subpoena.

(b) The person, sole proprietorship, partnership, or corporation upon whom a subpoena is served may file a motion to limit or quash the subpoena. Any such motion shall set forth the reasons why the subpoena should be quashed or limited and may be accompanied by memoranda, affidavits, or other documents submitted in support of the motion. Unless a different period of time for filing a motion is specified in the subpoena, the motion must be received in the Office of the Secretary of the Commission within ten calendar days after the subpoena is mailed or delivered to such person, sole proprietorship, partnership, or corporation unless the Commission, upon a showing of good cause, grants an extension of time within which to file a motion to limit or quash a subpoena.

(c) Upon receipt of any such motion, the Office of the Secretary shall immediately notify and transmit a copy of

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the motion to the Associate Executive Director for Compliance and Enforcement or the General Counsel, as appropriate. Unless a different period of time is specified in the subpoena, the Associate Executive Director for Compliance and Enforcement or the General Counsel shall file an answer with the Office of the Secretary within ten calendar days after receipt of a copy of the motion. A copy of the answer shall be served upon the moving party or the counsel of the moving party. No reply to the answer will be permitted.

(d) All motions to limit or quash a subpoena shall be ruled upon by the Commission. The Office of the Secretary shall serve the decision on the motion to limit or quash the subpoena upon the moving party or the counsel of the moving party and shall furnish a copy of the decision to the Associate Executive Director for Compliance and Enforcement or the General Counsel, as appropriate. The decision on the motion to limit or quash shall be the final decision on the matter. Motions for reconsideration will not be received.

§ 1605.6 Investigational hearings.

(a) The Commission may order, and by subpoena, may compel any person, sole proprietorship, partnership, or corporation to provide information at an investigational hearing. Such hearings shall be for the purpose of taking the testimony, under oath, of witnesses and receiving documents and other data relating to any subject under investigation. Such hearings shall be presided over by the commission, by one or more of its members, an Administrative Law Judge, hearing examiner, attorney-examiner or by a duly designated officer or employee. The hearings shall be stenographically reported, and a transcript thereof shall be made a part of the record.

(b) A Commissioner who participates in such a hearing or other investigation, inspection, or inquiry shall not be disqualified by reason of such participation from subsequently sharing in a Commission decision in the matter.

(c) All investigational hearings shall be closed to the public, unless otherwise ordered by the Commission.