

(d) Any person who knowingly and willfully violates section 19 of this Act after having received notice of non-compliance from the Commission may be subject to criminal penalties under section 21 of the CPSA, 15 U.S.C. 2070.

PART 1118—INVESTIGATIONS, INSPECTIONS AND INQUIRIES UNDER THE CONSUMER PRODUCT SAFETY ACT

Subpart A—Procedures for Investigations, Inspections, and Inquiries

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SOURCE: 44 FR 34929, June 18, 1979, unless otherwise noted.

Subpart A—Procedures for Investigations, Inspections, and Inquiries

§ 1118.1 Definitions, initiation of investigations, inspections, and inquiries and delegations.

(a) *Definitions.* For the purpose of these rules, the following definitions apply:

(1) *Act* means the Consumer Product Safety Act (15 U.S.C. 2051, et seq.).

(2) *Commission* means the Consumer Product Safety Commission.

(3) *Firm* means a manufacturer, private labeler, distributor, or retailer of a consumer product, except as otherwise provided by section 16(b) of the Act.

(4) *Investigation* is an undertaking by the Commission to obtain information for implementing, enforcing, or determining compliance with the Consumer Product Safety Act and the regulations, rules, and orders issued under the Act. The term investigation includes, but is not limited to, inspections (§ 1118.2), investigational hearings (§ 1118.5), and inquiries; employing subpoenas (§ 1118.4), depositions (§ 1118.6), and general or special orders (§ 1118.9).

(5) The definition of the terms set forth in section 3 of the Consumer Product Safety Act (15 U.S.C. 2052) shall apply to this part 1118.

(b) *Initiation of Investigations and Inquiries.* Investigations and inquiries will be initiated by the Commission in any manner authorized by law.

(c) *Initiation of Inspections.* An inspection as described in § 1118.2 is initiated when the Commission or its delegate authorizes the issuance of a written notice of inspection, described in § 1118.2(c).

(d) *Delegations of Authority.* The Commission hereby delegates to the Associate Executive Director for Compliance and Enforcement; the Solicitor, the Directors of the Divisions of Enforcement; the Solicitor, the Directors of the Divisions of Enforcement, Product Defect Correction, and Regulatory Management; and the directors of area offices, the power to initiate inspections in the same manner as the Commission.

§ 1118.2 Conduct and scope of inspections.

(a) After an inspection is initiated as set forth in § 1118.1, an officer or employee duly designated by the Commission shall issue the notice of inspection (hereinafter: notice). Upon presenting the notice, along with appropriate credentials, to the person or agent in charge of the firm to be inspected, the Commission officer or employee is authorized for the purposes set forth in § 1118.1(a):

(1) To enter, at reasonable times, any factory, warehouse, or establishment

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in which consumer products are manufactured or held, in connection with distribution in commerce, or any conveyance being used to transport consumer products in connection with distribution in commerce; and

(2) To inspect, at reasonable times and in a reasonable manner, any conveyance or those areas of the factory, warehouse, or establishment where consumer products are manufactured, held, or transported and which may relate to the safety of those products; and

(3) To have access to and to copy all relevant records, books, documents, papers, packaging or labeling which:

(i) Are required by the Commission to be established, made or maintained, or

(ii) Show or relate to the production, inventory, testing, distribution, sale, transportation, importation, or receipt of any consumer product, or that are otherwise relevant to determining whether any person or firm has acted or is acting in compliance with the Act and regulations, rules and orders promulgated under the Act, and

(4) To obtain:

(i) Information, both oral and written, concerning the production, inventory, testing, distribution, sale, transportation, importation, or receipt of any consumer product, and the organization, business, conduct, practices, and management of any person or firm being inspected and its relation to any other person or firm;

(ii) Samples of items, materials, substances, products, containers, packages and packaging, and labels and labeling, or any component at manufacturer's, distributor's or retailer's cost unless voluntarily provided; and

(iii) Information, both oral and written, concerning any matter referred to in the Act and these rules.

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

(c) The notice of inspection shall include the name and address of the person or firm being inspected; the name and title of the Commission officer or

employee; 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 § 1118.2 of these rules setting forth the authority of Commission officers or employees and the types of information and items they are authorized to obtain; a statement that the inspection will be conducted and the information will be provided with the cooperation of the person or firm being inspected; 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 in writing 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 6(a)(2) of the Act (15 U.S.C. 2055(a)(2)) 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) and the Commission's regulations under that Act, 16 CFR part 1015 (42 FR 10496, February 22, 1977) or as amended. 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 by an officer or employee duly designated by the Commission, the person or agent-in-charge of the firm being inspected refuses to allow entry or inspection, the Commission may then seek a search warrant or take other appropriate legal action. If the person refuses to provide information, to allow access to or the copying of records, or to supply samples as provided in these rules, the officer or employee of the Commission shall complete the investigation to the extent that voluntary cooperation is provided. The Commission may take such additional action, including but not limited to seeking an ex parte search warrant, employing the

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compulsory process provided for in these rules, and/or taking other suitable legal action. If the person or agent in charge refuses to accept the notice upon its presentation, the officer or employee may affix the notice to a public entrance way on the premises and this shall constitute presentation of the notice.

§ 1118.3 Compulsory processes and service.

(a) In addition to or in lieu of authorizing the issuance of a notice, the Commission may elect either to seek an ex parte search warrant and/or use any other reasonable means authorized by law to initiate investigations, inspections, or inquires to obtain information for the purposes set forth in § 1118.1(a), including but not limited to the following compulsory processes:

- (1) Subpoenas;
- (2) Investigational hearings;
- (3) Depositions; and
- (4) General or special orders.

(b) Service in connection with any of the compulsory processes in § 1118.3(a) shall be effected:

(1) By personal service upon the person or agent in charge of the firm being investigated, inspected or inquired of; or

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

(3) In the case of general or special orders where personal service, mailing or delivery has been unsuccessful, service may also be effected by publication in the FEDERAL REGISTER.

(c) The date of service of any form of compulsory process shall be the date on which the document is received by mail, delivered in person or published in the FEDERAL REGISTER. In computing a period of time in which a party is required or permitted to act, the day from which the time begins to run shall not be included. The last day of the period shall be included, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday or legal holiday.

(d) These rules shall be referred to in any notice of compulsory process served upon a person or firm.

(e) Anyone submitting information in response to any of the compulsory processes referred to in § 1118.3(a) 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 6(a)(2) of the Consumer Product Safety Act (15 U.S.C. 2055(a)(2)) and whether any of the information is believed to be exempt from disclosure by the Commission under the provisions of the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations under that Act, 16 CFR part 1015 (42 FR 10490, February 22, 1977) or as amended. Any claim of confidentiality must be in writing, and any request for exemption 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.

§ 1118.4 Subpoenas.

The Commission may issue to any person or firm a subpoena requiring the production of documentary evidence (subpoena duces tecum) and/or attendance and testimony of witnesses (subpoena ad testificandum) relating to any matter under investigation. Procedures regarding compliance with subpoenas and motions to limit or quash subpoenas are provided for in § 1118.9.

§ 1118.5 Investigational hearings.

(a) The Commission by subpoena may require any person or firm to provide information at an investigational hearing. These 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. The hearings shall be presided over by the Commission, by one or more of the Commissioners, by an administrative law judge, or by a duly designated officer or employee, who shall be referred to as the presiding official. The hearings shall be stenographically reported, and the transcript shall be made a part of the record.