

§ 1118.3

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.

16 CFR Ch. II (1-1-07 Edition)

(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.

Consumer Product Safety Commission

§ 1118.7

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

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

(d) The release of the record of the hearing shall be governed by the Freedom of Information Act (5 U.S.C. 552), the Commission's regulations under that Act, 16 CFR part 1015 (42 FR 10490, February 22, 1977) or as amended and/or other applicable laws or regulations, except that a person required to give testimony or a deposition may, in accordance with § 1118.7(d), obtain a copy of his or her testimony or deposition.

§ 1118.6 Depositions.

(a) The Commission by subpoena may require testimony to be taken by deposition at any stage of any investigation. Depositions may be taken before any person who is designated by the Commission and has the power to administer oaths. The person before whom the deposition is taken shall put the deponent under oath. The testimony given shall be reduced to writing by the person taking the deposition or under that person's direction and shall then be submitted to the deponent for signature unless the deponent waives the right to sign the deposition. All depositions shall be closed to the public, unless otherwise ordered by the Commission. The release of the record of such depositions shall be governed by the Freedom of Information Act (5 U.S.C. 552), the Commission's regulations under that Act, 16 CFR part 1015 (42 FR 10490, February 22, 1977) or as amended and/or other applicable laws or regulations, except that the deponent may, in accordance with § 1118.7(d), obtain a copy of his or her deposition.

(b) Any changes which the deponent desires to make shall be entered on the face of the deposition and shall state the reasons for such changes. The deposition shall then be signed by the deponent, unless the deponent waives the right to sign, cannot be found, or is unable or refuses to sign. The deponent

must sign the deposition within 30 days of its submission to him or her, or within such shorter time period as the Commission may designate. Whenever a deponent is required to sign in less than ten days, the Commission shall notify the deponent of the reasons for such shorter time period.

If the deponent does not sign the deposition within the prescribed time period, the Commission designee shall sign it and state on the record the fact of the waiver of the right to sign or of the illness or absence of the deponent, or the deponent's inability or refusal to sign, together with the reason if any is given. The deposition may be used in any administrative proceeding, as provided by these rules, or any other proceeding, as allowed by applicable rules.

§ 1118.7 Rights of witnesses at investigational hearings and of deponents at depositions.

(a) Any person, agent, or officer of a firm, who is required to produce documentary evidence or give testimony as a witness at an investigational hearing conducted under provisions of § 1118.5 or as a deponent at a deposition taken under provisions of § 1118.6 may be accompanied by an attorney, or an officer or partner of the firm, who may act as representative for the witness or the deponent. However, a person who is subpoenaed to produce documentary evidence or give testimony at an investigational hearing or deposition cannot act as attorney or representative for another witness or deponent at the same proceeding. The term attorney refers to members of the bar of a Federal court or the courts of any State or Territory of the United States, the Commonwealth of Puerto Rico, or the District of Columbia. The witness or deponent and his or her attorney or representative may act as follows during the course of an investigational hearing or deposition:

(1) A witness or deponent may confer, in confidence, with his or her attorney or representative concerning any questions asked of the witness or deponent. If the witness, deponent, or his or her attorney or representative objects to a question or any other matter relevant to the investigational hearing or deposition, the objection and basis for it