foreign government information, a determination is made by the reviewer that continued classification is necessary, a date for declassification or for review no more than 10 years later shall be set. That action and date shall be marked on the document. Subsequent review dates shall be set at no more than 10-year intervals.

(c) Requests for mandatory review for declassification of foreign government information shall be processed and acted upon in accordance with the provisions of § 1203.603 except that foreign government information will be declassified only in accordance with the guidelines developed for that purpose under § 1203.702 and after consultation with other Government agencies with subject matter interest as necessary. In those cases where these guidelines cannot be applied to the foreign government information requested, the foreign originator normally should be consulted, through appropriate channels, prior to final action on the request. However, when the responsible NASA installation knows the foreign originator's view toward declassification or continued classification of the types of information requested, consultation with the foreign originator is not necessary.

(d) Requests for mandatory review for declassification of foreign government information which NASA has not received or classified shall be referred to the Government agency having a primary interest. The requestor shall be advised of the referral.

Robert A. Frosch,
Administrator.

[FR Doc. 79-18974 Filed 6-15-79; 8:45 am]
BILLING CODE 7510-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. C-2964]

Prohibited Trade Practices, and Affirmative Corrective Actions; Aluminum Company of America, et al.

AGENCY: Federal Trade Commission.

ACTION: Final Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order, among other things, requires a Pittsburgh, Pa. producer of aluminum building products and its subsidiary, Alcoa Building Products, Inc., to cease disseminating or participating in the dissemination of advertisements which contain fuel reduction, heat loss reduction, energy savings or thermal insulation representations regarding residential aluminum siding. The order also requires that the R-value for insulating material be disclosed in advertisements which merely use the term "insulated aluminum siding" for descriptive purposes.

DATES: Complaint and order issued May 11, 1979.[1]

FOR FURTHER INFORMATION CONTACT: Paul R. Peterson, Director, 4R, Cleveland Regional Office, Federal Trade Commission, 1339 Federal Office Building, 1240 East Ninth St., Cleveland, Ohio, 44199, (216) 522–4207.

SUPPLEMENTARY INFORMATION: On Friday, January 12, 1979, there was published in the **Federal Register**, 44 FR 2600, a proposed consent agreement with analysis In the Matter of Aluminum Company of America, a corporation, and Alcoa Building Products, Inc., a corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions, or objections regarding the proposed form of order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows:

Subpart-Disseminating Advertisements, Etc.: § 13.1043 Disseminating advertisements, etc.

(Sec. 6, 38 Stat. 721; (15 U.S.C. 46). Interprets or applies sec. 5, 38 Stat. 719, as amended; (15 U.S.C. 45))

Carol M. Thomas,
Secretary.

[FR Doc. 79-18921 Filed 6-15-79; 8:45 am]
BILLING CODE 6750-01-M

16 CFR Part 13

[Docket No. C-2966]

Prohibited Trade Practices, and Affirmative Corrective Actions; General Motors Corporation

AGENCY: Federal Trade Commission.

ACTION: Final Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, among other things, requires a Detroit, Mich. motor vehicle manufacturer to cease misrepresenting the manufacturing source of engine options and the availability of standard or optional equipment. The order also requires the firm to make designated disclosures regarding the manufacturing source, ordering code, and availability of each engine option offered for the model years 1979 through 1981; notify dealers promptly of engine option substitutions; and provide them with the replacement parts and maintenance information necessary to service such equipment. Additionally, the company is prohibited from using any wholesale order system which could prevent dealers from designating specific options requested by purchasers.

DATES: Complaint and order issued May 18, 1979.[1]

FOR FURTHER INFORMATION CONTACT: Paul R. Peterson, Director, 4R, Cleveland Regional Office, Federal Trade Commission, 1339 Federal Office Bldg., 1240 East Ninth St., Cleveland, Ohio. 44199. (216) 522–4207.

SUPPLEMENTARY INFORMATION: On Friday, January 26, 1979, there was published in the **Federal Register**, 44 FR 5457, a proposed consent agreement with analysis In the Matter of General Motors Corporation, a corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions, or objections regarding the proposed form of order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows:

Subpart-Advertising Falsely or Misleadingly: § 13.10 Advertising falsely or misleadingly; 13.10–1 Availability of merchandise and/or facilities; § 13.90 History of product or offering; § 13.160 Promotional sales plans; § 13.205 Scientific or other relevant facts; § 13.235 Source or origin; 13.235–35 History. Subpart-Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; 13.533–20 Disclosures. Subpart-Misrepresenting Oneself and Goods—

[1] Copies of the Complaint, and the Decision and Order filed with the original document.

[1] Copies of the Complaint, and the Decision and Order filed with the original document.

Goods: § 13.1572 Availability of advertised merchandise and/or facilities; § 13.1650 History of product; § 13.1745 Source or origin: 13.1745-60 Maker or seller; § 13.1750 Style or type.—Promotional Sales Plans: § 13.1830 Promotional sales plans. Subpart-Neglecting, Unfairly or Deceptively, To Make Material Disclosure: § 13.1854 History of products; § 13.1886 Quality, grade or type; § 13.1895 Scientific or other relevant facts; § 13.1900 Source or origin.

(Sec. 6, 38 Stat. 721; (15 U.S.C. 46). Interprets or applies sec. 5, 38 Stat. 719, as amended; (15 U.S.C. 45))

Carol M. Thomas,

Secretary.

[FR Doc. 79-18919 Filed 6-15-79; 8:45 am]

BILLING CODE 6750-01-M

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16 CFR Part 13

[Docket No. C-2968]

Prohibited Trade Practices, and Affirmative Corrective Actions; Inland Empire Roofing Contractors Association

AGENCY: Federal Trade Commission.

ACTION: Final order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, among other things, requires a Spokane, Wash. roofing association to cease entering into agreements with others to establish and maintain terms of guarantees, prices, or other conditions of sale in connection with the sale of roofs and related services; suggesting that members adhere to any particular price, guarantee, or other condition of sale; or limiting by any means a member's right to give any guarantee, price or other term or condition of sale to its customers. The association is also prohibited from investigating and/or policing its members with regard to prices charged and guarantees imposed in the sale of their products and services.

DATES: Complaint and order issued May 22, 1979. [1]

FOR FURTHER INFORMATION CONTACT: Thomas Armitage, Director, 10R, Seattle Regional Office, Federal Trade Commission, 28th Floor, Federal Bldg., 915 Second Ave., Seattle, Wash. 98174 (206) 442-4655.

SUPPLEMENTARY INFORMATION: On Monday, March 19, 1979, there was published in the **Federal Register,** 44 FR 16441, a proposed consent agreement with analysis In the Matter of Inland Empire Roofing Contractors Association, an unincorporated association, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions, or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR 13, are as follows:

Subpart-Coercing and Intimidating: § 13.367 Members. Subart-Combining or Conspiring: § 13.395 To control marketing practices and conditions; § 13.430 To enhance, maintain or unify prices; § 13.470 To restain or monopolize trade. Subpart-Controlling, Unfairly, Seller-Suppliers: § 13.530 Controlling, unfairly, seller-suppliers. Subpart-Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; 13.533-20 Disclosures; 13.533-60 release of general, specific or contractual constrictions, requirements, or restraints. Subpart-Maintaining Resale Prices: § 13.1165 Systems of espionage.

(Sec. 6, 38 Stat. 721; (15 U.S.C. 46). Interprets or applies sec. 5, 38 Stat. 719, as amended; (15 U.S.C. 45).)

Carol M. Thomas,

Secretary.

[FR Doc. 79-18922 Filed 6-15-79; 8:45 am]

BILLING CODE 6750-01-M

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16 CFR Part 13

[Docket No. C-2963]

Prohibited Trade Practices, and Affirmative Corrective Actions; International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union

AGENCY: Federal Trade Commission.

ACTION: Final Order.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, among other things, requires an Anchorage, Alaska labor union local to cease entering into agreements or understandings which restrict signatory construction companies to deal only with subcontractors who agree with the same terms and conditions binding between the union and the contractors. Additionally, the agreement would prohibit the local from taking any action that would discriminate or economically injure non-compliers.

DATES: Complaint and order issued May 9, 1979. [1]

FOR FURTHER INFORMATION CONTACT: Thomas Armitage, Director, 10R, Seattle Regional Office, Federal Trade Commission, 28th Floor, Federal Bldg., 915 Second Ave., Seattle Wash. 98174. (206) 442-4655.

SUPPLEMENTARY INFORMATION: On Wednesday, July 19, 1978 there was published in the **Federal Register,** 43 FR 31022, a proposed consent agreement with analysis In the Matter of International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union 959, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions, or objections regarding the proposed form of order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows:

Subpart-Coercing and Intimidating: § 13.370 Suppliers and sellers. Subpart-Combining or Conspiring: § 13.390 To control employment practice; § 13.395 To control marketing practices and conditions.

(Sec. 6, 38 Stat. 721; (15 U.S.C. 46). Interprets or applies sec. 5, 38 Stat. 719, as amended; (15 U.S.C. 45).)

Carol M. Thomas,

Secretary.

[FR Doc. 79-18920 Filed 6-15-79; 8:45 am]

BILLING CODE 6750-01-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1118

Investigations, Inspections, and Inquiries Under the Consumer Product Safety Act

AGENCY: Consumer Product Safety Commission.

[1] Copies of the Complaint, and the Decision and Order filed with the original document.

[1] Copies of the Complaint, and the Decision and Order filed with the original document.

ACTION: Final rules.

SUMMARY: In this document, the Commission sets forth rules to govern the scope and conduct of investigations, inspections, and inquiries under the Consumer Product Safety Act as well as procedures for disposing of matters by consent order agreements. The rules state the manner in which officers or employees of the Commission are authorized to enter and inspect premises; to have access to and copy documentary evidence; and to obtain information. These rules are intended to provide the Commission with an effective and efficient method of conducting investigations, inspections, and inquiries in order to determine whether there has been compliance with the Consumer Product Safety Act and the standards, rules, and regulations issued under the Act. In addition, the rules will inform the public of the Commission's procedures and the safeguards available during investigational activities.

EFFECTIVE DATE: July 18, 1979.

FOR FURTHER INFORMATION CONTACT: Ronald G. Yelenik, Consumer Product Safety Commission, Directorate for Compliance and Enforcement, Washington, D.C. 20207, Telephone No. (301) 492-6629.

SUPPLEMENTARY INFORMATION: On August 9, 1978, the Consumer Product Safety Commission published proposed Nonadjudicative Rules of Procedure for Investigations, Inspections, and Inquiries under the Consumer Product Safety Act in the **Federal Register** (43 FR 35440). The Commission invited the public to submit written comments regarding the rules by September 22, 1978.

The Commission received numerous written comments from businesses, trade associations, law firms and others. Most of the commenters support the purpose of the proposal. The rules issued below, in final form, reflect changes made in the proposed rules in response to questions and suggestions raised by commenters as well as changes suggested by the Commission staff. Following is a discussion of major comments received and the Commission's responses to them.

Discussion of Major Comments

Inspections and the Fourth Amendment

The majority of the comments refer to the recent Supreme Court decision in *Marshall v. Barlow's Inc* 436 U.S. 307 (1978), and the possible impact of this decision upon the proposed rules. In *Marshall v. Barlow's Inc.*, the Supreme Court held that non-consensual inspections which are conducted by the Occupational Safety and Health Administration (OSHA) without a warrant or its "functional equivalent" violate the Fourth Amendment of the United States Constitution. The Fourth Amendment states in pertinent part: "The rights of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated and no warrants shall issue, but upon probable cause * * *"

Several commenters expressed the view that proposed §§ 1118.2(a) (1) and (2) and 1118.2(d) are in conflict with the *Barlow* decision in that these subsections would authorize Commission officers and employees to enter and inspect premises without first obtaining a search warrant. The Commission believes that the commenters have improperly construed *Barlow*. The Supreme Court ruled that where an OSHA inspector in the course of his/her duties is refused entry and inspection to business premises, OSHA must obtain a search warrant or its "functional equivalent" to obtain entry. The Court, however, did not indicate that OSHA must procure a search warrant prior to refusal of entry and/or inspection. On the contrary, the opinion expressly anticipates that "the great majority of businessmen can be expected in normal course to consent to inspection without a warrant." 436 U.S. 307, 314 (1978). If voluntary entry is refused, *Barlow* requires that OSHA obtain either a search warrant or its functional equivalent if it wishes to enter and inspect.

Section 16 of the Consumer Product Safety Act (15 U.S.C. 2065) authorizes officers or employees of the Commission to conduct inspections at reasonable times and in a reasonable manner for purposes of implementing the Act. The Commission has carefully considered this provision in light of the Supreme Court's decision in *Barlow*. The Commission in § 1118.2 has provided for the use of search warrants or their functional equivalent in situations where entry and/or inspection has been refused. Therefore, the Commission believes that these rules follow the *Barlow* decision, and has made no change in the rules issued below.

Several commenters stated that proposed §§ 1118.2(a) (1) and (2) and 1118.2(d) should make clear that an individual has the right to request that a warrant be obtained, and that it is not a violation of the Act or the rules for any person or firm to refuse entry or inspection to a Commission officer or employee who does not present a lawfully obtained search warrant. The Commission believes that the rules as proposed, adequately reflect the rationale of the Supreme Court in *Barlow*. Accordingly, the Commission declines to make the suggested revisions. However, the Commission has revised proposed § 1118.2(c) to provide for the inclusion of a statement in the notice of inspection that "the inspection will be conducted and the information provided with the cooperation of the person or firm being inspected."

Conduct and Scope of Inspections

Several commenters expressed the view that proposed §§ 1118.2(a) (1) and (2) should be revised to state that Commission investigators do not have the authority to inspect certain areas of a firm's facilities such as offices, file rooms and supply space where consumer products are neither manufactured nor held. An analysis of the applicable legislative history indicates that the Commission has the authority, in accordance with its obligation to protect the public health and safety, to investigate and inspect these and other areas of a factory, warehouse or establishment. House Commerce Committee Report No. 92-1153 (1972) at p. 43, clearly states: "Such inspection may extend to any portion of any premises or facility which may relate to the safety of such products." Therefore, the Commission declines to adopt the suggested changes.

One commenter suggested that proposed § 1118.2 be modified to show that the inspectional authority of the Commission does not extend to retailers. Although retailers have been excluded from the recordkeeping requirements of § 16(b) of the Act, they have not been exempted from the inspection provisions of § 16(a). House Committee Rep. No 92-1153 p. 44 (1972). Section 16, which pertains to entry and inspection of premises, grants to the Commission broad authority to conduct on-site inspections of any establishment where consumer products are held in connection with their distribution in commerce. Since retailers are establishments within the meaning of § 16, they are therefore subject to inspection by the Commission. Accordingly, the Commission believes that it has the statutory authority to inspect the business premises of retailers, and therefore, declines to make the suggested change.

Several commenters contended that the Commission lacks statutory authority to have access to records, books, documents, papers, packaging or labeling as as provided in proposed § 1118.2(a)(3), without first promulgating a rule requiring such information to be kept and made available. Careful analysis of § 16 of the CPSA clearly indicates that the sole limitation on the Commission's authority to have access to and copy records is that said records be "* * * appropriate books, records and papers relevant to determining whether such manufacturer, private labeler or distributor has acted or is acting in compliance with this Act and rules under this Act. 15 U.S.C. 2065 (1972)." Furthermore, the legislative history of § 16 of the Consumer Product Safety Act indicates that the broad remedial purposes of the Act, a public safety statute, authorizes the Commission to have access to all books, papers, records and other relevant information. The Commission concludes that such authority is not dependent upon the prior promulgation of a Commission rule requiring the establishment and maintenance of such information. Accordingly, the Commission declines to make any substantive changes in § 1118.2(a)(3) to reflect such a limitation.

One commenter expressed the opinion that the scope of proposed § 1118.2(a)(3), exceeds the Commission's statutory authority, in that it provides for the copying of printed information. The Commission believes that this view is unduly restrictive. When § 16, which relates to inspections and recordkeeping, is read in conjunction with § 19(a)(3) of the Act, which makes it unlawful to fail or refuse to permit the copying of records, it is apparent that the Commission has the authority to copy information which shows or relates to the firm's compliance with the Act and the rules. Therefore, the Commission declines to modify § 1118.2(a)(3) in the manner suggested.

Another commenter suggested that the language of proposed § 1118.2(a)(3) purports to authorize access to and copying of virtually any data, whether or not such data relates to the firm's compliance with the Act or rules. Although such was not the intent of this provision, the Commission recognizes that the language of this subsection may give such an impression. Accordingly, proposed § 1118.2(a)(3) has been revised in the following manner to authorize access to and copying of only relevant information: "(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 others promulgated under the act, and * * *" The Commission believes that this language change will remove any possible ambiguity.

One commenter expressed the view that the Commission lacks statutory authority to inspect packaging and labeling of consumer products. The Commission believes that packaging and labeling are component parts of consumer products within the meaning of § 3(a)(1) of the CPSA (see 16 CFR 1115.4) and are therefore obtainable and subject to inspection to the same extent as other consumer products and components. Therefore, the Commission has not deleted "packaging" and "labeling" from § 1118.2(a)(3).

Several commenters argued that proposed § 1118.2(a)(4) exceeds the Commission's statutory authority in that it provides that the Commission may obtain information during the course of an on-site inspection by interviewing employees. These commenters would require the Commission to rely exclusively on compulsory process to obtain oral and/or written statements from employees. However, the Supreme Court in *Barlow* voiced the expectation that most inspections would be conducted with the consent of the person or firm involved. This expectation also applies to oral and written comments of employees. Although the Act and these rules provide methods for compelling answers to questions, the Commission expects that most questions will be answered by employees in a cooperative manner. To resort to compulsory process at the outset would create unjustified expense for both the Commission and the subject of the investigation. It may also generate antagonism and resistance towards the Commission. The Commission believes that employee cooperation should be sought and encouraged.

Another comment, similar to the preceding one, has stated that the seeking of oral information is intrusive, and that the same information is more easily obtainable by use of a subpoena. In response to the preceding comment, the Commission expressed its preference for relying on public cooperation in the first instance. The Commission does not believe it necessary at this time to change a long-standing regulatory enforcement procedure in the absence of compelling evidence that there has been an undue disruption of normal business activities. It is the practice of the staff to accommodate business firms to every extent possible to prevent the kind of disruptions referred to by the commenter. The Commission believes that the unnecessary issuance of compulsory process would be far more disruptive and expensive to the firms involved. Therefore, the Commission will continue first to seek and obtain oral information.

Other Comments

Definitions; Initiation of Investigations, Inspections and Inquiries

The Commission, on its own initiative, has, for the purpose of clarity, divided proposed § 1118.1(b) into two subsections: § 1118.1(b) and § 1118.1(c). Proposed § 1118.1(c) now appears as final § 1118.1(d).

One commenter objected to the phrase "includes but is not limited to" within the proposed definition of "investigation" in proposed § 1118.1(a)(1) (now final § 1118.1(a)(4)). The Commission believes that there should be no limitations on the types of investigations, inspections and inquiries that may be pursued in the future, so long as adequate notice and opportunity to be heard are afforded to the firms involved. The Commission has therefore declined the commenter's suggestion that the phrase be deleted.

Several commenters objected to the inclusion of retailers within the proposed definition of "firm" in proposed § 1118.1(a)(2) (now final § 1118.1(a)(3)). They argue that since retailers are excluded from the recordkeeping requirements of section 16(b), such retailers should not be included within the broad definition of "firm". Despite the fact that the recordkeeping requirement is not applicable to retailers, retailers are generally subject to the other provisions of the Act. Section 16(a)(1) of the Act authorizes the Commission to enter any establishment in which consumer products are held in connection with distribution in commerce. The definition of "distribution in commerce" includes holding consumer products for sale. Section 3(a)(6) of the Act defines a retailer as one to whom a consumer product is delivered or sold for purposes of sale or distribution to consumers. Thus, a retailer comes within the statutory scope of § 16(a)(1) of the Act. Therefore, the Commission declines to adopt the suggestion of the commenters to delete the word retailer from the definition of "firm". However, in order to clarify the applicability of the Act and these rules to retailers, the Commission has added the following language to proposed § 1118.1(a)(2) "* * * except as otherwise provided by § 16(b) of the Act.

Trade Secrets

Several commenters have claimed that proposed § 1118.2 does not provide adequate protection against the disclosure of trade secrets and other confidential or proprietary information. The Commission points out that §§ 1118.2(c) and 3(c) of these rules exempt such information from disclosure to anyone except other officers or employees of the Commission who are concerned with enforcing or administering the Act. These two subsections paraphrase and restate the Commission's Freedom of Information Act Regulations, 16 CFR Part 1015 (42 FR 10490, February 22, 1977), the Freedom of Information Act and apply the maximum protection provided for under the FOIA (15 U.S.C. 552) to all information obtained by the Commission. Accordingly, the Commission declines to modify § 1118.2 of the final rules.

Samples

Several commenters, including a number of trade associations and manufacturers, objected to proposed § 1118.2(a)(4)(ii). The commenters claim that this subsection authorizes the Commission to obtain samples of consumer products without payment. The Commission did not intend this subsection to have such an effect. Section 27(f) of the Act provides that the Commission "may require any manufacturer, distributor or retailer of a consumer product to sell the product to the Commission at manufacturer's, distributor's or retailer's cost." Accordingly, the Commission has clarified final § 1118.2(a)(4)(ii) by adding the phrase "at manufacturer's, distributor's, or retailer's cost, unless voluntarily provided * * *"

Other commenters expressed the view that the Commission is only authorized to buy finished products and not components. Since § 3(a)(1) of the Act includes "components" within the definition of "consumer product" the Commission disagrees with the commenter. Therefore, the Commission believes that § 1118.2(a)(4) correctly interprets the statute and that the Commission has the authority to obtain components.

Compulsory Process

In order to clarify the fact that the Commission may initiate investigations, inspections or inquiries by either issuance of a notice of inspection or by seeking ex parte search warrants or using the compulsory processes enumerated in proposed § 1118.3, the staff has modified the language of § 1118.3 of the final rules.

One commenter objected to the language "including but not limited to" in proposed § 1118.3 as excessively broad. The Commission agrees with the commenter and has revised final § 1118.3 by adding the words "the following compulsory processes" after the phrase "including but not limited to."

Another commenter expressed the view that the use of the term "notice" in proposed § 1118.3(b) is unclear and could be construed to allow mail service of search warrants. Final § 1118.3(b) has been modified by deleting the words "of notice" from the subsection. Moreover, the phrase "the following compulsory processes" has been added to final § 1118.3(a) to make clear that the service involved refers solely to compulsory process and not to search warrants.

Several commenters suggested that proposed § 1118.3(b)(3) is probably unconstitutional in that it permits service of general or special orders by publication in the **Federal Register.** Other commenters stated that this means of service is unfair to small businessmen who do not subscribe to the **Federal Register.** The Commission is neither aware of any case law supporting the constitutional claim of the commenters, nor was any cited in the comment. However, in order to assure the commenter that service by publication will only be used as a last resort, the Commission has deleted the phrase "is impractical or" from final § 1118.3(b)(3). Therefore, the Commission does not believe that this form of service is unfair to small businessmen.

A few commenters complained that the date of service of compulsory processes in proposed § 1118.3(c) should be the date on which the document is received rather than the date on which the document is mailed. The commenters claimed that since it might take three or four days for process to be received by mail, such delay would unreasonably shorten the time period in which they are permitted or required to respond. Although the proposed rules provide for a three-day extension of time when service by mail is involved, the Commission believes that the commenter's views are well founded. The Commission has therefore modified § 1118.3(c) in the manner suggested by the commenter.

Subpoenas

One commenter suggested that proposed § 1118.4 is overbroad since it allows for discovery of documents beyond the authority granted in section 16 of the CPSA. The authority to issue subpoenas is granted by section 27(b)(3) of the CPSA. This section empowers the Commission to require the production of all documents relating to the execution of Commission duties. Accordingly, the Commission declines to make any change in final § 1118.4.

Investigational Hearings

Several commenters stated that the purpose of investigational hearings set forth in proposed § 1118.5(a) is too expansive in that it relates to "any matter under investigation." For this reason, the commenters claim that there is no guarantee that the hearings will be limited to matters in the public interest. The Commission did not intend that "any matter under investigation" be read in such a broad manner. Section § 1118.1 of these rules defines "investigation" as "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 that Act."

Therefore, the scope of an investigational hearing will be limited to the areas enumerated above, which are undoubtedly matters in the public interest. Moreover, a witness at an investigational hearing has the right to be represented by counsel and to object to any matter relevant to the hearing, as provided in § 1118.7(a.) In light of this built-in procedural safeguard and the inherent subject matter limitations of such investigations, the Commission believes that it is unnecessary to adopt the views of the commenters.

One commenter suggested that the language of proposed § 1118.5(a) be changed from "may order and by subpoena may compel" to "by subpoena may require" in order to comport with the statutory language of section 27(b)(3) of the CPSA. The Commission agrees with the commenter and has adopted the suggested language.

Another commenter expressed the opinion that only persons with legal training be allowed to preside at investigational hearings. Section 27(a) of the CPSA, which authorizes the Commission to conduct hearings provides no such limitation, either explicit or implicit, on the qualifications of presiding officials. However, the commenter can be assured that the

Commission will appoint persons with legal training to preside at Commission hearings when the Commission deems necessary. Therefore, the Commission declines to amend this section.

Another commenter argued that a Commissioner who participates in a hearing, investigation or inspection should be disqualified from participating in a subsequent decision on the same matter. The statutory language of section 27(a) of the CPSA provides that "a Commissioner who participates in * * * a hearing or other inquiry shall not be disqualified *solely* by reason of such participation from subsequently participating in a decision of the Commission in the same matter (emphasis added)." Accordingly, the Commission has decided not to incorporate the suggestion of the commenter. However, in order to clarify the meaning of proposed § 1118.5(b) and to track the language of the statute, the Commission has added the word "solely" to § 1118.5(b) of the final rules.

One commenter expressed the view that proposed § 1118.5(b) should be amended to provide that if a Commissioner is to participate in a Commission decision involving a matter in which he or she had previously participated at the investigational level, a written statement indicating why the Commissioner should not be disqualified should be included as part of the record. The Commission believes that the inclusion of such a written statement is unnecessary in view of the language of § 27(a) of the Act providing for a Commissioner to participate in a Commission decision after conducting a hearing or after inquiry regarding the same matter. Moreover, a person believing that a Commissioner has lost his or her objectivity may, of course, move to disqualify that Commissioner under the CPSC Adjudicative Rules, 16 CFR 1025.42(e)(2). Accordingly, the Commission declines to make the suggested change.

Another commenter claimed that proposed § 1118.5(d), which limits the release of the record of an investigational hearing in accordance with the Freedom of Information Act is in conflict with proposed § 1118.7(d) which allows any person who is required to appear at an investigational hearing or a deposition to obtain a copy of his/her testimony by paying the prescribed costs. To clarify that a person giving testimony may obtain a copy of the transcript, final § 1118.5(d) has been amended by adding the following language: " * * * except that any person required to give testimony or to be deposed may in accordance with § 1118.7(d) obtain a copy of his or her testimony or deposition."

Depositions

The Commission has modified proposed § 1118.6 in the same manner and for the same reasons stated in the comments pertaining to § 1118.5(d).

One commenter suggested that the language of proposed § 1118.6 should be modified to require that changes in depositions be made on the face of the document rather than on a separate document accompanying the deposition. The commenter's rationale for such suggestion is that the change would avoid the potential loss of such separate documents. The Commission concurs and has incorporated appropriate language into § 1118.6 of the final rules.

Several commenters objected to the language of proposed § 1118.6(b) which allows the Commission to reduce the time period in which a deposition must be signed to less than ten days. The commenters claim that such a practice may lead to harassment by the Commission. The Commission believes that circumstances may arise in which the public interest may require that a deposition regarding consumer safety be signed and submitted in less than ten days. However, the Commission has modified final § 1118.6(b) by providing that the Commission must state the reason for requiring a deposition to be signed in less than ten days.

Another commenter expressed the view that it is inappropriate for the Commission to establish rules of admissibility of evidence for the courts. The Commission agrees with this observation and has modified § 1118.6(b) of the final rules to clearly indicate that admissibility of such testimony in court is not governed by these rules.

Rights of Witnesses at Investigational Hearings and of Deponents at Depositions

The Commission, on its own initiative, has amended proposed §§ 1118.7(a)(4) and § 1118.7(e) to make clear that the conduct of witnesses at investigational hearings is subject to direction and regulation by the presiding official. The Commission believes that it has the statutory authority to so empower the presiding official.

The Commission has also substituted the term "representative" for the term "counsel" in final § 1118.7(a). The Commission believes that it is inappropriate to refer to laymen who are not admitted to practice before any bar as "counsel." Moreover, to insure that lay representatives have adequate knowledge of the business affairs of the firm, the Commission has limited persons who may serve as representatives to partners of the partnership or officers of the corporation whose activities are under investigation by the Commission during that proceeding.

Thirdly, the Commission, on its own initiative, has revised final § 1118.7(a)(4) to provide a witness or his or her attorney or representative with the opportunity to make a brief statement at the conclusion of the hearing regarding the position of the firm as to matters under investigation. Furthermore, the Commission has for the purpose of clarity, divided proposed § 1118.7(a)(4) into two subsections: § 1118.7(a)(4) and § 1118.7(a)(5).

Several companies and trade associations objected to the limitation in proposed § 1118.7(a)(1) which precludes individuals who have been subpoenaed to produce documentary evidence or give testimony at any investigational hearing or deposition from acting as counsel for another witness or deponent at the same proceeding. The Commission believes that the possibility exists that an individual who has been present during the testimony of a witness and is later called to testify at the same proceeding may be influenced by the previous testimony he or she has heard. Therefore, the Commission believes that the limitation of § 1118.7(a) is a reasonable one.

Several commenters expressed the view that proposed § 1118.7(a)(1) discriminates against firms with in-house counsel who normally testify regarding documents maintained by the firm. The Commission disagrees with the position of the commenters and suggests that another person could present the subpoenaed documents, thereby allowing the in-house counsel to act as legal representative of the firm. If the firm maintains more than one attorney, one lawyer could present the documents and another could act as counsel. Accordingly, the Commission declines to incorporate the suggested change in these rules.

One commenter stated that proposed §§ 1118.7(a)(3) and (4) do not provide a witness, deponent, their attorney or representative with the opportunity to object on the record to anything other than a question that has been posed. It was suggested that the right to object should be expanded to include any matter pertinent to the hearing. The Commission agrees with the commenter and has modified final § 1118.7(a)(1) to comply with the suggestion.

Another commenter suggested that proposed § 1118.7(b) be modified to require the Commission to issue a separate notice to firms under investigation, indicating the nature of the information to be sought from a deponent or witness at an investigational hearing. The Commission believes that administrative subpoenas issued pursuant to § 1118.3 serve this purpose. Such subpoenas specify in detail the information sought from each witness, the nature of the investigation, and all other factors relevant to the inquiry. Accordingly, the Commission declines to make the suggested modification.

One commenter stated that the term "reasonably available" in proposed § 1118.7(b), referring to the information to which a witness or deponent shall testify, is vague and may result in overreaching by the Commission. The Commission believes that this language, taken from similar provisions of the Federal Rules of Civil Procedure, adequately describes the matters to which a witness must testify, while providing the witness reasonable grounds for refusing to supply that information, if it is not available. Accordingly, the Commission has decided not to revise this subsection.

The same commenter suggested that the Commission be required "to notify the firm sufficiently in advance of the hearing or deposition of those matters and information to which testimony would be sought, to afford the firm a reasonable time to gather the requested * * * information for use of its agent or offices during his testimony." Under § 1118.10(a)(3), any firm may request an extension of time for the purpose of complying with compulsory processes, including investigational hearings and depositions. Therefore, the Commission believes that these rules provide an adequate period of time to gather requested information, and has therefore not modified this subsection.

Another commenter expressed the view that proposed § 1118.7(d) should provide that witnesses who testify under compulsory process should be allowed to keep a copy of their testimony at government expense. The Commission is of the opinion that the procedure contained in § 1118.7(d) by which a witness or deponents may obtain a copy of testimony given by paying the prescribed costs is adequate and reasonable. Such procedure comports with similar provisions of the Freedom of Information Act. Therefore, the Commission has not incorporated the suggested change in § 1118.7(d) of the final rules.

Written Interrogatories

One commenter questioned whether it was necessary for the rules to provide for both written interrogatories and general and special orders. After careful consideration, the Commission has concluded that no useful purpose will be served by providing for the use of written interrogatories. Any information obtainable through written interrogatories may also be obtained through general and special orders. Therefore, proposed § 1118.8 has been deleted. The number sequence of the rules which follow has been modified accordingly.

Modification of Terms for Compliance

The Commission believes that proposed § 1118.10(b)(2) and (3) both provide for an extension of time to limit or quash subpoenas and general or special orders. In order to eliminate this redundancy, § 1118.10(b)(2) has been deleted. Section 1118.10(b)(3) of the proposed rules now appears as final rule § 1118.9(b)(2).

Consent Order Agreements

The Commission on its own initiative has amended proposed § 1118.20(b) by adding subpart (4), which requires that a statement describing the alleged hazard, noncompliance or violation be included in a consent order agreement. This subpart was added in order to comport with provisions in the Interim Rules of Practice for Adjudicative Proceedings under the CPSA and the Flammable Fabrics Act, 42 FR 31431 (1977) (16 CFR Part 1025) and the Policy and Procedures Regarding Substantial Product Hazards, 16 CFR Part 1116 (43 FR 34988, August 7, 1978).

Additionally, the Commission believes that the language of proposed § 1118.20(b)(8) lacks clarity. The Commission has therefore modified this subsection to avoid any possible confusion.

One commenter suggested that the time period in which the Commission will notify a consenting party of its decision not to accept a consent order agreement on a final basis should be stated in proposed § 1118.20(c) of these rules. The Commission endeavors to inform a consenting party within a reasonable period of time of its decision not to accept agreements on a final basis. Accordingly, final § 1118.20(g) has been amended to provide that the Commission shall, within a reasonable time, issue and serve an order indicating its rejection of the consent agreement.

Another commenter observed that proposed § 1118.20(g) should include a provision requiring the Commission to state in writing the reasons for rejecting a proposal. The Commission does not believe that it is practicable for the Commission to set forth in detail the basis for rejecting a proposed agreement in each and every case. However, although the Commission declines to make the suggested change in § 1118.20(g) of the final rules, the Commission will make every effort to respond in writing where practicable.

On its own initiative, the Commission has revised the language of §§ 1118.20(f) and 1118.20(g) to clarify the procedure the Commission will follow in finally accepting or rejecting an agreement that has been tentatively accepted. If no public objections to the agreement are received within 15 days of placing the agreement on the public record in accordance with § 1118.20(e), the agreement is accepted by operation of law. Where the Commission receives one or more requests that it not finally accept an agreement, it shall make its final decision after considering the requests and reasons contained in them. The Commission's final decision will be made within a reasonable time following the end of the fifteen day comment period.

The Commission, on its own initiative, has added § 1118.20(h) to provide a procedure to vacate or modify an order issued pursuant to an agreement. The procedure is begun either by a petition filed by a party or by the Commission acting on its own initiative. The petition shall include the change sought and the reasons for it. The grounds for a petition are (1) false statements were relied upon by the Commission in accepting the agreement or (2) there has been a change in facts or law. Parties affected by the petition shall be allowed to submit a response to it. In deciding whether to grant the petition, the Commission shall consider the public interest.

Effective Date and Promulgation

Effective Date. These rules become effective July 18, 1979.

Promulgation

Accordingly, pursuant to the provisions of the Consumer Product Safety Act, §§ 16, 19 and 27, 86 Stat. 1222, 1224, and 1227, as amended, 90 Stat. 509; 15 U.S.C. 2065, 2068, and 2076, Chapter II of Title 16 is amended by adding a new Part 1118 as follows:

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

Subpart A—Procedures for Investigations, Inspections and Inquiries

Subpart B—Consent Order Agreements

Authority: Sec. 16, Pub. L. 92-573, 86 Stat. 1222 (15 U.S.C. 2065); sec. 19, Pub. L. 92-573, 86 Stat. 1224 (15 U.S.C. 2068); sec. 27, Pub. L. 92-573, 86 Stat. 1227 (15 U.S.C. 2076); as amended by Pub. L. 94-284, 90 Stat. 509.

Subpart A—Procedures for Investigation 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 § 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 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 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.

(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 shall be stated on the record. In the case of an objection based upon self-incrimination, the privilege must be asserted by the witness or deponent. If a witness at an investigational hearing refuses to answer a question or provide other information, the presiding official shall have the authority to immediately order the witness to answer the question or provide the information requested, except in circumstances where, in the discretion of the presiding official an immediate ruling would be unwarranted and except where a refusal is based upon the privilege against self-incrimination. Otherwise all objections shall be ruled upon by presiding official at the time the objection is made.

(2) Objections timely made under the provisions of § 1118.7(a) shall be noted on the record, shall be treated as continuing, and shall be preserved throughout the proceeding without the necessity of repetition during similar lines of inquiry.

(3) Except as provided by § 1118.7(a), counsel for a witness or deponent may not interrupt the examination of the witness or the deponent by making objections or statements on the record.

(4) Upon completion of the examination, any witness at an investigational hearing may clarify on the record any of his or her answers, or, if the witness is accompanied by an attorney or representative, the attorney or representative may examine the witness on the record as to answers previously given. In addition, the witness or his or her attorney or representative may make a brief statement at the conclusion of the hearing giving his, her or the firm's position with regard to matters under investigation. In order to prevent abuse of the investigational process, the presiding official shall have the authority to impose reasonable limitations on the period of time allowed for objections, clarification of answers, and statements of position.

(5) Upon completion of all testimony, a deponent may clarify on the record any of his or her answers. The attorney or representative for a deponent may examine that deponent on the record to clarify answers previously given.

(b) Any person, agent, or officer who is required to appear in person at an investigational hearing or at a deposition shall testify as to matters and information known and/or reasonably available to the person or firm involved.

(c) Any person, agent or officer who is compelled by subpoena to appear in person at an investigational hearing or at a deposition shall receive the same fees and mileage allowances as are paid witnesses in the courts of the United States.

(d) Any person, agent, or officer who is required to appear at an investigational hearing or at a deposition shall be entitled to retain a copy of any document submitted by him or her and, upon payment of lawfully prescribed costs, in accordance with the Commission's regulations under the Freedom of Information Act, shall be entitled to procure a copy of his or her own testimony as recorded.

(e) The presiding official shall take all necessary action to regulate the course of the hearing, to avoid delay and to assure that reasonable standards of orderly and ethical conduct are maintained. The presiding official, for reasons stated on the record, shall immediately report to the Commission any instance in which a witness or his or her attorney or representative has refused to comply with the presiding official's directions or to adhere to reasonable standards of orderly and ethical conduct in the course of the hearing. The Commission shall take whatever action is appropriate under the circumstances.

§ 1118.8 General or special orders seeking information.

The Commission may require by the issuance of general or special orders any person or firm to submit in writing any reports and answers to questions as the Commission may prescribe. The reports or answers shall be made under oath, and shall be filed within the time prescribed by the Commission. Procedures regarding compliance with general or special orders and motions to limit or quash such orders are provided for in § 1118.9.

§ 1118.9 Motions to limit or quash subpoenas and general or special orders and delegation to modify terms for compliance.

(a) The Commission hereby delegates to the Associate Executive Director for Compliance and Enforcement; the Solicitor; the Directors of Divisions of Enforcement, Product Defect Correction, and Regulatory Management; and the General Counsel the authority:

(1) To negotiate and approve the terms of satisfactory compliance with subpoenas and general or special orders; (2) to impose conditions upon compliance with such compulsory processes; (3) and to extend the time for compliance and the time for filing motions to limit or quash.

(b) The person or firm served with a subpoena or general or special order may file a motion to limit or quash the subpoena or order. Any motion to limit or quash shall set forth the reasons why the subpoena or order should be limited or quashed and may be accompanied by memoranda, affidavits, or other documents submitted in support of the motion. The motion must be received in the Office of the Secretary of the Commission within 10 calendar days of receipt of the subpoena or order unless: (1) The subpoena or order provides for a different time; or (2) the Commission, for good cause shown, grants an extension of time to file a motion.

(c) Upon receipt of a motion to limit or quash, the Office of the Secretary shall immediately notify and transmit a copy to the appropriate staff member. Unless a different period of time is specified in the subpoena or order, the staff shall file an answer with the Office of the Secretary within 10 calendar days after receipt 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 shall be ruled upon by the Commision. The Office of the Secretary shall serve the decision on a motion to limit or quash upon the moving party or the counsel for the moving party and shall furnish a copy of the decision to the appropriate staff member. The Commission's decision is a final decision. Motions for reconsideration will not be received.

§ 1118.10 Remedies for failure to permit authorized investigations.

In the event a person or firm fails to comply with any investigative process authorized by these rules, the Commission may seek appropriate action within its authority under the Consumer Product Safety Act (15 U.S.C. 2051, et seq.)

§ 1118.11 Nonexclusive delegation of power.

No provision contained herein delegating any of the Commission's powers shall be construed as limiting the authority of the Commission to exercise the same powers.

Subpart B—Consent Order Agreements

§ 1118.20 Procedures for consent order agreements.

(a) For the procedure to be followed regarding consent order agreements involving section 15 of the Act (15 U.S.C. 2064), refer to the Commission's regulations relating to substantial product hazards (16 CFR Part 1115). For all other consent order agreements under the Consumer Product Safety Act, the provisions set forth below are applicable.

(b) The consent order agreement is a document executed by a person, or firm (consenting party) and a Commission staff representative which incorporates both a proposed complaint setting forth the staff's charges and a proposed order by which such charges are resolved. A consent order agreement shall contain the following provisions, as appropriate:

(1) An admission of all jurisdictional facts by the consenting parties;

(2) A waiver of any rights to an administrative or judicial hearing and of any other procedural steps including any rights to seek judicial review or otherwise challenge or contest the validity of the Commission's order;

(3) A statement that the agreement is in settlement of the staff's charges and does not constitute an admission by the consenting party that the law has been violated;

(4) A statement describing the alleged hazard, non-compliance or violation.

(5) A statement that the Commission's order is issued under the provisions of the Act (15 U.S.C. 2051, et seq.); and that a violation of such order may subject the consenting party to appropriate legal action.

(6) An acknowledgment that the consent order agreement only becomes effective upon its final acceptance by the Commission and its service upon the consenting party;

(7) An acknowledgment that the Commission may disclose terms of the consent order agreement to the public;

(8) A statement that the consenting party shall comply with the provisions of the agreement and order;

(9) A statement that the requirements of the order are in addition to and not to the exclusion of other remedies under the Act.

(c) At any time in the course of an investigation, the staff, with the approval of the Commission, may propose to the person or firm being investigated that any alleged violation be resolved by an agreement containing a consent order. Additionally, such a proposal may be made to the Commission staff by such person or firm.

(d) Upon receiving an executed agreement, the Commission may: (1) provisionally accept it; (2) reject it and issue the complaint (in which case the matter will be scheduled for hearing in accordance with the Commission's Rules of Practice for Adjudicative Proceedings, 16 CFR Part 1025, June 21, 1977 or as amended) and/or (3) take such other action as it may deem appropriate.

(e) If the agreement is provisionally accepted, the Commission shall place the agreement on the public record and shall announce provisional acceptance of the agreement in the **Federal Register**. Any interested person may ask the Commission not to accept the agreement by filing a written request in the Office of the Secretary. Any request must be received in the Office of the Secretary no later than the close of business of the 15th calendar day following the date of announcement in the **Federal Register**.

(f) If no requests are received, the agreement shall be deemed finally accepted by the Commission on the 16th calendar day after the date of the announcement in the **Federal Register**. Notice of final acceptance will be given and the order issued within a reasonable time.

(g) If the Commission receives one or more requests that it not finally accept an agreement, it shall, within a reasonable time, either finally accept or reject the agreement after considering the requests. The Commission shall promptly issue and serve an order indicating its decision.

(1) If the agreement is accepted, the Commission shall issue the complaint and order. The order is a final order in disposition of the proceeding and is effective immediately upon its service on the consenting party under these rules. The consenting party shall thereafter be bound by and take immediate action in accordance with the final order.

(2) If the agreement is rejected, the order so notifying the consenting party shall constitute withdrawal of the Commission's provisional acceptance. The Commission may then issue its complaint, may order further investigation, or may take any action it considers appropriate.

(h) An agreement that has been finally accepted may be vacated or modified upon petition of any party or the Commission's own initiative. The petition shall state the proposed changes in the agreement and the reasons for granting the petition. The Commission may modify or vacate where (1) false statements were relied upon in accepting the agreement or (2) there are changed conditions of fact or law. In deciding whether to grant a petition, the Commission shall consider the public interest. A petitioner, or the Commission when acting on its own initiative, shall serve a copy of the petition or notice of reconsideration, respectively, on all parties. Parties affected by the petition or notice of reconsideration may file a response within 10 calendar days. No replies shall be accepted. The Commission shall decide the petition or notice of reconsideration within a reasonable time and, by order, shall indicate its decision and its reasons.

Dated: June 13, 1979.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

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