

Consumer Product Safety Commission

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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 partici-

pating 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

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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.