

results, equipment, supplies, frequency of occurrence, and negative outcomes. When possible, the submission should attach documents, records, photographs, correspondence, notes, electronic mails, or any other information that supports the basis for the allegations;

(5) Description of the impact of the acts and/or omissions, where known.

(b) *Review of initiating information.* Upon receiving the information, the CPSC will review the information to determine if it is sufficient to warrant an investigation. The CPSC may deem the information insufficient to warrant an investigation if the information fails to address adequately the categories of information outlined in paragraph (a) of this section.

**§ 1112.51 What are the procedures relevant to adverse actions?**

(a) *Investigation.* (1) Investigations under this part are investigations into grounds for an adverse action against a third party conformity assessment body.

(2) The Commission will use its *Procedures for Investigations, Inspections, and Inquiries*, 16 CFR part 1118, subpart A, to investigate under this part.

(3) An investigation under this part may include any act the CPSC takes to verify the accuracy, veracity, and/or completeness of information received in connection with an application for acceptance of accreditation, a submission alleging grounds for an adverse action, or any other information received by the CPSC that relates to a third party conformity assessment body's ability to become or remain a CPSC-accepted third party conformity assessment body.

(4) The CPSC will begin an investigation under this part by providing written notice, which may be electronic, to the third party conformity assessment body. The notice will inform the third party conformity assessment body that the CPSC has received information sufficient to warrant an investigation, and it will describe the information received by the CPSC and the CPSC's investigative process. The notice also will inform the third party conformity assessment body that failure to cooper-

ate with a CPSC investigation is grounds for suspension under § 1112.45.

(5) The notice sent by the CPSC under § 1112.35(b)(3) informing the third party conformity assessment body that it must submit a CPSC Form 223 for audit purposes, which may be electronic, constitutes notice of investigation for purposes of this section. The examination portion of an audit under § 1112.33(c) constitutes an investigation for purposes of this section.

(b) *Initial notice.* If, after investigation, the CPSC determines that grounds for adverse action exist and proposes to take an adverse action against a third party conformity assessment body, the CPSC will notify the third party conformity assessment body, in writing, which may be electronic, about the proposed adverse action. If the proposed adverse action is suspension or withdrawal, the notice formally begins a proceeding to suspend or withdraw, as described in section 14(e) of the CPSA. The notice will contain:

(1) The proposed adverse action;

(2) Specific grounds on which the proposed adverse action is based;

(3) Findings of fact to support the proposed adverse action;

(4) When appropriate, specific actions a third party conformity assessment body must take to avoid an adverse action;

(5) When the proposed adverse action is withdrawal, consideration of the criteria set forth in paragraph (d)(1) of this section;

(6) The time period by which a third party conformity assessment body has to respond to the notice. In general, the notice will inform the third party conformity assessment body that it has 30 calendar days to respond. A third party conformity assessment body may request an extension of the response time, but they must explain why such an extension is warranted and the amount of additional time needed for a response; and

(7) Except under § 1112.53, a CPSC-accepted third party conformity assessment body may continue to conduct tests for purposes of section 14 of the CPSA until a Final Notice of adverse action is issued.

(c) *Third party conformity assessment body response to initial notice.* A third party conformity assessment body's response must be submitted in writing, in English, and may be in the form of electronic mail. The response may include, but is not limited to, an explanation or refutation of material facts upon which the Commission's proposed action is based, supported by documents or sworn affidavit; results of any internal review of the matter and action(s) taken as a result; or a detailed plan and schedule for an internal review. The written response must state the third party conformity assessment body's reasons why the ground(s) for adverse action does not exist, or why the CPSC should not pursue the proposed adverse action, or any portion of the proposed adverse action. If a third party conformity assessment body responds to the notice in a timely manner, the CPSC will review the response, and, if necessary, investigate further to explore or resolve issues bearing on whether grounds exist for adverse action and the nature of the proposed adverse action. If a third party conformity assessment body does not respond to the notice in a timely manner, the CPSC may proceed without further delay to a Final Notice, as described in paragraph (e) of this section.

(d) *Proceeding.* (1) In any proceeding to withdraw the CPSC's acceptance of a third party conformity assessment body's accreditation, the CPSC will consider the gravity of the third party conformity assessment body's action or failure to act, including:

(i) Whether the action or failure to act resulted in injury, death, or the risk of injury or death;

(ii) Whether the action or failure to act constitutes an isolated incident or represents a pattern or practice; and

(iii) Whether and when the third party conformity assessment body initiated remedial action.

(2) In all cases, the CPSC will review and take under advisement the response provided by the third party conformity assessment body. Except for cases under paragraph (d)(3) of this section, the CPSC will determine what action is appropriate under the circumstances.

(3) If, after reviewing and taking under advisement the response provided by a CPSC-accepted firewalled third party conformity assessment body, the CPSC staff concludes that suspension or withdrawal of CPSC acceptance of accreditation is appropriate, staff will transmit its recommendation to the Commission for consideration. Any suspension or withdrawal of CPSC acceptance of accreditation of a firewalled third party conformity assessment body (including immediate and temporary withdrawal under § 1112.53) will be by order of the Commission.

(4) The CPSC may withdraw its acceptance of the accreditation of a third party conformity assessment body on a permanent or temporary basis.

(5) If the CPSC withdraws its acceptance of the accreditation of a third party conformity assessment body, the CPSC may establish conditions for the reacceptance of the accreditation of the third party conformity assessment body, under section 14(e)(2)(B)(ii) of the CPSA. Any such conditions would be related to the reason(s) for the withdrawal.

(e) *Final notice.* If, after reviewing a third party conformity assessment body's response to a notice and conducting additional investigation, where necessary, the CPSC determines that grounds for adverse action exist, it will send a Final Notice to the third party conformity assessment body, in writing, which may be electronic. The Final Notice will state:

(1) The adverse action that the CPSC is taking;

(2) Specific grounds on which the adverse action is based;

(3) Findings of fact that support the adverse action;

(4) When the adverse action is withdrawal, consideration of the criteria as set forth in paragraph (d)(1) of this section;

(5) When the adverse action is withdrawal, whether the withdrawal is temporary or permanent, and if temporary, the duration of the withdrawal;

(6) The third party conformity assessment body's accreditation is not accepted by the Commission as of the date of the Final Notice of denial, suspension, or withdrawal, for specified

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portion(s) of its CPSC scope. The CPSC Web site will be updated to reflect adverse actions to any previously CPSC-accepted third party conformity assessment bodies; and

(7) Whether the third party conformity assessment body may submit a new application.

(f) *Possible actions after final notice.* Upon receipt of a Final Notice, a third party conformity assessment body, as applicable, may:

(1) If the Final Notice indicates such, the third party conformity assessment body may submit a new application; or

(2) File an Administrative Appeal.

(g) *Administrative appeal.* (1) Except for paragraph (g)(2) of this section, the third party conformity assessment body may file an Administrative Appeal with the Office of the Executive Director.

(i) The Administrative Appeal must be sent, by mail, within 30 calendar days of the date on the Final Notice to: the Office of the Executive Director, Room 812, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, or by electronic mail to: [cpsc-os@cpsc.gov](mailto:cpsc-os@cpsc.gov).

(ii) All appeals must be in writing, and must be in English.

(iii) All appeals must explain the nature and scope of the issues appealed from in the Final Decision, and must describe in detail the reasons why the third party conformity assessment body believes that no ground(s) for adverse action exist.

(iv) If an Administrative Appeal is timely filed, the Executive Director will issue a Final Decision within 60 calendar days of receipt. If the Executive Director's Final Decision requires more than 60 calendar days, he or she will notify the third party conformity assessment body that more time is required, state the reason(s) why more time is required, and, if feasible, include an estimated date for a Final Decision to be issued.

(2) In the case that the Commission has suspended or withdrawn its acceptance of the accreditation of a firewalled third party conformity assessment body, the firewalled third party conformity assessment body may file an Administrative Appeal with the Commission.

(i) The Administrative Appeal must be sent, by mail, within 30 calendar days of the date on the Final Notice to: the Office of the Secretary, Room 820, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, or by electronic mail to: [cpsc-os@cpsc.gov](mailto:cpsc-os@cpsc.gov).

(ii) All appeals must be in writing, and must be in English.

(iii) All appeals must explain the nature of the issues appealed from in the Final Decision, and must describe in detail the reasons why the third party conformity assessment body believes that no ground(s) for adverse action exist.

### **§ 1112.53 Can the CPSC immediately withdraw its acceptance of the accreditation of a third party conformity assessment body?**

(a) When it is in the public interest to protect health and safety, and notwithstanding any other provision of this part, the CPSC may withdraw immediately and temporarily its acceptance of a third party conformity assessment body's accreditation for any portion of its CPSC scope while the CPSC pursues an investigation and potential adverse action under § 1112.51.

(1) For purposes of this part, "in the public interest to protect health and safety" means that the CPSC has credible evidence that:

(i) The integrity of test(s) being conducted under a scope for which the CPSC has accepted the third party conformity assessment body's accreditation, have been affected by undue influence or otherwise interfered with or compromised; and

(ii) The scope for which the CPSC has accepted the third party conformity assessment body's accreditation involve a product(s) which, if noncompliant with CPSC rules, bans, standards, and/or regulations, constitutes an imminently hazardous consumer product under section 12 of the CPSA.

(2) When presented with an allegation that, if credible, would result in immediate and temporary withdrawal of CPSC acceptance of a third party conformity assessment body's accreditation, the investigation and adverse action procedures described in § 1112.51