

§ 1605.3

16 CFR Ch. II (1-1-10 Edition)

packaging, and labels, and labeling therein:

(4) To have access to and copy at all reasonable times: (i) All records, reports, books, documents, papers, or labeling required by the Commission to be established, made, or maintained; (ii) all documents showing or relating to the production inventory, testing, distribution, sale, transportation, importation, or receipt of any product, fabric, or related material; and (iii) all other appropriate records, reports, books, documents, papers, packages and packaging, and labels and labeling;

(5) To obtain: (i) Information, both oral and written, concerning the production, inventory, testing, distribution, sale, transportation, importation or receipt of any product, fabric or related material and the organization, business, conduct, practices, and management of any person, sole proprietorship, partnership, or corporation being inspected and its relation to any other person, sole proprietorship, partnership, or corporation; (ii) samples of items, materials, substances, products, fabrics, related materials, containers, packages and packaging, labels and labeling, and have the same analyzed, tested, or examined; and (iii) information, both oral and written, concerning any matter referred to in these rules.

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

(c) The notice of inspection shall include: the name and address of the person, sole proprietorship, partnership, or corporation being inspected; the name and title of the inspector; 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 the statutory provisions upon which the penalties for refusal of access are based; pertinent extracts from §1605.2 of these rules setting forth the authority of inspectors and the types of information and items they are authorized to obtain; 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 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 4(c) of the Flammable Fabrics Act (15 U.S.C. 1193(c)) 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) or section 6(f) of the Federal Trade Commission Act (15 U.S.C. 46(f)). 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, the person, or agent-in-charge of the sole proprietorship, partnership, or corporation being inspected fails to allow access to documentary evidence for the purpose of inspecting and making copies of such evidence, the inspector shall notify that individual that he or she may be in violation of the law and subject to the penalties therein and immediately thereafter refer such individual to the appropriate provisions of the notice which set forth such penalties. If the individual still refuses to comply, in whole or in part, with the authorized request for access, the inspector shall leave the premises; and the Commission shall take such action as it deems appropriate. If the person in charge refuses to accept the notice upon its presentation, the inspector shall affix the notice to a public entrance way on the premises.

§ 1605.3 Compulsory processes and the service thereof.

(a) In addition to or in lieu of authorizing the issuance of a notice, the Commission may elect to use any of the following means to initiate investigations, inspections, or inquiries to obtain information for the purposes set forth in §1605.1(a):

- (1) Orders for Access;
- (2) Subpoenas;

- (3) Investigational Hearings;
- (4) Depositions;
- (5) Written Interrogatories; and
- (6) General or special Orders.

(b) Service of notice in connection with any of the compulsory processes enumerated in §1605.3(a) shall be effected as follows:

(1) By personal service upon the person, or agent-in-charge of the sole proprietorship, partnership, or corporation being investigated, inspected, or inquired of; or

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

(c) The date of service of any form of compulsory process shall be the date on which the document is mailed, or delivered in person, whichever is applicable. Whenever a party is required or permitted to do an act within a prescribed period after service of a document and the document is served by mail, three (3) days shall be added to the prescribed period.

(d) These rules shall be referred to in any form of compulsory process served upon a person, sole proprietorship, partnership, or corporation.

(e) Anyone submitting information in response to any of the compulsory processes referred to in §1605.4(a) hereof 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 4(c) of the Flammable Fabrics Act (15 U.S.C. 1193(c)) 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 (15 U.S.C. 552) or section 6(f) of the Federal Trade Commission Act (15 U.S.C. 46(f)). 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.

§ 1605.4 Orders for access.

(a) In the event an inspection pursuant to §1605.2 herein is refused, in whole or in part, or prior to any such inspection, the Commission may issue an order requiring any person, sole proprietorship, partnership, or corporation to allow access to a duly-designated officer or employee of the Commission for the purpose of conducting an inspection. Such order will be issued by the Commission upon the demonstration by the staff of a justifiable need to gain access. Inspections conducted after service of an order for access shall be conducted in accordance with the procedures provided in §1605.2.

(b) After issuance of an order for access, the staff may, upon request of the recipient of the order, agree to modify the order to limit its scope, impose conditions or extend the time for compliance. If an agreement cannot be voluntarily reached, the recipient of the order may file a motion to limit or quash the order. Any such motion shall set forth the reasons why the order should be limited or quashed; and may be accompanied by memoranda, affidavits, or other documents submitted in support of the motion. Unless a different period of time for filing a motion is specified in the order, the motion must be received in the Office of the Secretary of the Commission within ten calendar days after the order is mailed or delivered in person to such person, sole proprietorship, partnership, or corporation unless the Commission, upon a showing of good cause, grants an extension of time within which to file a motion to limit or quash an order of access.

(c) Upon receipt of a motion to limit or quash the order for access, the Office of the Secretary shall immediately notify and transmit a copy of the motion to Associate Executive Director for Compliance and Enforcement or the General Counsel, as appropriate. Unless a different period of time is specified in the order, the Associate Executive Director for Compliance and Enforcement or General Counsel shall file an answer with the Office of the Secretary within ten calendar days after receipt of a copy of the motion. A copy of the answer shall be served upon the moving party or the counsel of the moving