

## Consumer Product Safety Commission

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that does not dispose of all issues shall include a statement of those material facts about which there is no substantial controversy and of those material facts that are actually and in good faith controverted. The Summary Order shall direct such further proceedings as are appropriate.

### § 1025.26 Settlements.

(a) *Availability.* Any party shall have the opportunity to submit an offer of settlement to the Presiding Officer.

(b) *Form.* Offers of settlement shall be filed *in camera* and the form of a consent agreement and order, shall be signed by the respondent or respondent's representative, and may be signed by any other party. Each offer of settlement shall be accompanied by a motion to transmit the proposed agreement and order to the Commission. The motion shall outline the substantive provisions of the agreement and state reasons why it should be accepted by the Commission.

(c) *Contents.* The proposed consent agreement and order which constitute the offer of settlement shall contain the following:

(1) An admission of all jurisdictional facts;

(2) An express waiver of further procedural steps and of all rights to seek judicial review or otherwise to contest the validity of the Commission order;

(3) Provisions that the allegations of the complaint are resolved by the consent agreement and order;

(4) A description of the alleged hazard, noncompliance, or violation;

(5) If appropriate, a listing of the acts or practices from which the respondent shall refrain; and

(6) If appropriate, a detailed statement of the corrective action(s) which the respondent shall undertake. In proceedings arising under Section 15 of the Consumer Product Safety Act, 15 U.S.C. 2064, this statement shall contain all the elements of a "Corrective Action Plan," as outlined in the Commission's Interpretation, Policy, and Procedure for Substantial Product Hazards, 16 CFR part 1115.

(d) *Transmittal.* The Presiding Officer may transmit to the Commission for decision all offers of settlement and accompanying memoranda that meet the

requirements enumerated in paragraph (c) of this section. The Presiding Officer shall consider whether an offer of settlement is clearly frivolous, duplicative of offers previously made and rejected by the Commission or contrary to establish Commission policy. The Presiding Officer may, but need not, recommend acceptance of offers. Any party may object to the transmittal to the Commission of a proposed consent agreement by filing a response opposing the motion.

(e) *Stay of proceedings.* When an offer of settlement has been agreed to by all parties and has been transmitted to the Commission, the proceedings shall be stayed until the Commission has ruled on the offer. When an offer of settlement has been made and transmitted to the Commission but has not been agreed to by all parties, the proceedings shall not be stayed pending Commission decision on the offer, unless otherwise ordered by the Presiding Officer or the Commission.

(f) *Commission ruling.* The Commission shall rule upon all transmitted offers of settlement. If the Commission accepts the offer, the Commission shall issue an appropriate order, which shall become effective upon issuance.

(g) *Commission rejection.* If the Commission rejects an offer of settlement, the Secretary, in writing, shall give notice of the Commission's decision to the parties and the Presiding Officer. If the proceedings have been stayed, the Presiding Officer shall promptly issue an order notifying the parties of the resumption of the proceedings, including any modifications to the schedule resulting from the stay of the proceedings.

(h) *Effect of rejected offer.* Neither rejected offers of settlement, nor the fact of the proposal of offers of settlement are admissible in evidence.

## Subpart D—Discovery, Compulsory Process

### § 1025.31 General provisions governing discovery.

(a) *Applicability.* The discovery rules established in this subpart are applicable to the discovery of information among the parties in any proceedings.

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Parties seeking information from persons not parties may do so by subpoena in accordance with §1025.38 of these rules.

(b) *Discovery methods.* Parties may obtain discovery by one or more of the following methods:

- (1) Written interrogatories;
- (2) Requests for production of documents or things;
- (3) Requests for admission; or
- (4) Depositions upon oral examination.

Unless the Presiding Officer otherwise orders under paragraph (d) of this section, the frequency of use of these methods is not limited.

(c) *Scope of discovery.* The scope of discovery is as follows:

(1) *In general.* Parties may obtain discovery regarding any matter, not privileged, which is within the Commission's statutory authority and is relevant to the subject matter involved in the proceedings, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(2) *Privilege.* Discovery may be denied or limited, or a protective order may be entered, to preserve the privilege of a witness, person, or governmental agency as governed by the Constitution, any applicable Act of Congress, or the principles of the common law as they may be interpreted by the Commission in the light of reason and experience.

(3) *Hearing preparation: materials.* Subject to the provisions of paragraph (c)(4) of this section, a party may obtain discovery of documents and tangible things otherwise discoverable under paragraph (c)(1) of this section and prepared in anticipation of litigation or for hearing by or for another party or by or for that other party's representative (including his attorney

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or consultant) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his case and that he is unable without unique hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the Presiding Officer shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party.

(4) *Hearing preparation: experts.* Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of paragraph (c)(1) of this section and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:

(i)(A) A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify, to state the substance of the facts and opinions to which the expert is expected to testify, and to provide a summary of the grounds for each opinion.

(B) Upon motion, the Presiding Officer may order further discovery by other means upon a showing of substantial cause and may exercise discretion to impose such conditions, if any, as are appropriate in the case.

(ii) A party may discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial only upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(iii) The Presiding Officer may require as a condition of discovery that the party seeking discovery pay the expert a reasonable fee, but not more than the maximum specified in 5 U.S.C. 3109 for the time spent in responding to discovery.

(d) *Protective orders.* Upon motion by a party and for good cause shown, the Presiding Officer may make any order

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which justice requires to protect a party or person from annoyance, embarrassment, competitive disadvantage, oppression, or undue burden or expense, including one or more of the following:

- (1) That the discovery shall not be had;
- (2) That the discovery may be had only on specified terms and conditions, including a designation of the time or place;
- (3) That the discovery shall be had only by a method of discovery other than that selected by the party seeking discovery;
- (4) That certain matters shall not be inquired into or that the scope of discovery shall be limited to certain matters;
- (5) That discovery shall be conducted with no one present except persons designated by the Presiding Officer;
- (6) That a trade secret or other confidential research, development, or commercial information shall not be disclosed or shall be disclosed only in a designated way or only to designated parties; and
- (7) That responses to discovery shall be placed *in camera* in accordance with § 1025.45 of these rules.

If a motion for a protective order is denied in whole or in part, the Presiding Officer may, on such terms or conditions as are appropriate, order that any party provide or permit discovery.

(e) *Sequence and timing of discovery.* Discovery may commence at any time after filing of the answer. Unless otherwise provided in these Rules or by order of the Presiding Officer, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

(f) *Supplementation of responses.* A party who has responded to a request for discovery with a response that was complete when made is under a duty to supplement that response to include information later obtained.

(g) *Completion of discovery.* All discovery shall be completed as soon as practical but in no case longer than one hundred fifty (150) days after issuance of a complaint, unless otherwise ordered by the Presiding Officer in

exceptional circumstances and for good cause shown. All discovery shall be commenced by a date which affords the party from whom discovery is sought the full response period provided by these Rules.

(h) *Service and filing of discovery.* All discovery requests and written responses, and all notices of deposition, shall be filed with the Secretary and served on all parties and the Presiding Officer.

(i) *Control of discovery.* The use of these discovery procedures is subject to the control of the Presiding Officer, who may issue any just and appropriate order for the purpose of ensuring their timely completion.

### § 1025.32 Written interrogatories to parties.

(a) *Availability; procedures for use.* Any party may serve upon any other party written interrogatories to be answered by the party served or, if the party served is a public or private corporation or a partnership or unincorporated association or governmental entity, by any officer or agent, who shall furnish such information as is available to the party. Interrogatories may, without leave of the Presiding Officer, be served upon any party after the filing of an answer.

(b) *Procedures for response.* Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. Each answer shall be submitted in double-spaced typewritten form and shall be immediately preceded by the interrogatory, in single-spaced typewritten form, to which the answer is responsive. The answers are to be signed by the person making them, and the objections signed by the person or representative making them. The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within 30 days after service of the interrogatories. The Presiding Officer may allow a shorter or longer time for response. The party submitting the interrogatories may move for an order under § 1025.36 of

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these rules with respect to any objection to, or other failure to answer fully, an interrogatory.

(c) *Scope of interrogatories.* Interrogatories may relate to any matters which can be inquired into under §1025.31(c), and the answers may be used to any extent permitted under these rules. An interrogatory otherwise proper is not objectionable merely because an answer to the interrogatory would involve an opinion or contention which relates to fact or to the application of law to fact, but the Presiding Officer may order that such an interrogatory need not be answered until a later time.

(d) *Option to produce business records.* Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served, or from an examination, audit, or inspection of such business records, or from a compilation, abstract, or summary of those records, and the burden of deriving the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to the interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit, or inspect such records and to make copies, compilations, abstracts, or summaries.

#### § 1025.33 Production of documents and things.

(a) *Scope.* Any party may serve upon any other party a request:

(1) To produce and permit the party making the request, or someone acting on behalf of that party, to inspect and copy any designated documents (including writings, drawings, graphs, charts, photographs, phono-records, and any other data compilation from which information can be obtained, translated, if necessary, by the party in possession through detection devices into reasonably usable form), or to inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of §1025.31(c) and which are in the posses-

sion, custody, or control of the party upon whom the request is served, or

(2) To permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection (including photographing), or sampling any designated object or operation within the scope of §1025.31(c).

(b) *Procedure for request.* The request may be served at any time after the filing of an answer without leave of the Presiding Officer. The request shall set forth the items to be inspected, either by individual item or by category, and shall describe each item or category with reasonable particularity. The request shall specify a reasonable time, place, and manner for making the inspection and performing the related acts.

(c) *Procedure for response.* The party upon whom the request is served shall respond in writing within thirty (30) days after service of the request. The Presiding Officer may allow a shorter or longer time for response. The response shall state, with respect to each item or category requested, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to only part of an item or category, that part shall be specified. The party submitting the request may move for an order under §1025.36 with respect to any objection to or other failure to respond to the request or any part thereof, or to any failure to permit inspection as requested.

(d) *Persons not parties.* This section does not preclude an independent action against a person not a party for production of documents and things.

#### § 1025.34 Requests for admission.

(a) *Procedure for request.* A party may serve upon any other party a written request for the admission, for the purposes of the pending proceedings only, of the truth of any matters within the scope of §1025.31(c) set forth in the request that relate to statements of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies

of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. The request may, without leave of the Presiding Officer, be served upon any party after filing of the answer. Each matter about which an admission is requested shall be separately set forth.

(b) *Procedure for response.* The matter about which an admission is requested will be deemed admitted unless within thirty (30) days after service of the request, or within such shorter or longer time as the Presiding Officer may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or the party's representative and stating the reasons for the objections. The answer shall specifically admit or deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission. When good faith requires that a party qualify an answer or deny only a part of the matter to which an admission is requested, the party shall specify the portion that is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny a fact unless the party states that he/she has made reasonable inquiry and that the information known or readily available to him/her is insufficient to enable him/her to admit or deny a fact. A party who considers that a matter to which an admission has been requested presents a genuine issue for hearing may not, on that ground alone, object to the request but may deny the matter or set forth reasons why the party cannot admit or deny it. The party who has requested an admission may move to determine the sufficiency of any answer or objection in accordance with § 1025.36 of these Rules. If the Presiding Officer determines that an answer does not comply with the requirements of this section, he/she may order that the matter be deemed admitted or that an amended answer be served.

(c) *Effect of admission.* Any matter admitted under this section is conclu-

sively established unless the Presiding Officer on motion permits withdrawal or amendment of such admission. The Presiding Officer may permit withdrawal or amendment when the presentation of the merits of the action will be served thereby and the party who obtained the admission fails to satisfy the Presiding Officer that withdrawal or amendment will prejudice that party in maintaining an action or defense on the merits. Any admission made by a party under this section is for the purposes of the pending adjudication only and is not an admission by that party for any other purposes, nor may it be used against that party in any other proceedings.

#### § 1025.35 Depositions upon oral examination.

(a) *When depositions may be taken.* At any time after the first prehearing conference, upon leave of the Presiding Officer and under such terms and conditions as the Presiding Officer may prescribe, any party may take the deposition of any other party, including the agents, employees, consultants, or prospective witnesses of that party at a place convenient to the deponent. The attendance of witnesses and the production of documents and things at the deposition may be compelled by subpoena as provided in § 1025.38 of these rules.

(b) *Notice of deposition—(1) Deposition of a party.* A party desiring to take a deposition of another party to the proceedings shall, after obtaining leave from the Presiding Officer, serve written notice of the deposition on all other parties and the Presiding Officer at least ten (10) days before the date noticed for the deposition. The notice shall state:

(i) The time and place for the taking of the deposition;

(ii) The name and address of each person to be deposed, if known, or if the name is not known, a general description sufficient to identify him/her; and

(iii) The subject matter of the expected testimony. If a subpoena *duces tecum* is to be served on the person to be deposed, the designation of the materials to be produced, as set forth in

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the subpoena, shall be attached to or included in the notice of deposition.

(2) *Deposition of a non-party.* A party desiring to take a deposition of a person who is not a party to the proceedings shall make application for the issuance of a subpoena, in accordance with §1025.38 of these rules, to compel the attendance, testimony, and/or production of documents by such non-party. The party desiring such deposition shall serve written notice of the deposition on all other parties to the proceedings, after issuance of the subpoena. The date specified in the subpoena for the deposition shall be at least twenty (20) days after the date on which the application for the subpoena is made to the Presiding Officer.

(3) *Opposition to notice.* A person served with a notice of deposition may oppose, in writing, the taking of the deposition within five (5) days of service of the notice. The Presiding Officer shall rule on the notice and any opposition and may order the taking of all noticed depositions upon a showing of good cause. The Presiding Officer may, for good cause shown, enlarge or shorten the time for the taking of a deposition.

(c) *Persons before whom depositions may be taken.* Depositions may be taken before any person who is authorized to administer oaths by the laws of the United States or of the place where the examination is held. No deposition shall be taken before a person who is a relative, employee, attorney, or representative of any party, or who is a relative or employee of such attorney or representative, or who is financially interested in the action.

(d) *Taking of deposition—(1) Examination.* Each deponent shall testify under oath, and all testimony shall be recorded. All parties or their representatives may be present and participate in the examination. Evidence objected to shall be taken subject to any objection. Objections shall include the grounds relied upon. The questions and answers, together with all objections made, shall be recorded by the official reporter before whom the deposition is taken. The original or a verified copy of all documents and things produced for inspection during the examination of the deponent shall, upon a request of

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any party present, be marked for identification and made a part of the record of the deposition.

(2) *Motion to terminate or limit examination.* At any time during the deposition, upon motion of any party or of the deponent, and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass or oppress the deponent or party, the Presiding Officer may order the party conducting the examination to stop the deposition or may limit the scope and manner of taking the deposition as provided in §1025.31(d) of these rules.

(3) *Participation by parties not present.* In lieu of attending a deposition, any party may serve written questions in a sealed envelope on the party conducting the deposition. That party shall transmit the envelope to the official reporter, who shall unseal it and read the questions to the deponent.

(e) *Transcription and filing of depositions—(1) Transcription.* Upon request by any party, the testimony recorded at a deposition shall be transcribed. When the testimony is fully transcribed, the deposition shall be submitted to the deponent for examination and signature and shall be read to or by the deponent, unless such examination and signature are waived by the deponent. Any change in form or substance which the deponent desires to make shall be entered upon the deposition by the official reporter with a statement of the reasons given by the deponent for making them. The deposition shall then be signed by the deponent, unless the deponent waives signature or is ill or cannot be found or refuses to sign. If the deposition is not signed by the deponent within thirty (30) days of its submission to him/her, the official reporter shall sign the deposition and state on the record the fact of the waiver of signature or of the illness or absence of the deponent or of the refusal to sign, together with a statement of the reasons therefor. The deposition may then be used as fully as though signed, in accordance with paragraph (i) of this section.

(2) *Certification and filing.* The official reporter shall certify on the deposition that it was taken under oath and that the deposition is a true record of the

testimony given and corrections made by the deponent. The official reporter shall then seal the deposition in an envelope endorsed with the title and docket number of the action and marked "Deposition of [name of deponent]" and shall promptly file the deposition with the Secretary. The Secretary shall notify all parties of the filing of the deposition and shall furnish a copy of the deposition to any party or to the deponent upon payment of reasonable charges.

(f) *Costs of deposition.* The party who notices the deposition shall pay for the deposition. The party who requests transcription of the deposition shall pay for the transcription.

(g) *Failure to attend or to serve subpoena; expenses.* If a party who notices a deposition fails to attend or conduct the deposition, and another party attends in person or by a representative pursuant to the notice, the Presiding Officer may order the party who gave the notice to pay to the attending party the reasonable expenses incurred. If a party who notices a deposition fails to serve a subpoena upon the deponent and as a result the deponent does not attend, and if another party attends in person or by a representative because that party expects the deposition to be taken, the Presiding Officer may order the party who gave notice to pay to the attending party the reasonable expenses incurred.

(h) *Deposition to preserve testimony—*  
(1) *When available.* By leave of the Presiding Officer, a party may take the deposition of his/her own witness for the purpose of perpetuating the testimony of that witness. A party who wishes to conduct such a deposition shall obtain prior leave of the Presiding Officer by filing a motion. The motion shall include a showing of substantial reason to believe that the testimony could not be presented at the hearing. If the Presiding Officer is satisfied that the perpetuation of the testimony may prevent a failure of justice or is otherwise reasonably necessary, he/she shall order that the deposition be taken.

(2) *Procedure.* Notice of a deposition to preserve testimony shall be served at least fifteen (15) days prior to the deposition unless the Presiding Officer

authorizes less notice when warranted by extraordinary circumstances. The deposition shall be taken in accordance with the provisions of paragraph (d) of this section. Any deposition taken to preserve testimony shall be transcribed and filed in accordance with paragraph (e) of this section.

(i) *Use of depositions.* At the hearing or upon a petition for interlocutory appeal, any part or all of a deposition may be used against any party who was present or represented at the deposition or who had reasonable notice of the deposition, in accordance with any of the following:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness.

(2) The deposition of anyone who at the time of the taking of the deposition was an officer, director, managing agent, or person otherwise designated to testify on behalf of a public or private corporation, partnership or unincorporated association or governmental entity which is a party to the proceedings, may be used by any adverse party for any purpose.

(3) The deposition of a witness may be used by any party for any purpose if the Presiding Officer finds:

(i) That the witness is dead; or

(ii) That the witness is out of the United States, unless it appears that the absence of the witness was procured by the party offering the deposition; or

(iii) That the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or

(iv) That the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or

(v) That such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard for the importance of presenting the testimony of witnesses orally during the hearing, to allow the deposition to be used.

(4) If only part of a deposition is offered in evidence by a party, any other party may move to introduce any other part of the deposition.

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### § 1025.36 Motions to compel discovery.

If a party fails to respond to discovery, in whole or in part, the party seeking discovery may move within twenty (20) days for an order compelling an answer, or compelling inspection or production of documents, or otherwise compelling discovery. For purposes of this section, an evasive or incomplete response is to be treated as a failure to respond. When taking depositions, the discovering party shall continue the examination to the extent possible with respect to other areas of inquiry before moving to compel discovery.

### § 1025.37 Sanctions for failure to comply with discovery orders.

If a party fails to obey an order to provide or permit discovery, the Presiding Officer may take such action as is just, including but not limited to the following:

(a) Infer that the admission, testimony, document or other evidence would have been adverse to the party;

(b) Order that for the purposes of the proceedings, the matters regarding which the order was made or any other designated facts shall be taken to be established in accordance with the claim of the party obtaining the order;

(c) Order that the party withholding discovery not introduce into evidence or otherwise rely, in support of any claim or defense, upon the documents or other evidence withheld;

(d) Order that the party withholding discovery not introduce into evidence, or otherwise use at the hearing, information obtained in discovery;

(e) Order that the party withholding discovery forfeit its right to object to introduction and use of secondary evidence to show what the withheld admission, testimony, documents, or other evidence would have shown;

(f) Order that a pleading, or part of a pleading, or a motion or other submission by the party, concerning which the order was issued, be stricken, or that decision on the pleadings be rendered against the party, or both; and

(g) Exclude the party or representative from the proceedings, in accordance with § 1025.42(b) of these rules.

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Any such action may be taken by order at any point in the proceedings.

### § 1025.38 Subpoenas.

(a) *Availability.* A subpoena shall be addressed to any person not a party for the purpose of compelling attendance, testimony, and production of documents at a hearing or deposition, and may be addressed to any party for the same purposes.

(b) *Form.* A subpoena shall identify the action with which it is connected; shall specify the person to whom it is addressed and the date, time, and place for compliance with its provisions; and shall be issued by order of the Commission and signed by the Secretary or by the Presiding Officer. A subpoena *duces tecum* shall specify the books, papers, documents, or other materials or data-compilations to be produced.

(c) *How obtained*—(1) *Content of application.* An application for the issuance of a subpoena, stating reasons, shall be submitted in triplicate to the Presiding Officer. The Presiding Officer shall bring the application to the attention of the Commission by forwarding it or by communicating its contents by any other means, e.g., by telephone, to the Commission.

(2) *Procedure for application.* The original and two copies of the subpoena, marked “original,” “duplicate” and “triplicate,” shall accompany the application. The Commission shall rule upon an application for a subpoena *ex parte*, by issuing the subpoena or by issuing an order denying the application.

(d) *Issuance of a subpoena.* The Commission shall issue a subpoena by authorizing the Secretary or the Presiding Officer to sign and date each copy in the lower right-hand corner. The “duplicate” and “triplicate” copies of the subpoena shall be transmitted to the applicant for service in accordance with these Rules; the “original” shall be retained by, or be forwarded to, the Secretary for retention in the docket of the proceedings.

(e) *Service of a subpoena.* A subpoena may be served in person or by registered or certified mail, return receipt requested, as provided in § 1025.16(b) of these rules. Service shall be made by



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delivery of the signed “duplicate” copy to the person named therein.

(f) *Return of service.* A person serving a subpoena shall promptly execute a return of service, stating the date, time, and manner of service. If service is effected by mail, the signed return receipt shall accompany the return of service. In case of failure to make service, a statement of the reasons for the failure shall be made. The “triplicate” copy of the subpoena, bearing or accompanied by the return of service, shall be returned without delay to the Secretary after service has been completed.

(g) *Motion to quash or limit subpoena.* Within five (5) days of receipt of a subpoena, the person to whom it is directed may file a motion to quash or limit the subpoena, setting forth the reasons why the subpoena should be withdrawn or why it should be limited in scope. Any such motion shall be answered within five (5) days of service and shall be ruled on immediately. The order shall specify the date, if any, for compliance with the specifications of the subpoena.

(h) *Consequences of failure to comply.* In the event of failure by a person to comply with a subpoena, the Presiding Officer may take any of the actions enumerated in §1025.37 of these rules, or may order any other appropriate relief to compensate for the withheld testimony, documents, or other materials. If in the opinion of the Presiding Officer such relief is insufficient, the Presiding Officer shall certify to the Commission a request for judicial enforcement of the subpoena.

### **§ 1025.39 Orders requiring witnesses to testify or provide other information and granting immunity.**

(a) *Applicability to Flammable Fabrics Act only.* This section applies only to proceedings arising under the Flammable Fabrics Act.

(b) *Procedure.* A party who desires the issuance of an order requiring a witness or deponent to testify or provide other information upon being granted immunity from prosecution under title 18, United States Code, section 6002, may make a motion to that effect. The motion shall be made and ruled on in

accordance with §1025.23 of these rules and shall include a showing:

(1) That the testimony or other information sought from a witness or deponent, or prospective witness or deponent, may be necessary to the public interest; and

(2) That such individual has refused or is likely to refuse to testify or provide such information on the basis of that individual’s privilege against self-incrimination.

(c) *Approval of the Attorney General.* If the Presiding Officer determines that the witness’ testimony appears necessary and that the privilege against self-incrimination may be invoked, he/she may certify to the Commission a request that it obtain the approval of the Attorney General of the United States for the issuance of an order granting immunity.

(d) *Issuance of order granting immunity.* Upon application to and approval by the Attorney General of the United States, and after the witness has invoked the privilege against self-incrimination, the Presiding Officer shall issue the order granting immunity unless he/she determines that the privilege was improperly invoked.

(e) *Sanctions for failure to testify.* Failure of a witness to testify after a grant of immunity or after a denial of a motion for the issuance of an order granting immunity shall result in the imposition of appropriate sanctions as provided in § 1025.37 of these rules.

## **Subpart E—Hearings**

### **§ 1025.41 General rules.**

(a) *Public hearings.* All hearings conducted pursuant to these Rules shall be public unless otherwise ordered by the Commission or the Presiding Officer.

(b) *Prompt completion.* Hearings shall proceed with all reasonable speed and, insofar as practicable and with due regard to the convenience of the parties, shall continue without suspension until concluded, except in unusual circumstances or as otherwise provided in these Rules.

(c) *Rights of parties.* Every party shall have the right of timely notice and all other rights essential to a fair hearing, including, but not limited to, the rights to present evidence, to conduct