



NUMBER: 0318.1¹

SUBJECT: Delegation of Authority to Assert Deliberative Process Privilege in Specific Administrative Litigation Matters

DIRECTIVE OWNER: Office of General Counsel (OGC)

EFFECTIVE DATE: October 8, 2021

1. **PURPOSE.** To memorialize the delegation of authority, from the Acting Chairman to the Deputy Executive Director for Operations, to assert the deliberative process privilege as appropriate and consistent with existing Commission practice and applicable law for specific administrative litigation matters.
2. **SCOPE.** This delegation applies to the following adjudicative proceedings:
 - a. *In the Matter of thyssenkrupp Access Corp.* (CPSC 21-1)
 - b. *In the Matter of Amazon.com, Inc.* (CPSC 21-2)
3. **AUTHORITIES.**
 - a. Section 27(b)(10) of the Consumer Product Safety Act (CPSA), as amended (15 U.S.C. § 2076(b)(10)).
 - b. Sections 15(c), (d), and (f) of the CPSA (15 U.S.C. §§ 2064(c), (d), (f)).
 - c. 5 U.S.C. § 554 of the Administrative Procedure Act (APA).
 - d. 16 CFR Part 1025, Rules of Practice for Adjudicative Proceedings.

Section 27(b)(10) of the CPSA authorizes the Commission to delegate any of its functions or powers, other than the power to issue subpoenas under Section 27(b)(3) (except as provided in paragraph (9)), to any officer or employee of the Commission. Sections 15(c), (d), and (f) of the CPSA authorize adjudicative proceedings. Part 1025 of 16 C.F.R. governs the procedures in adjudicative proceedings. Section 1025.31 (c)(2) provides that discovery may be limited or denied “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.”

4. **EXPIRATION DATE.** This delegation expires upon occurrence of either of the following: the Commission’s acceptance of an offer of settlement and issuance of an appropriate order pursuant to 16 C.F.R. § 1025.26, or the conclusion of litigation, meaning issuance of a Final Decision and Order and the time for appeal to the Commission or to a federal court has expired for each party.

¹ Formerly Directive D202.10. Administratively renumbered by the Commission Secretary in accordance with Directive 0100 (September 21, 2022) on January 23, 2023.



United States

Consumer Product Safety Commission

5. **DELEGATION OF AUTHORITY:** Pursuant to Section 27(b)(10) of the CPSA, the Acting Chairman hereby delegates to the Deputy Executive Director for Operations authority to assert the deliberative process privilege as the basis for withholding documents or testimony that arise in connection with *In the Matter of thyssenkrupp Access Corp.* (CPSC 21-1) and *In the Matter of Amazon.com, Inc.* (CPSC 21-2). This authority may be re-delegated to the Assistant Executive Director for Compliance and Field Operations.

Robert Adler

Digitally signed by Robert Adler
Date: 2021.10.12 11:10:37 -05'00'

Acting Chairman

10/12/2021

Date