

## Consumer Product Safety Commission

## § 1052.4

AUTHORITY: 15 U.S.C. 1193(d), 15 U.S.C. 2058(d)(2), 15 U.S.C. 2076(a), and 5 U.S.C. 553(c).

SOURCE: 48 FR 57122, Dec. 28, 1983, unless otherwise noted.

### § 1052.1 Scope and purpose.

(a) Section 9(d)(2) of the Consumer Product Safety Act, 15 U.S.C. 2058(d)(2), and section 4(d) of the Flammable Fabrics Act, 15 U.S.C. 1193(d), provide that certain rules under those statutes shall be promulgated pursuant to section 4 of the Administrative Procedure Act, 5 U.S.C. 553, except that the Commission shall give interested persons an opportunity for the oral presentation of data, views or arguments in addition to the opportunity to make written submissions. Several rulemaking provisions of the statutes administered by the Commission are subject only to the rulemaking procedures of the Administrative Procedure Act. Section 4(c) of the Administrative Procedure Act provides that the opportunity for oral presentations may or may not be granted in rulemaking under that section. In addition, section 27(a) of the Consumer Product Safety Act, 15 U.S.C. 2076(a), authorizes informal proceedings that can be conducted in non-rulemaking investigatory situations.

(b) This part sets forth rules of procedure for the oral presentation of data, views or arguments in the informal rulemaking or investigatory situations described in subsection (a) of this section. In situations where the opportunity for an oral presentation is not required by statute, the Commission will determine whether to provide the opportunity on a case-by-case basis.

### § 1052.2 Notice of opportunity for oral presentation.

The Commission will publish in the FEDERAL REGISTER notice of opportunity for an oral presentation in each instance. The notice shall be sufficiently in advance of the oral presentation to allow interested persons to participate. If the oral presentation involves a proposed rule, the notice of opportunity may be in the notice proposing the rule or in a later, separate FEDERAL REGISTER notice.

### § 1052.3 Conduct of oral presentation.

(a) The purpose of the oral presentation is to afford interested persons an opportunity to participate in person in the Commission's rulemaking or other proceedings and to help inform the Commission of relevant data, views and arguments.

(b) The oral presentation, which shall be taped or transcribed, shall be an informal, non-adversarial legislative-type proceeding at which there will be no formal pleadings or adverse parties.

(c) The proceedings for the oral presentation shall be conducted impartially, thoroughly, and expeditiously to allow interested persons an opportunity for oral presentation of data, views or arguments.

### § 1052.4 Presiding officer; appointment, duties, powers.

(a) For oral presentations, the presiding officer shall either be the Chairman of the Commission or a presiding officer shall be appointed by the Chairman with the concurrence of the Commission.

(b) The presiding officer shall chair the proceedings, shall make appropriate provision for testimony, comments and questions, and shall be responsible for the orderly conduct of the proceedings. The presiding officer shall have all the powers necessary or appropriate to contribute to the equitable and efficient conduct of the oral proceedings including the following:

(1) The right to apportion the time of persons making presentations in an equitable manner in order to complete the presentations within the time period allotted for the proceedings.

(2) The right to terminate or shorten the presentation of any party when, in the view of the presiding officer, such presentation is repetitive or is not relevant to the purpose of the proceedings.

(3) The right to confine the presentations to the issues specified in the notice of oral proceeding or, where no issues are specified, to matters pertinent to the proposed rule or other proceeding.

(4) The right to require a single representative to present the views of two or more persons or groups who have

the same or similar interests. The presiding officer shall have the authority to identify groups or persons with the same or similar interests in the proceedings.

(c) The presiding officer and Commission representatives shall have the right to question persons making an oral presentation as to their testimony and any other relevant matter.

## PART 1061—APPLICATIONS FOR EXEMPTION FROM PREEMPTION

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AUTHORITY: 15 U.S.C. 2075; 15 U.S.C. 1261n; 15 U.S.C. 1203; 15 U.S.C. 1476.

SOURCE: 56 FR 3416, Jan. 30, 1991, unless otherwise noted.

### § 1061.1 Scope and purpose.

(a) This part applies to the submission and consideration of applications by State and local governments for exemption from preemption by statutes, standards, and regulations of the Consumer Product Safety Commission.

(b) This part implements section 26 of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2075), section 18 of the Federal Hazardous Substances Act (FHSA) (15 U.S.C. 1261n), section 16 of the Flammable Fabrics Act (FFA) (15 U.S.C. 1203), and section 7 of the Poison Prevention Packaging Act (PPPA) (15 U.S.C. 1476), all as amended.

### § 1061.2 Definitions.

For the purposes of this part:

(a) *Commission* means the Consumer Product Safety Commission.

(b) *Commission's statutory preemption provisions* and *statutory preemption provisions* means section 26 of the CPSA (15 U.S.C. 2075), section 18 of the FHSA (15 U.S.C. 1261n), section 16 of the FFA (15 U.S.C. 1203) and section 7 of the PPPA (15 U.S.C. 1476).

(c) *Commission statute, standard, or regulation* means a statute, standard, regulation, or requirement that is designated as having a preemptive effect by the Commission's statutory preemption provisions.

(d) *State* means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, Wake Island, Midway Island, Kingman Reef, Johnston Island, the Canal Zone, American Samoa, or the Trust Territory of the Pacific Islands.

(e) *Local government* means any political subdivision of a State having the authority to establish or continue in effect any standard, regulation, or requirement that has the force of law and is applicable to a consumer product.

(f) *State or local requirement* means any statute, standard, regulation, ordinance, or other requirement that applies to a product regulated by the Commission, that is issued by a State or local government, and that is intended to have the force of law when in effect.

### § 1061.3 Statutory considerations.

(a) The Commission's statutory preemption provisions provide, generally, that whenever consumer products are subject to certain Commission statutes, standards, or regulations, a State or local requirement applicable to the same product is preempted, i.e., superseded and made unenforceable, if both are designed to protect against the same risk of injury or illness, unless the State or local requirement is identical to the Commission's statutory requirement, standard, or regulation. A State or local requirement is not preempted if the product it is applicable to is for the State or local government's own use and the requirement provides a higher degree of protection than the Commission's statutory requirement, standard, or regulation.

(b) The Commission's statutory preemption provisions provide, generally, that if a State or local government