

## § 1502.11

regardless whether a hearing has been granted on other objections and issues.

### § 1502.11 Judicial review after waiver of hearing on a regulation.

(a) A person with a right to submit objections and a request for hearing under § 1502.5(a) may submit objections and waive the right to a hearing. The waiver may be either an explicit statement, or a failure to request a hearing, as provided in § 1502.6(a)(4).

(b) If a person waives the right to a hearing, the Commission will rule upon the person's objections under §§ 1502.8 through 1502.10. As a matter of discretion, the Commission may also order a hearing on the matter.

(c) If the Commission rules adversely on a person's objection, the person may petition for judicial review in a U.S. court of appeals under the appropriate statute.

(1) The record for judicial review is the record designated in § 1502.10(e).

(2) The time for filing a petition for judicial review begins on the date of publication of the Commission's ruling on the objections in the FEDERAL REGISTER.

### § 1502.12 Request for alternative form of hearing.

(a) A person with a right to request a formal hearing may waive that right and request a hearing before the Commission under 16 CFR part 1052.

(b) The request—

(1) May be on the person's own initiative or at the suggestion of the Commission;

(2) Must be submitted by the person in the form of a petition before publication of a notice of hearing under § 1502.13 or a denial of hearing under § 1502.10; and

(3) Must be—

(i) In lieu of a request for a formal hearing under § 1502.5; or,

(ii) If submitted with or after a request for formal hearing, accompanied by a waiver of the right to a formal hearing, conditioned on the request for the alternative form of hearing. Upon acceptance by the Commission, the waiver becomes binding and may be withdrawn only by waiving any right to any form of hearing, unless the Commission determines otherwise.

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(c) When more than one person requests and justifies a formal hearing under these procedures, an alternative form of hearing may be used only if all the persons concur and waive their right to request a formal hearing.

(d) The Commission will determine whether an alternative form of hearing should be used after considering the requests submitted and the appropriateness of the alternative hearing for the issues raised in the objections. The Commission's determination is binding unless, for good cause, the Commission subsequently determines otherwise.

(e) If the Commission determines that an alternative form of hearing will be used, the Commission will publish a notice in the FEDERAL REGISTER setting forth the following information:

(1) A description of the regulation that is the subject of the hearing.

(2) A statement specifying any part of the regulation that has been stayed by operation of law or in the Commission's discretion.

(3) The time, date, and place of the hearing, or a statement that such information will be contained in a later notice.

(4) The parties to the hearing.

(5) The issues at the hearing. The statement of issues determines the scope of the hearing.

### § 1502.13 Notice of hearing; stay of action.

(a) If the Commission determines upon review of the objections and requests for hearing that a hearing is justified on any issue, the Commission will publish a notice setting forth the following:

(1) A description of the regulation that is the subject of the hearing.

(2) A statement specifying any part of the regulation or order that has been stayed by operation of law or in the Commission's discretion.

(3) The parties to the hearing.

(4) The issues of fact on which a hearing has been justified.

(5) A statement of any objections or requests for hearing for which a hearing has not been justified, which are subject to § 1502.10.

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(6) The presiding officer, or a statement that the presiding officer will be designated in a later notice.

(7) The time within which notices of participation should be filed under § 1502.16.

(8) The date, time, and place of the prehearing conference, or a statement that the date, time, and place will be announced in a later notice. The prehearing conference may not commence until after the time expires for filing the notice of participation required by § 1502.16(a).

(9) The time within which participants should submit written information and views under § 1502.25(b). Additional copies of material already submitted under § 1502.25 need not be included with any later submissions.

(10) The contents of the portions of the administrative record relevant to the issues at the hearing. Except for trade secrets or other confidential information, the disclosure of which is prohibited by statute, the portions listed will be placed on public display in the Office of the Secretary before the notice is published.

(b) The statement of the issues determines the scope of the hearing and the matters on which evidence may be introduced. The issues may be revised by the presiding officer. A participant may obtain interlocutory review by the Commission of a decision by the presiding officer to revise the issues to include an issue on which the Commission has not granted a hearing or to eliminate an issue on which a hearing has been granted.

(c) A hearing is deemed to begin on the date of publication of the notice of hearing.

**§ 1502.14 Effective date of a regulation when no objections are filed.**

(a) If no objections are filed and no hearing is requested on a regulation under § 1502.5, the regulation is effective on the date specified in the regulation as promulgated.

(b) The Commission shall publish a confirmation of the effective date of the regulation. The FEDERAL REGISTER document confirming the effective date of the regulation may extend the time for compliance with the regulation.

**Subpart C—Appearance and Participation**

**§ 1502.15 Appearance.**

(a) A person who has filed a notice of participation under § 1502.16 may appear in person or by counsel or other representative in any hearing and, subject to § 1502.27, may be heard concerning all relevant issues.

(b) The presiding officer may strike a person's appearance for violation of the requirements regarding conduct in § 1502.28.

**§ 1502.16 Notice of participation.**

(a) Within 30 days after publication of the notice of hearing under § 1502.13, a person desiring to participate in a hearing is to file with the Office of the Secretary a notice of participation in the following form:

(Date) \_\_\_\_\_  
Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East West Highway, Bethesda, MD. Mailing address: Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

**Notice of Participation**

(Title of Regulation) \_\_\_\_\_  
Docket No. \_\_\_\_\_  
Please enter the participation of:  
(Name) \_\_\_\_\_  
(Street address) \_\_\_\_\_  
(City, State, and Zip Code) \_\_\_\_\_  
\_\_\_\_\_  
(Telephone number) \_\_\_\_\_  
Service on the above will be accepted by:  
(Name) \_\_\_\_\_  
(City, State, and Zip Code) \_\_\_\_\_  
\_\_\_\_\_  
(Telephone number) \_\_\_\_\_

The following statements are made as part of this notice of participation:

A. *Specific interests.* (A statement of the specific interest of the person in the proceeding, including the specific issues of fact concerning which the person desires to be heard. This part need not be completed by a party to the proceeding.)

B. *Commitment to participate.* (A statement that the person will present documentary evidence or testimony at the hearing and will comply with the requirements of § 1502.25 of these procedures.)  
(Signed) \_\_\_\_\_

(b) Any amendment to a notice of participation should be filed with the Office of the Secretary and served on all participants.