

Consumer Product Safety Commission

§ 1502.16

(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.

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(c) No person may participate in a hearing who has not filed a written notice of participation or whose participation has been stricken under paragraph (e) of this section.

(d) The presiding officer may permit the late filing of a notice of participation upon a showing of good cause.

(e) The presiding officer may strike the participation of a person for non-participation in the hearing or for failure to comply with any requirement of this subpart, e.g., disclosure of information as required by §1502.25 or the prehearing order issued under §1502.30. Any person whose participation is stricken may petition the Commission for interlocutory review of that decision.

[56 FR 9278, Mar. 6, 1991, as amended at 62 FR 46667, Sept. 4, 1997]

§ 1502.17 Advice on public participation in hearings.

(a) All inquiries from the public about scheduling, location, and general procedures should be addressed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or telephone (301) 504-0800.

(b) Requests by hearing participants for changes in the schedule of a hearing or for filing documents, briefs, or other pleadings should be made in writing directly to the presiding officer.

(c) Under no circumstances will the Office of the General Counsel of CPSC directly provide advice about a hearing to any person who is participating or may participate in the hearing. In every hearing, certain attorneys in the office are designated to represent the staff. Other members of the office, ordinarily including the General Counsel, are designated to advise the Commission on a final decision in the matter. It is not compatible with these functions, nor would it be professionally responsible, for the attorneys in the Office of the General Counsel also to advise other participants in a hearing, or for any attorney who may be called on to advise the Commission to respond to inquiries from other participants in the hearing; such participants may be urging views contrary to those of the staff involved or to what may ultimately be the final conclusions of the Commis-

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sion. Accordingly, members of the Office of the General Counsel, other than the attorneys responsible for representing the staff, will not answer questions about the hearing from any participant or potential participant.

(d) Participants in a hearing may communicate with the attorneys responsible for representing the staff, in the same way that they may communicate with counsel for any other party in interest about the presentation of matters at the hearing. It would be inappropriate to bar discussion of such matters as stipulations of fact, joint presentation of witnesses, or possible settlement of hearing issues. Members of the public, including participants at hearings, are advised, however, that all such communications, including those by telephone, will be recorded in memoranda that can be filed with the Office of the Secretary.

(e) Separation of functions and *ex parte* communications will be handled as follows.

(1) An interested person may meet or correspond with any CPSC representative concerning a matter prior to publication of a notice announcing a formal evidentiary public hearing on the matter. The provisions of 16 CFR part 1012 apply to such meetings.

(2) Upon publication of a notice announcing a formal evidentiary public hearing, the following rules concerning separation of functions apply:

(i) The CPSC staff members responsible for preparing evidence and participating in the hearing in the matter are, as a party to the hearing, responsible for all investigative functions and for presentation of the position of the staff at the hearing and in any pleading or oral argument before the Commission. These representatives of the staff may not participate or advise in any decision except as witnesses or counsel in public proceedings. Except as provided herein, there shall be no other communication between representatives of the staff and representatives of the various Commissioners' offices concerning the matter prior to the decision of the Commission. The Commission may, however, designate other representatives of the staff to advise the Commission. The designation will be in writing and filed with the Office