

Consumer Product Safety Commission

§ 1502.6

(a) A person has a right to an opportunity for a hearing under sections 2(q)(1)(B) or 3(a) of the Federal Hazardous Substances Act ("FHSA") and 701(e) of the Federal Food, Drug, and Cosmetic Act ("FDCA") (15 U.S.C. 1261(q)(1)(B) and 1262(a), and 21 U.S.C. 371(e));

(b) The Commission elects to hold a hearing under section 3(e)(1) of the FHSA or section 5 of the Poison Prevention Packaging Act ("PPPA") and section 701(e) of the FDCA (15 U.S.C. 1262(e)(1) and 1474(a), and 21 U.S.C. 371(e)); or

(c) The Commission concludes that it is in the public interest to hold a formal evidentiary public hearing on any matter before it in such a proceeding.

§ 1502.2 Computation of time periods.

Whenever a time period for taking action is specified by these procedures, by the presiding officer, or by the Commission, Saturdays, Sundays, and Federal holidays are included in computing time. However, if the last day for taking such action falls on a Saturday, Sunday, or Federal holiday, the action shall be timely if taken on or before the next Federal Government business day.

§ 1502.3 Confidential information.

Whenever any participant desires or is required to submit information in any proceeding under this part 1502, and the participant believes that such information consists of trade secret or other confidential business or financial information that should not be disclosed publicly, the participant may, instead of submitting such information, file a motion for a protective order containing a general description of the information desired to be withheld, together with a detailed argument supporting the claim that the information should be held in confidence.

§ 1502.4 Office of the Secretary.

(a) The mailing address of the Commission's Office of the Secretary is: Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

(b) The address for delivery to the Office of the Secretary is: Office of the Secretary, Room 502, 4330 East West Highway, Bethesda, Maryland 20816.

(c) The telephone number of the Office of the Secretary is (301)504-0800.

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

Subpart B—Initiation of Proceedings

§ 1502.5 Initiation of a hearing involving the issuance, amendment, or revocation of a regulation.

(a) The FEDERAL REGISTER notice promulgating the final regulation will describe how to submit objections and requests for hearing.

(b) On or before the 30th day after the date of publication of a final regulation in the FEDERAL REGISTER, a person may file written objections, with or without a request for a hearing, with the Commission. The 30-day period may not be extended, except that additional information supporting an objection may be received after 30 days upon a showing of inadvertent omission or for other good cause shown, if consideration of the additional information will not delay review of the objection and request for hearing.

§ 1502.6 Filing objections and requests for a hearing on a regulation.

(a) Objections and requests for a hearing under §1502.5(a) must be filed with the Office of the Secretary and will be accepted for filing if they meet the following conditions:

(1) They are submitted within the time specified in §1502.5(b).

(2) Each objection is separately numbered.

(3) Each objection specifies with particularity the provision(s) of the regulation to which that objection is directed.

(4) Each objection on which a hearing is requested specifically requests a hearing. Failure to request a hearing on an objection constitutes a waiver of the right to a hearing on that objection.

(5) Each objection for which a hearing is requested includes a detailed description of the basis for the objection and the factual information or analysis in support thereof. Failure to include a description and analysis for an objection constitutes a waiver of the right

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to a hearing on that objection. The description and analysis may be used only for the purpose of determining whether a hearing has been justified under § 1502.8, and do not limit the evidence that may be presented if a hearing is granted.

(i) A copy of any report, article, survey, or other written document relied upon must be submitted, unless the document is—

(A) A CPSC document that is routinely publicly available; or

(B) A recognized medical or scientific textbook or journal in the public domain.

(ii) A summary of the non-documentary testimony to be presented by any witnesses relied upon must be submitted.

(b) If an objection or request for a public hearing fails to meet the requirements of this section the Office of the General Counsel shall notify the Office of the Secretary of the deficiency. The Office of the Secretary shall return it with a copy of the applicable regulations, indicating those provisions not complied with. A deficient objection or request for a hearing may be supplemented and subsequently filed if submitted within the 30-day time period specified in § 1502.5(b).

(c) If another person objects to a regulation issued in response to a petition, the petitioner may submit a written reply to the Office of the Secretary on or before the 15th day after the last day for filing objections.

§ 1502.7 Notice of filing of objections.

As soon as practicable after the expiration of the time for filing objections to and requests for hearing on agency action involving the issuance, amendment, or revocation of a regulation under the FHSA or the PPPA and section 701(e) of the Federal Food, Drug, and Cosmetic Act, the Commission shall publish a notice in the FEDERAL REGISTER specifying those parts of the regulation that have been stayed by the filing of proper objections and, if no objections have been filed, stating that fact. The notice does not constitute a determination that a hearing is justified on any objections or requests for hearing that have been filed. When to do so will cause no undue

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delay, the notice required by this section may be combined with the notices described in §§ 1502.10 and 1502.13.

§ 1502.8 Ruling on objections and requests for hearing.

(a) As soon as practicable, the Commission will review all objections and requests for hearing filed under § 1502.6 and determine—

(1) Whether the regulation should be modified or revoked under § 1502.9; and

(2) Whether a hearing has been justified.

(b) A request for a hearing will be granted if the material submitted shows the following:

(1) There is a genuine and substantial issue of fact for resolution at a hearing. A hearing will not be granted on issues of policy or law.

(2) The factual issue can be resolved by available and specifically identified reliable evidence. A hearing will not be granted on the basis of mere allegations or denials or general descriptions of positions and contentions.

(3) The data and information submitted, if established at a hearing, would be adequate to justify resolution of the factual issue in the way sought by the person. A hearing will be denied if the Commission concludes that the data and information submitted, even though accurate, are insufficient to justify the factual determination urged.

(4) Resolution of the factual issue in the way sought by the person is adequate to justify the action requested. A hearing will not be granted on factual issues that are not determinative with respect to the action requested, e.g., if the Commission concludes that the Commission's action would be the same even if the factual issue were resolved in the way sought, or if a request is made that a final regulation include a provision not reasonably encompassed by the proposal.

(5) The action requested is not inconsistent with any provision in the FHSA or any regulation in 16 CFR subchapter C explaining or particularizing the requirements of the FHSA.

(6) The requirements in other applicable regulations, and in the notice promulgating the final regulation or