

Consumer Product Safety Commission

§ 1025.2

- 1025.45 *In camera* materials.
- 1025.46 Proposed findings, conclusions and order.
- 1025.47 Record.
- 1025.48 Official docket.
- 1025.49 Fees.

Subpart F—Decision

- 1025.51 Initial decision.
- 1025.52 Adoption of initial decision.
- 1025.53 Appeal from initial decision.
- 1025.54 Review of initial decision in absence of appeal.
- 1025.55 Final decision on appeal or review.
- 1025.56 Reconsideration.
- 1025.57 Effective date of order.
- 1025.58 Reopening of proceedings.

Subpart G—Appearances, Standards of Conduct

- 1025.61 Who may make appearances.
- 1025.62 Authority for representation.
- 1025.63 Written appearances.
- 1025.64 Attorneys.
- 1025.65 Persons not attorneys.
- 1025.66 Qualifications and standards of conduct.
- 1025.67 Restrictions as to former members and employees.
- 1025.68 Prohibited communications.

Subpart H—Implementation of the Equal Access to Justice Act in Adjudicative Proceedings With the Commission

- 1025.70 General provisions.
- 1025.71 Information required from applicant.
- 1025.72 Procedures for considering applications.

APPENDIX I TO PART 1025—SUGGESTED FORM OF FINAL PREHEARING ORDER

AUTHORITY: Consumer Product Safety Act (secs. 15, 20, 27 (15 U.S.C. 2064, 2069, 2076), the Flammable Fabrics Act (sec. 5, 15 U.S.C. 1194), the Federal Trade Commission Act (15 U.S.C. 45)), unless otherwise noted.

SOURCE: 45 FR 29215, May 1, 1980, unless otherwise noted.

Subpart A—Scope of Rules, Nature of Adjudicative Proceedings, Definitions

§ 1025.1 Scope of rules.

The rules in this part govern procedures in adjudicative proceedings relating to the provisions of section 15 (c), (d), and (f) and 17(b) of the Consumer Product Safety Act (15 U.S.C. 2064 (c), (d), (f); 2066(b)), section 15 of the Federal Hazardous Substances Act (15 U.S.C. 1274), and sections 3 and 8(b) of

the Flammable Fabrics Act (15 U.S.C. 1192, 1197(b)), which are required by statute to be determined on the record after opportunity for a public hearing. These rules will also govern adjudicative proceedings for the assessment of civil penalties under section 20(a) of the Consumer Product Safety Act (15 U.S.C. 2068(a)), except in those instances where the matter of a civil penalty is presented to a United States District Court in conjunction with an action by the Commission for injunctive or other appropriate relief. These Rules may also be used for such other adjudicative proceedings as the Commission, by order, shall designate. A basic intent of the Commission in the development of these rules has been to promulgate a single set of procedural rules which can accommodate both simple matters and complex matters in adjudication. To accomplish this objective, broad discretion has been vested in the Presiding Officer who will hear a matter being adjudicated to allow him/her to alter time limitations and other procedural aspects of a case, as required by the complexity of the particular matter involved. A major concern of the Commission is that all matters in adjudication move forward in a timely manner, consistent with the Constitutional due process rights of all parties. It is anticipated that in any adjudicative proceedings for the assessment of civil penalties there will be less need for discovery since most factual matters will already be known by the parties. Therefore, the Presiding Officer should, whenever appropriate, expedite the proceedings by setting shorter time limitations than those time limitations generally applicable under these Rules. For example, the 150-day limitation for discovery, as provided in § 1025.31(g), should be shortened, consistent with the extent of discovery reasonably necessary to prepare for the hearing.

[45 FR 29215, May 1, 1980, as amended at 47 FR 46846, Oct. 21, 1982]

§ 1025.2 Nature of adjudicative proceedings.

Adjudicative proceedings shall be conducted in accordance with Title 5, United States Code, sections 551 through 559, and these Rules. It is the

§ 1025.3

policy of the Commission that adjudicative proceedings shall be conducted expeditiously and with due regard to the rights and interests of all persons affected and in locations chosen with due regard to the convenience of all parties. Therefore, the Presiding Officer and all parties shall make every effort at each stage of any proceedings to avoid unnecessary delay.

§ 1025.3 Definitions.

As used in this part:

(a) *Application* means an *ex parte* request by a party for an order that may be granted or denied without opportunity for response by any other party.

(b) *Commission* means the Consumer Product Safety Commission or a quorum thereof.

(c) *Commissioner* means a Commissioner of the Consumer Product Safety Commission.

(d) *Complaint Counsel* means counsel for the Commission's staff.

(e) *Motion* means a request by a party for a ruling or order that may be granted or denied only after opportunity for responses by all other parties.

(f) *Party* means any named person or any intervenor in any proceedings governed by these Rules.

(g) *Person* means any individual, partnership, corporation, unincorporated association, public or private organization, or a federal, state or municipal governmental entity.

(h) *Petition* means a written request, addressed to the Commission or the Presiding Officer, for some affirmative action.

(i) *Presiding Officer* means a person who conducts any adjudicative proceedings under this part, and may include an administrative law judge qualified under Title 5, United States Code, section 3105, but shall not include a Commissioner.

(j) *Respondent* means any person against whom a complaint has been issued.

(k) *Secretary* means the Secretary of the Consumer Product Safety Commission.

(l) *Staff* means the staff of the Consumer Product Safety Commission.

Additional definitions relating to prohibited communications are in §1025.68.

16 CFR Ch. II (1-1-02 Edition)

Subpart B—Pleadings, Form, Execution, Service of Documents

§ 1025.11 Commencement of proceedings.

(a) *Notice of institution of enforcement proceedings.* Any adjudicative proceedings under this part shall be commenced by the issuance of a complaint, authorized by the Commission, and signed by the Associate Executive Director for Compliance and Enforcement.

(b) *Form and content of complaint.* The complaint shall contain the following:

(1) A statement of the legal authority for instituting the proceedings, including the specific sections of statutes, rules and regulations involved in each allegation.

(2) Identification of each respondent or class of respondents.

(3) A clear and concise statement of the charges, sufficient to inform each respondent with reasonable definiteness of the factual basis or bases of the allegations of violation or hazard. A list and summary of documentary evidence supporting the charges shall be attached.

(4) A request for the relief which the staff believes is in the public interest.

(c) *Notice to the public.* Once issued, the complaint shall be submitted without delay to the FEDERAL REGISTER for publication.

§ 1025.12 Answer.

(a) *Time for filing.* A respondent shall have twenty (20) days after service of a complaint to file an answer.

(b) *Contents of answer.* The answer shall contain the following:

(1) A specific admission or denial of each allegation in the complaint. If a respondent is without knowledge or information sufficient to form a belief as to the truth of an allegation, the respondent shall so state. Such statement shall have the effect of a denial. Allegations that are not denied shall be deemed to have been admitted.

(2) A concise statement of the factual or legal defenses to each allegation of the complaint.

(c) *Default.* Failure of a respondent to file an answer within the time provided, unless extended, shall constitute