

## Consumer Product Safety Commission

## § 1025.45

to rebut or contradict the offer of proof. Written offers of proof or of rebuttal, adequately marked for identification, shall accompany the record and be available for consideration by any reviewing authority.

### § 1025.44 Expert witnesses.

(a) *Definition.* An expert witness is one who, by reason of education, training, experience, or profession, has peculiar knowledge concerning the subject matter to which his/her testimony relates and from which he/she may draw inferences based upon hypothetically stated facts or offer opinions from facts involving scientific or technical knowledge.

(b) *Method of presenting testimony of expert witness.* Except as may otherwise be ordered by the Presiding Officer, the direct testimony of an expert witness shall be in writing and shall be filed on the record and exchanged between the parties no later than ten (10) days preceding the commencement of the hearing. The written testimony of an expert witness shall be incorporated into the record and shall constitute the direct testimony of that witness. Upon a showing of good cause, the party sponsoring the expert witness may be permitted to amplify the written direct testimony during the hearing.

(c) *Cross-examination and redirect examination of expert witness.* Cross-examination, redirect examination, and re-cross-examination of an expert witness shall proceed in due course based upon the written testimony and any amplifying oral testimony.

(d) *Failure to file or exchange written testimony.* Failure to file or exchange written testimony of expert witnesses as provided in this section shall deprive the sponsoring party of the use of the expert witness and of the conclusions which that witness would have presented, unless the opposing parties consent or the Presiding Officer otherwise orders in unusual circumstances.

### § 1025.45 In camera materials.

(a) *Definition.* In camera materials are documents, testimony, or other data which by order of the Presiding Officer or the Commission are kept confidential and excluded from the public record.

(b) *In camera treatment of documents and testimony.* The Presiding Officer or the Commission shall have authority, when good cause is found on the record, to order documents or testimony offered in evidence, whether admitted or rejected, to be received and preserve in camera. The order shall specify the length of time for in camera treatment and shall include:

(1) A description of the documents or testimony;

(2) The reasons for granting in camera treatment for the specified length of time; and

(3) The terms and conditions imposed by the Presiding Official, if any, limiting access to or use of the in camera material.

(c) *Access and disclosure to parties.* (1) Commissioners and their staffs, Presiding Officers and their staffs, and Commission staff members concerned with judicial review shall have complete access to in camera materials. Any party to the proceedings may seek access only in accordance with paragraph (c)(2) of this section.

(2) Any party desiring access to, or disclosure of, in camera materials for the preparation and presentation of that party's case shall make a motion which sets forth its justification. The Presiding Officer or the Commission may grant such motion for good cause shown and shall enter a protective order prohibiting unnecessary disclosure and requiring any other necessary safeguards. The Presiding Officer or the Commission may examine the in camera materials and excise any portions prior to disclosure of the materials to the moving party.

(d) *Segregation of in camera materials.* In camera materials shall be segregated from the public record and protected from public view.

(e) *Public release of in camera materials.* In camera materials constitute a part of the confidential records of the Commission and shall not be released to the public until the expiration of in camera treatment.

(f) *Reference to in camera materials.* In the submission of proposed findings, conclusions, briefs, or other documents, all parties shall refrain from disclosing specific details of in camera materials. However, such refraining