

Discussion

Title 16 C.F.R. § 1025.45, “*In Camera* materials” provides, in relevant part:

(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.

In the instant case, CPSC has not alleged good cause for filing the documents *in camera*; in fact, it is altogether unclear why the motions were filed as such. The relevant regulatory provision, 16 C.F.R. § 1025.45, appears under Subpart E, entitled “Hearings”, and refers to “documents or testimony offered into evidence.” The regulations do not contemplate motions being exempted from public disclosure, particularly when no explanation or argument has been provided.¹

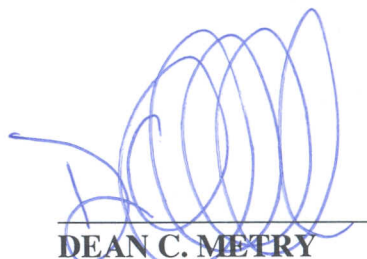
¹ Further, 16 C.F.R. § 1025.68, “Prohibited communications” defines “*ex parte communication*” as “[a]ny written communication concerning a matter in adjudication which is made to a decision-maker by any person subject to these Rules, which is not served on all parties...”. (Emphasis added).

ORDER

WHEREFORE, Counsel for the Consumer Product Safety Commission is hereby ordered to **SHOW CAUSE** not later than **Monday, December 9, 2013** as to why the motions were filed *in camera* and why they should not be made part of the public record.

SO ORDERED.

Done and dated this 26th day of November, 2013, at
Galveston, TX



DEAN C. METRY
Administrative Law Judge