

Notice Regarding Requests Relating to the Informal Hearing in Project No. P214504, Rule on the Use of Consumer Reviews and Testimonials

The Commission received a request seeking a 30-day extension of time and raising other purported procedural deficiencies in connection with the informal hearing scheduled for February 13, 2024, in the above-referenced matter.¹ These requests are denied for the reasons detailed below.² The requestor also asked the Commission to reconsider its determination that there are no disputed issues of material fact necessary to be resolved at the informal hearing and that hearing participants be granted more than thirty minutes each to raise their issues.³ These requests are denied without prejudice and referred to the informal hearing's presiding officer who is responsible for handling them under the Commission's Rules of Practice.

Pursuant to Section 18 of the FTC Act, 15 U.S.C. § 57a, the Commission published the notice of proposed rulemaking (NPRM) concerning the proposed Rule on the Use of Consumer Reviews and Testimonials in the Federal Register on July 31, 2023, with a sixty-day comment period that ended on September 29, 2023.⁴ The NPRM was announced publicly a month prior, on June 30, 2023.⁵ In the NPRM, the Commission did not identify any disputed issues of material fact that need to be resolved at an informal hearing and solicited the public's views on whether there are any such issues.⁶ The NPRM informed the public they must submit any requests to present views orally by the conclusion of the notice and comment period, no later than September 29, 2023.⁷ The Commission received three requests to present orally, one of which requested that the Commission consider several potential disputed issues of fact.⁸

On January 16, 2024, the Commission published in the Federal Register an initial and final notice of informal hearing, which scheduled the informal hearing for February 13, 2024.⁹ In that notice, the Commission explained its finding that there are no disputed issues of material

¹ Cmt. of the Interactive Advertising Bureau (Jan. 30, 2024), <https://www.regulations.gov/comment/FTC2024-0004-0008>.

² *Id.* at 2.

³ *Id.* at 2, 9.

⁴ See Fed. Trade Comm'n, Notice of Proposed Rulemaking: Trade Regulation Rule on the Use of Consumer Reviews and Testimonials, 88 Fed. Reg. 49364 (July 31, 2023), <https://www.federalregister.gov/documents/2023/07/31/2023-15581/trade-regulation-rule-on-the-use-of-consumer-reviews-and-testimonials>.

⁵ See Press Release, Fed. Trade Comm'n, Federal Trade Commission Announces Proposed Rule Banning Fake Reviews and Testimonials (June 30, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/06/federal-trade-commission-announces-proposed-rule-banning-fake-reviews-testimonials>.

⁶ *Id.* at 49364, 49381.

⁷ *Id.* at 49364.

⁸ See Fed. Trade Comm'n, Initial and Final Notice of Informal Hearing: Trade Regulation Rule on the Use of Consumer Reviews and Testimonials, 89 Fed. Reg. 2526, 2527 (Jan. 16, 2024), <https://www.federalregister.gov/documents/2024/01/16/2024-00678/rule-on-the-use-of-consumer-reviews-and-testimonials>.

⁹ *Id.* at 2526.

fact necessary to be resolved.¹⁰ Hearing participants were given until January 30, 2024, to provide documentary submissions.¹¹ These periods afforded the public meaningful opportunities to provide the Commission with written comments regarding its rulemaking proposal. Generally, agencies must provide 15 days' advance notice of a hearing. *See* 44 U.S.C. § 1508. Here, interested persons had three months from the announcement of the NPRM to consider whether they wanted to present views orally, after which the Commission provided an additional 28 days' advance notice of the informal hearing. Interested persons had an opportunity to file documentary submissions in response to the hearing notice, and several did so.¹² Based on the facts and law, the Commission declines to postpone the hearing date or invite other interested persons to participate in the hearing.

Commission Rule 1.13(a)(2)(viii) allows the presiding officer to rule on all requests “made during the course of the informal hearing” pursuant to the presiding officer’s authority to oversee “the orderly conduct of the informal hearing.” 16 C.F.R. § 1.13(a)(2)(viii). The presiding officer may also add or modify designated issues of material fact that are necessary to be resolved. *See id.* § 1.13(b)(1)(ii) (“The presiding officer may at any time on the presiding officer’s own motion or pursuant to a written petition by interested persons, add or modify any issues designated pursuant to § 1.12(a).”).¹³ The requests made to the Commission to add designated issues of material fact and that hearing participants be granted more than thirty minutes each for statements are therefore denied without prejudice and referred to the presiding officer to address in the first instance under the Rules of Practice. Requests from participants may be made to the presiding officer at the informal hearing, or in advance pursuant to Commission Rule 4.2(d)(1), 16 C.F.R. § 4.2(d)(1). Write “Consumer Reviews and Testimonials Rule (16 CFR part 465) (Project No. P214504)” on your submission and submit it via email to ElectronicFilings@ftc.gov with a copy to alj@sec.gov. Or, if you prefer, send via overnight service to: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex P), Washington, DC 20580.

By the Commission,

April Tabor
Secretary

SEAL:

ISSUED: February 7, 2024

¹⁰ *Id.* at 2527–29.

¹¹ *Id.* at 2529.

¹² *See* <https://www.regulations.gov/docket/FTC-2024-0004/comments>.

¹³ Participants are reminded that, if they propose to add new designated issues of fact that they had not proposed in response to the NPRM, they face the heightened burden of showing good cause for their failure to timely propose such issues. *See* 16 C.F.R. § 1.13(b)(1)(ii).