



U.S. CONSUMER PRODUCT SAFETY COMMISSION

WASHINGTON, D.C. 20207

Record of Commission Action
Commission Meeting of August 9, 1979

1111 - 18th Street, N.W.
Washington, D.C.

Presiding: Chairman King

Present : Commissioner Pittle
Commissioner Sloan
Commissioner Zagoria

ITEM

Draft Final Regulations Concerning the Development of Proposed Consumer Product Safety Standards (16 CFR Part 1105)

(Briefing material transmitted by the Office of the Secretary on July 27, 1979)

DECISION

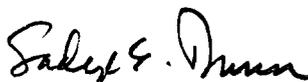
The Commission approved the attached Federal Register document issuing final regulations for the development of proposed Consumer Product Safety Standards. In this document published on August 17, 1979, the Commission reorganizes and amends the standard development regulation to reflect changes in section 7 of the Consumer Product Safety Act resulting from the Consumer Product Safety Act Authorization Act of 1978.

VOTE

Concurring: Chairman King
Commissioner Pittle
Commissioner Sloan
Commissioner Zagoria

Attachment

For the Commission:



Sadye E. Dunn
Secretary

FRIDAY
AUGUST 17, 1979

Friday
August 17, 1979

Part V

Consumer Product Safety Commission

Development of Proposed Consumer
Product Safety Standards

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1105

Development of Proposed Consumer Product Safety Standards

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Commission reorganizes and amends a portion of its regulation on developing proposed safety standards. This action is necessary to reflect changes in section 7 of the Consumer Product Safety Act resulting from the Consumer Product Safety Act Authorization Act of 1978. The changes to section 7 of the act include allowing the Commission to develop proposed consumer product safety standards itself and to publish as proposed standards certain types of existing standards without first soliciting offers to develop standards or soliciting the submission of existing standards; deleting the 150 day period for developing standards and the 60 day period for the Commission to review a recommended standard submitted by an offeror; requiring the Commission to provide for notice, public participation and recordkeeping when it develops standards itself; and allowing the Commission to fund participants when it develops standards itself.

DATES: The rule is effective on August 17.

FOR FURTHER INFORMATION CONTACT: Philip Bechtel, Office of the General Counsel, Consumer Product Safety Commission, 1111 18th Street NW., Washington, D.C. 20207 (202) 634-7770.

SUPPLEMENTARY INFORMATION: A major objective of the Consumer Product Safety Commission is to protect the public against unreasonable risks of injury associated with consumer products. One way in which the Commission may achieve this objective is by developing and issuing mandatory consumer product safety standards when the Commission believes they are necessary to eliminate or reduce an unreasonable risk of injury. These standards are authorized by section 7 of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2056.

The CPSA, as originally enacted, (Pub. L. 92-573) provided a novel method for the development and issuance of consumer product safety standards. The act required the Commission to solicit from outside parties the submission of offers to develop recommended standards for the Commission or the

submission of existing standards for consideration as proposed mandatory standards. The Commission could develop standards itself only under limited circumstances and, in any event, only after it had invited outside parties to offer to develop recommended standards for the Commission.

To implement its authority to develop and issue mandatory standards, the Commission on May 7, 1974, after providing an opportunity for public comment, issued a regulation covering (1) the submission of existing standards to the Commission, (2) the submission of offers to develop recommended consumer product safety standards, and (3) the actual development of recommended consumer product safety standards by parties outside the Commission (16 CFR Part 1105, 39 FR 16213). The regulation also included requirements for cost contributions by CPSC toward the development of standards.

The Commission amended the regulation on November 9, 1977 (42 FR 58400) to reflect changes in section 7 of the act contained in the Consumer Product Safety Commission Improvements Act of 1976 (Pub. L. 94-284). In November 1978, the Consumer Product Safety Act Authorization Act (Pub. L. 95-631) became law. It authorized appropriations for the Commission through 1981 and contained, among other things, changes and additions to the provisions of the Consumer Product Safety Act.

The amendments to the CPSA include a number of changes to section 7 of the CPSA which sets forth the procedures for the development of proposed consumer product safety standards. The changes include allowing the Commission to develop proposed standards without the necessity of first soliciting offers to develop recommended standards; allowing the Commission to propose certain types of existing standards without the necessity of soliciting offers to develop standards or the submission of existing standards; deleting the prescribed 150 day period for developing standards and the 60 day period for the Commission to review a recommended standard submitted by an offeror; allowing the Commission to fund participants when it develops standards itself; and requiring the Commission to prescribe regulations governing situations where it develops standards itself without using the offeror process.

In this document, the Commission amends its standard development regulation, 16 CFR Part 1105, to reflect the amendments to section 7 of the

CPSA. In addition, because of the complexity of section 7 as amended and the need to include new provisions in the regulation to reflect the amendments, the Commission is reorganizing the regulation and reprinting the entire regulation in this document. The Commission believes it is necessary to reorganize the regulation to assure that, with the addition of new provisions, the regulation is clear and understandable. The Commission has also made several nonsubstantive editorial changes in the reorganized regulation to simplify and clarify the regulation.

The regulation as reorganized contains four subparts. Subpart A contains general purpose and policy provisions. Subpart B contains procedures for the development of recommended standards under the Consumer Product Safety Act by persons or groups outside the Commission. Subpart C contains procedures for Commission development of proposed standards, and Subpart D applies where the Commission proposes existing standards as mandatory standards.

On May 31, 1979, the Commission proposed the regulation in the *Federal Register* (44 FR 31208). The proposal solicited comments only on Subpart C, which contains provisions for Commission developed standards needed as a result of the amendments to section 7, and §§ 1105.5(a)(7) and 1105.11 of Subpart B, which describe the development period for offeror developed standards. Subparts A, B and D of the reorganized regulation are essentially the same as the existing regulation, and except for §§ 1105.5(a)(7) and 1105.11 of Subpart B, the Commission did not seek comment on them. Generally, the only changes the Commission has made to the provisions of those subparts from the existing regulation are minor editorial changes and changes specifically required by the recent amendments to section 7. The amendment to section 7 deleting the prescribed 150 day period for developing standards and requiring the Commission to specify a development period has been reflected in the regulation at § 1105.5(a)(7).

Similarly, the amendment requiring the Commission to publish a proposed standard within 45 days after the development period ends has been reflected in the regulation at section 1105.11. The amendment authorizing the Commission to publish an existing standard as a proposed standard without first soliciting offers to develop a standard or the submission of existing

standards is reflected in the regulation at § 1105.26. In addition, the Commission has made minor changes in the regulation at § 1105.25(a) to reflect the amendment to section 7 regarding the Commission's authority to publish an existing standard as a proposed standard in lieu of accepting an offer to develop a standard. Previously, the Commission could publish only certain types of existing standards. The amendment to section 7 has broadened this authority. The Commission has revised its standard development regulation to reflect these nondiscretionary changes.

The amendments to section 7 authorizing the Commission to develop proposed standards itself without using the offeror process also require that the Commission amend its existing regulation by adding new provisions for Commission development of proposed standards. These new provisions appear in Subpart C. The new provisions require the Commission, when developing proposed standards itself, to follow procedures similar to those in Subpart B applicable to offerors who develop standards.

The provisions of Subpart C also reflect requirements in the amended act that are unique to Commission developed standards. Under the amendments, the CPSC may develop a proposed standard without inviting offers whenever it determines that it is more expeditious for the Commission itself to develop a standard that would adequately protect the public from the identified risk of injury than to use the offeror process. In making this determination, the Commission must consider various factors. These include the nature of the risk of injury associated with the product; the CPSC's expertise with respect to the risk of injury; its expertise in developing consumer product safety standards; and its available resources and priorities. In considering these criteria, the Commission, in accordance with the legislative history of the amendments, must also consider the qualifications of persons or groups outside the Commission. In addition, in determining whether it is more expeditious for the Commission to develop standards itself rather than using the offeror process, the Commission must consider not only technical expertise but also the ability to translate technical results into understandable enforceable standards. These requirements are included in the regulation at Subpart C.

The amended act also requires the Commission to give interested persons 30 days in which to comment on the

Commission's determination to develop a standard itself.

The regulation also provides that the Commission, in its discretion, may publish the determination that it intends to develop a standard itself before it publishes a notice beginning the standard development proceeding, or, it may combine the two notices. This provision is found in § 1105.16.

At section 1105.17(b)(5) the Commission has included in this final regulation a paragraph clarifying that the Federal Register notice beginning the proceeding for the CPSC to develop a proposed standard must include an invitation for interested persons to submit to the Commission an existing standard as the proposed consumer product safety standard. This paragraph is in accordance with the provisions of section 7(b)(2) of the act.

The amended act permits the Commission to make financial contributions to persons who participate with the Commission when it develops proposed standards itself in addition to being able to contribute to an offeror's cost in developing a standard. When the Commission develops standards itself, it may provide financial assistance directly to any interested persons or groups whose participation in the standard development process is likely to result in a more satisfactory standard. Subpart C reflects this authority and generally follows the provisions of the Commission's interim regulations on financial contributions, found at 16 CFR Part 1050 (43 FR 23560, May 31, 1978).

The financial contribution provision in Subpart C is intended to encourage and ensure representation of various viewpoints when the Commission develops standards itself. This provision does not affect the Commission's ability and authority to contract with persons or groups outside the Commission to aid in the development of Commission developed standards.

Response To Comments

In response to the proposal, the Commission received six comments, from an individual, a manufacturer, a voluntary standards organization, and several trade associations. These comments are available for inspection in the Office of the Secretary of the Commission. The Commission's response, to the relevant issues raised by the comments is given below:

Subpart B—Development of Recommended Standards by Offerors

One commentator recommended that in discussing the time allotted to the offeror during the development period at

§§ 1105.5(a)(7) and 1105.11(a) the Commission refer to the offeror as the "offeror of an accepted offer" to eliminate confusion.

The Commission agrees with the suggestion of the commentator, and has changed §§ 1105.5(a)(7) and 1105.11(a) accordingly.

One commentator suggested that the Commission change § 1105.11(a) and § 1105.20(a) to specifically provide that on publication of a proposed standard, a 30 day comment period would be provided before issuance of a final standard.

The regulation issued here concerns the development of proposed consumer product safety standards, and does not deal with the procedure for issuing a final standard. The procedure for issuing standards is specified in section 9(a) of the CPSA (15 U.S.C. 2058(a)) and is beyond the scope of this regulation. Therefore, the Commission does not believe it is necessary to make the change suggested by the commentator.

One commentator opposed the deletion of the 150 day period for developing standards and the 60 day period for the Commission to review recommended standards.

The Commission has deleted the 150 day period for developing standards and the 60 day period for the Commission to review recommended standards since the act, as amended by Pub. L. 95-631, no longer includes these time provisions. Instead, section 7(b)(1)(E) of the act (15 U.S.C. 2056(b)(1)(E)) provides that the Commission will specify in the notice beginning the standard development proceeding the period of time in which the offeror and the Commission, or the Commission acting by itself is to develop the proposed standard. This provision is included in the regulation at § 1105.5(a)(7) and § 1105.17(a)(2). The Commission believes that the development period specified in individual proceedings will provide sufficient time for meaningful participation by interested persons. At section 7(f) (15 U.S.C. 2056(f)), the act anticipates that the Commission will publish a proposed standard within 45 days after the end of the development period. At § 1105.11(a) and § 1105.20 the regulation provides that the Commission will normally publish a proposed standard within 45 days after the development period ends.

Subpart C—Development of Proposed Standards by the Commission

One commentator opposed the inclusion of subpart C in its entirety; however the commentator did not state the reasons for his opposition.

Section 7(d)(4) of the act, as amended (15 U.S.C. 2056(d)(4)) requires the Commission to prescribe regulations governing the Commission's development of proposed consumer product safety rules. Subpart C of the regulation contains provisions concerning the development of proposed standards by the Commission and is issued under the authority provided in section 7(d)(4) of the act.

Several commentors encouraged the Commission to continue to use offerors in developing standards. One commentor recommended that the Commission liberally construe the criteria of § 1105.15(a) to permit offerors to develop recommended standards.

In issuing this regulation the Commission does not intend to foreclose the development of standards by offerors. Section 1105.15(a) specifies the five circumstances in which the CPSA authorizes the Commission to develop proposed consumer product safety standards. The Commission will carefully evaluate individual standard development conditions before deciding to develop a standard itself.

One commentor claimed that § 1105.15 of the proposed regulations gives the Commission complete freedom to decide when it will develop a proposed standard without the use of an offeror. The commentor also stated that the section would result in more frequent development of standards by the Commission rather than offerors, and would increase the Commission's workload and expenditure of resources.

The Commission does not agree with the commentor that the regulation provides the Commission with complete freedom in deciding to develop a proposed standard without using an offeror. The circumstances listed at § 1105.15 for the development of proposed standards by the Commission, rather than an offeror, are the circumstances provided by statute for the Commission development of proposed standards.

The Commission does not believe that these provisions will encourage the development of proposed standards by the Commission in circumstances where the standards could be feasibly and more expeditiously developed by an offeror. The Commission also does not have any information indicating that the regulation would in itself increase the Commission's workload and expenditure of resources in developing standards.

One commentor suggested that the Commission change the language at § 1105.15(a)(5) to avoid ambiguity by adding the phrase "by the consumer

product safety standard" to the phrase "the consumer product proposed to be regulated."

The Commission does not believe that the additional phrase is necessary for clarity, and declines to make the change suggested by the commentor.

The same commentor recommended that in an instance where the Commission decides to develop a standard when the offeror is a manufacturer, distributor, or retailer of the product, the Commission should attempt to avoid unnecessary duplication of the work done by the offeror.

The Commission agrees with the commentor and intends to avoid unnecessary duplication of work in developing standards.

Several commentors recommended that the Commission include more specific provisions at § 1105.15(b)(3) to describe the procedures to be used by the Commission in situations where the Commission develops a standard after an offer has been accepted. According to the commentors the provision that the Commission will use procedures it deems reasonable and appropriate is vague and provides unnecessary latitude. According to one commentor, this statement could allow the Commission to proceed in a summary fashion to issue standards. The commentors suggested that the Commission use the procedures of Subpart C in such circumstances to ensure full and fair participation of all parties in standards development.

The Commission does not agree with the commentors that the regulation should include more specific provisions to describe the procedures to be used where the Commission develops a standard after an offer has been accepted. At § 1105.15(b)(3), the regulation provides that in these situations where the Commission develops a standard itself, the Commission will publish a notice in the Federal Register announcing its decision and stating the procedures it will use. The Commission believes that it is important to preserve procedural flexibility in developing standards under these circumstances, while being fair to interested persons. Since the circumstances described here for Commission development of standards are likely to involve unique conditions affecting the success of the standard development proceeding, the Commission does not believe that it is feasible to develop more specific provisions in this regulation. As an example, the Commission could encounter a situation where the offeror

has substantially completed work on a recommended standard at the time the Commission found it necessary to complete the work itself. In a situation such as this, it would be wasteful and unnecessary for the Commission to follow the Subpart C procedures. Instead, as these situations arise, the Commission will publish a Federal Register notice stating reasonable and appropriate procedures to be used in the standard development proceeding.

One commentor questioned the adequacy of the 30 day period provided at § 1105.16 for interested persons to submit written comments on the Commission's determination to develop a proposed standard by itself. According to the commentor, at least sixty days should be allowed for the submission of comments.

The Commission believes that the period of time for submitting written comments should remain at 30 days. The act, at section 7(b)(2) provides a 30 day period for the submission of written comments and does not provide for an extension of this period of time.

One commentor stated that the Commission should respond to comments submitted concerning the Commission's determination to develop a proposed standard itself.

As indicated in the legislative history of Pub. L. 95-631, the Commission is not obligated to respond to these comments (H.R. Rep. No. 1164, 95th Cong. 2nd Sess. 11 [1978]). However, the Commission will take these comments into consideration in determining whether to proceed with standard development itself. At § 1105.16(a), the regulation provides that the Commission will consider comments received before developing a proposed standard itself.

One commentor stated that § 1105.16(c) and § 1105.17(a) of the proposed regulation provide the Commission with great flexibility concerning publication of the notice of intent to develop a proposed standard and publication of the notice of the initiation of proceedings to develop proposed standards. According to the commentor, the Commission should never issue the notices at the same time and should make separate decisions concerning the issues to develop a proposed standard itself and to initiate proceedings to develop a proposed standard. The commentor suggested that the Commission solicit and consider comments on the notice initiating the proceeding to develop a proposed standard.

The Commission believes that it is important to preserve the Commission's discretion concerning the timing of the

publication of the notice of intent to develop a proposed standard and the notice beginning the proceeding to develop proposed standards. In fact, section 7(b)(1) of the act anticipates that the notice of determination be combined with the notice beginning a proceeding. At § 1105.16(c), the regulation specifically provides that the Commission may combine the two notices. As stated in § 1105.16(c) the Commission believes that the development proceeding should be begun as soon as practicable after the Commission decides to develop a proposed standard itself. The Commission does not believe that it is necessary to solicit and consider comments on the notice initiating the proceeding to develop a proposed standard. Under the procedures specified at § 1105.18(c) interested persons may submit comments on the information in the notice initiating the proceeding as well as on other aspects of the standard development proceeding before the Commission staff submits a draft proposed standard to the Commission. Interested persons may also submit comments on this information in response to the proposed standard. The act does not provide for a separate solicitation and consideration of comments in response to notices initiating standard development proceedings. The Commission believes that a separate solicitation and consideration of comments on this notice would create unnecessary delay and could be contrary to the Congressional intent that the Commission expeditiously develop proposed standards (H.R. Rep. No. 95-1164, 95th Cong., 2d Sess. 5-6 (1978); S. Rep. No. 95-889, 95th Cong., 2d Sess. 4 (1978)).

One commentator stated that the Commission should amend § 1105.17 of the regulation concerning the beginning of proceedings for the Commission to develop proposed standards to include the requirements that section 1105.8 imposes in the context of the offeror process. According to the commentator, the requirements of standard-development and public participation should be the same whether undertaken by the offeror or by the Commission. The commentator also suggested that the Commission include the provisions of § 1105.9, concerning requirements for recommended standards developed by offerors, in a new section 1105.21 concerning requirements for standards developed by the Commission, since the responsibilities of the offeror and the Commission in developing standards are the same.

The Commission does not agree with the commentator that the Commission should change proposed § 1105.17 to include the requirements of § 1105.8 or that the Commission should include the provisions of § 1105.9 in a new § 1105.21 concerning recommended standards developed by the Commission. Many of the provisions of § 1105.8 are inapplicable to the situation where the Commission develops its own standard, since these provisions (e.g. monthly progress reports, termination) are intended to ensure the accountability of an outside party, the offeror, in developing a standard for the Commission. In developing a standard itself, the Commission will keep written records throughout the development period as provided by § 1105.18(f). In addition § 1105.18(c) of the regulation provides for public participation during the development of the proposed standard. In accordance with the legislative history of Pub. L. 95-631 (H.R. Rep. No. 95-1164, 95th Cong., 2d Sess. 11 (1978); S. Rep. No. 95-889, 95th Cong., 2d Sess. 4 (1978)), the Commission believes that these provisions concerning recordkeeping and public participation are of a quality similar to that found in the offeror process. The Commission intends to vigorously encourage public participation whenever an offeror is not utilized.

The Commission does not believe it is necessary to include the provisions of § 1105.9 in a new section concerning recommended standards developed by the Commission, since the provisions of § 1105.9 are intended to provide guidance to persons outside the Commission who are developing standards for the Commission. The provisions of § 1105.9 that reflect statutory requirements will be followed by the Commission in its standard development proceedings. For these reasons, the Commission does not believe it is necessary to include the provisions of § 1105.8 in § 1105.17, or include the provisions of § 1105.9 in a new § 1105.21.

One commentator stated that § 1105.18 of the regulation provides only for an opportunity to submit written comments concerning the standard. According to the commentator, this section should be changed to provide for hearings and an opportunity to be heard.

Section 1105.18(c) provides that, as a minimum, the Commission will provide an opportunity for written comment before the Commission staff submits a draft proposed standard to the Commission. The section also states that the procedures specified in the Federal Register notice beginning each

proceeding may also provide an opportunity for oral participation. Where oral participation is appropriate, the Commission will provide for such participation.

One commentator claimed that § 1105.19(f)(2) of the Commission's regulation concerning CPSC contributions to costs of participants provide that persons with a very small financial stake in the outcome of the standards development are more likely to receive financial aid than those with a more substantial economic interest in the standard that is being developed. According to the commentator, persons with a small economic stake in the standard are unlikely to take into account economic problems caused by the standard and are less likely to aggressively pursue the development of a reasonable standard. The commentator also stated that the Commission should include expertise as one of the criteria for receiving financial aid, since persons with little technical background are of no practical use in developing a standard.

The Commission does not agree with the commentator that § 1105.19 of the regulation should be changed so that the Commission should make a financial contribution only to persons with a substantial economic interest in the standard. Section 1105.19 of the regulation does not preclude the Commission from making a financial contribution to persons with an economic interest in the standard. However, in deciding whether to make a financial contribution, the Commission believes it is important to evaluate, as one factor, the economic interest of the participant in comparison to the participant's costs of effective participation. If the economic interest of the participant is substantial in relation to the costs of effective participation, the Commission believes that the participant will be less likely to need financial support from the Commission. The Commission also does not agree with the commentator that the regulation should require expertise as one of the criteria for receiving financial aid. Section 1105.19(f)(1) provides that one of the criteria for authorizing contributions is that the participant represents an interest, expertise, or point of view that can reasonably be expected to contribute substantially to a full and fair determination of the issues involved in the proceeding. The Commission believes that this provision will prevent frivolous participation. The Commission does not agree with the commentator that persons without a technical background are of no practical use in developing a

standard. In many instances persons without a technical background may provide substantial contributions to the general fairness of the proceeding and may also assist in ensuring that provisions of the standard, including labels, are clearly explained. Non-technical participants may also be valuable in assessing the effect of the standard on the product's utility and other similar factors.

One commentator claimed that § 1105.19 would result in uncontrollable expenses and would make it difficult to deny contributions.

The Commission believes that the criteria provided in § 1105.19 are sufficiently precise to ensure meaningful participation and avoid unnecessary contributions. Section 1105.19(f) provides that the Commission may make a contribution to participants who meet the criteria. The regulation does not require the Commission to make a contribution to participants who meet all of the criteria.

One commenter objected to the provisions of § 1105.19 for the Commission to contribute to the costs of participants when the Commission develops a standard itself. According to the commentator, Congress did not provide for such contributions.

Section 7(d)(2) of the act (15 U.S.C. 2056(d)(2)), as amended by Pub. L. 95-631, specifically provides that the Commission may agree to contribute to the costs of persons participating with the Commission in the development of the standard. The Commission believes that § 1105.19 of the regulation is clearly in accord with the intent of Congress expressed in this section.

Other Comments

One commentator stated that the Commission should include in the regulation a provision that would require the Commission to consider existing voluntary standards for a product to avoid a costly duplication of effort between the government and the private sector.

Section 1105.17(b)(3) of the regulation (based on section 7(b)(1) of the act (15 U.S.C. 2056(b)(1))) already requires the notice of proceeding to provide information on existing standards, including voluntary standards.

In addition, Subpart D of the regulation contains provisions concerning the use of existing standards as proposed standards. These provisions are intended to avoid the unnecessary development of a standard where there is an existing standard that contains safety related provisions that adequately prevent or reduce the

identified unreasonable risks of injury associated with the product.

Effective Date

Subpart C and §§ 1105.5(a)(7) and 1105.11 are effective on publication in final form in the **Federal Register**. Because the regulation is a rule of agency practice or procedure, a delayed effective date is not necessary. Since the Commission may wish to implement this regulation with respect to a particular product in the near future, and since the Commission is not aware that any person would be prejudiced by not delaying the effective date of this regulation, the Commission, for good cause, finds that the regulation should take effect on publication in final form. The changes in Subparts A, B, and D required by the amendments will take effect at the same time as Subpart C.

Conclusion

Having considered the comments received concerning the proposal, the Consumer Product Safety Commission concludes that the regulation concerning the development of consumer product safety standards should be issued as set forth below.

Accordingly, pursuant to section 7 of the Consumer Product Safety Act, Pub. L. 92-573, 86 Stat. 1212-15, as amended, Pub. L. 94-284, 90 Stat. 505-506, as amended, Pub. L. 95-631, 92 Stat. 3742-45, 15 U.S.C. 2056, Part 1105 of Title 16 Chapter II, Subchapter B is amended to read as follows:

PART 1105—DEVELOPMENT OF PROPOSED CONSUMER PRODUCT SAFETY STANDARDS

Subpart A—General

Sec.

1105.1 Purpose.

1105.2 General policy considerations.

Subpart B—Development of Recommended Standards by Offerors

1105.5 Beginning of proceedings to develop recommended standards.

1105.6 Submission of offers to develop recommended standards.

1105.7 CPSC acceptance of offers to develop recommended standards.

1105.8 Development of recommended standards.

1105.9 Requirements for recommended standards developed by offerors.

1105.10 CPSC contributions to the offeror's cost of developing recommended standards.

1105.11 CPSC publication of proposed standards based on recommended standards.

Subpart C—Development of Proposed Standards by the Commission

Sec.

1105.15 When CPSC may develop standards itself; procedures to be followed.

1105.16 Statement of Commission intent to develop a proposed standard.

1105.17 Beginning of proceedings for CPSC to develop proposed standards.

1105.18 CPSC development of proposed standards.

1105.19 CPSC contributions to costs of participants in the development of proposed standards.

1105.20 CPSC publication of proposed standards developed by the Commission.

Subpart D—Use of Existing Standards as Proposed Standards

1105.25 Submission of existing standards to CPSC as recommended standards.

1105.26 CPSC publication of proposed standards based on existing standards.

Authority: Sec. 7, Pub. L. 92-573, 86 Stat. 1212-15, as amended Pub. L. 94-284, 90 Stat. 505-506, as amended Pub. L. 95-631, 92 Stat. 3742-45, 15 U.S.C. 2056.

Subpart A—General

§ 1105.1 Purpose.

(a) A major objective of the Consumer Product Safety Act ("act") is to reduce unreasonable risks of injury associated with consumer products. The Consumer Product Safety Commission ("Commission") may achieve this objective through the development and promulgation of mandatory consumer product safety standards where they are considered necessary to eliminate or reduce an unreasonable risk of injury. This Part sets forth the Commission's policy and procedures for developing proposed consumer product safety standards.

(b) Consumer product safety standards may originate in three ways:

(1) the Commission may accept an offer from a person or organization to develop a recommended standard (Subpart B);

(2) the Commission may itself develop a proposed standard (Subpart C);

(3) the Commission may publish an existing standard as a proposed standard (Subpart D). An existing standard may be published in whole, in part, or in combination with a recommended or proposed standard developed by an offeror or by the Commission.

§ 1105.2 General policy considerations.

(a) The general policy underlying this Part 1105 is that the interest and participation of the public are vital for carrying out the functions of the Consumer Product Safety Commission. Commission activities and deliberations are open to the public and afford any interested person the opportunity to

participate and be heard. Accordingly, standards development activities will be open to the public and will afford the opportunity for any interested person to participate in the development of standards.

(b) Since safety standards are intended to eliminate or reduce unreasonable risks of injury associated with consumer products, the Commission seeks the involvement of all interested persons, the general public, and especially consumers. Consumers and their representatives, as well as all other interested persons, are invited and encouraged to become involved by submitting offers to develop standards and by participating in the development of standards.

(c) Persons who are not members of an established organization may form a group for the express purpose of submitting offers and developing standards; such groups are referred to in these rules as "ad hoc associations."

(d) Public involvement in the development of standards by either an offeror or the Commission will be encouraged through the use of extensive public notice. In addition to providing notice in the *Federal Register*, the Commission will issue a press release at the beginning of a proceeding and at the time participants are sought.

(e) The Commission will maintain a list of all persons and organizations that have expressed an interest either in being offerors or in participating in the development of proposed standards. The Commission will send copies of the *Federal Register* notice of proceeding, press release, and other relevant documents to appropriate persons and organizations on the list that have expressed an interest in being offerors. The Commission will also send copies of the *Federal Register* notice of proceeding, the notice of acceptance of any offers, and other relevant notices to appropriate persons and organizations on the list that have expressed an interest in participating in the development of standards.

(f) The act enables the Commission to contribute to the offeror's cost or the cost of any person who participates with the Commission in developing a proposed standard in any case in which the Commission determines that a contribution is likely to result in a more satisfactory standard. The Commission views this provision of the act as a means by which a variety of persons and organizations will be able to develop standards and participate in the development of standards. The Commission also views this provision as a means by which the Commission can

assist a cross section of interested persons, including consumers, to participate in the development of standards.

(g) The Commission will adopt a reasonable approach to determining the amount of time necessary to develop standards. The Commission believes that as a general rule the public interest is best served by the development of standards in the shortest possible time commensurate with the objectives of the act and in conformance with the requirements contained in the act and this Part 1105.

Subpart B—Development of Recommended Standards by Offerors

§ 1105.5 Beginning proceedings to develop recommended standards.

(a) The Commission will begin a proceeding for the development of a recommended consumer product safety standard by an offeror by publishing a "notice of proceeding" in the *Federal Register*. The "notice of proceeding" shall:

- (1) Identify the product and clearly describe the nature of the risks of injury associated with the product;
- (2) State the Commission's preliminary determination that a consumer product safety standard is necessary to eliminate or reduce the specified unreasonable risk(s) of injury associated with the product;
- (3) Include information with respect to any existing domestic, foreign, or international standard known to the Commission which may be relevant to the proceeding, including information as to any deficiencies that the Commission recognizes in each identified standard that may make it not totally acceptable as a proposed rule;
- (4) Provide information concerning the availability of Commission material relating to: (i) The specific nature of the risks of injury associated with the product, (ii) the basis for the Commission's determination concerning the need for a mandatory standard, and (iii) additional information relating to the development of a mandatory standard which may be helpful to potential offerors;

(5) Include an invitation for any standards-writing organization, trade association, consumer organization, technical or professional society, testing laboratory, university or college department, wholesale or retail organization, Federal, State, or local government agency, engineering or research and development establishment, ad hoc association, or any company or person within 30 days

after the date of *Federal Register* publication of the notice:

(i) To submit to the Commission an existing standard as the proposed consumer product safety standard; or

(ii) To offer to develop a recommended consumer product safety standard;

(6) Include, to the extent known at the time the notice of proceeding is published, any requirement for additional information that is to be submitted to the Commission with either an existing standard or a standard to be developed by an offeror; and

(7) Specify the development period. The development period is the time the Commission allots for the offeror of an accepted offer to develop and submit to the Commission a recommended standard, and for the Commission staff to make any necessary revisions to the recommended standard and to prepare it for publication as a proposed standard.

(b) The Commission will, for the purpose of providing greater public awareness of its actions, issue a press release announcing the beginning of the proceeding. The press release will summarize the information contained in the *Federal Register* notice, including the invitation to any interested organization or person to submit an existing standard or to offer to develop a recommended standard.

(c) The Commission will send a copy of the *Federal Register* notice, press release, and other relevant documents to appropriate persons and organizations, on a list maintained by the Commission, that have expressed an interest in being offerors for one or more standards.

§ 1105.6 Submission of offers to develop recommended standards.

(a) Any standards-writing organization, trade association, consumer organization, technical or professional society, testing laboratory, university or college department, wholesale or retail organization, Federal, State, or local government agency, engineering or research and development establishment, ad hoc association, or any company or person may submit an offer to develop a recommended standard. Each offer shall include a detailed description of the procedure the offeror will use in developing the standard. Each offer shall also include:

(1) A description of the plan the offeror will use to give adequate and reasonable notice to interested persons (including individual consumers, manufacturers, distributors, retailers, importers, trade associations,

professional and technical societies, testing laboratories, Federal and State agencies, educational institutions, and consumer organizations) of their right and opportunity to participate in the development of the recommended standard;

(2) A description of the method whereby interested persons who have responded to the notice may participate, either in person or through correspondence, in the development of the recommended standard; and

(3) A realistic estimate of the time required to develop the recommended standard, including a detailed schedule for each phase of the standard development process.

(b) Each offeror shall submit with the offer the following information to supplement the description of the standard development procedure:

(1) A statement listing the number and experience of the personnel, including volunteers, the offeror intends to utilize in developing the recommended standard. This list should distinguish between (i) persons directly employed by the offeror, (ii) persons who have made a commitment to participate, (iii) organizations that have made commitments to provide a specific number of personnel and (iv) other persons to be utilized, although unidentified and uncommitted at the time of the submission. The educational and experience qualifications of these personnel relevant to the development of the recommended standard should also be included in the statement. This list should include only those persons who will be directly involved, in person, in the development of the recommended standard; and

(2) A statement describing the type of facilities or equipment which the offeror plans to utilize in developing the recommended standard and how the offeror plans to gain access to the facilities or equipment.

(c) Persons who are not members of an established organization may form a group for the express purpose of submitting offers and developing recommended standards. These groups are referred to as "ad hoc associations." An offer by an ad hoc association may be submitted by an individual member if the offer states that it is submitted on behalf of the members of the association. The individual member submitting the offer shall submit to the Commission a notarized copy of a power of attorney from each member of the association authorizing the individual member to submit an offer on behalf of each other member.

§ 1105.7 CPSC acceptance of offers to develop recommended standards.

(a)(1) If the Commission (i) does not decide to publish an existing standard as a proposed consumer product safety standard or (ii) decides to publish an existing standard as a proposed consumer product safety standard which does not address all of the specified unreasonable risks of injury associated with the product, the Commission will, as soon as practicable, accept one or more offers to develop a recommended consumer product safety standard to address at least those risks of injury not addressed by an existing standard the Commission intends to propose.

(2) Acceptance of an offer will be based on a determination by the Commission that an offeror is technically competent, is likely to develop an appropriate standard within the period specified in the notice of proceeding or within the period determined by the Commission to be necessary and appropriate for the development of the recommended standard, and will comply with all of the requirements of the Commission for the development of the recommended standard.

(3) An offeror will be considered to have technical competence if the offer submitted indicates to the satisfaction of the Commission (i) that the offeror has demonstrated a thorough understanding of the problem, (ii) that the offeror has provided a rational approach to the solution of that problem, and (iii) that persons with appropriate technical expertise or experience will be utilized in the development of the recommended standard either as employees, consultants, or volunteers.

(b) Before accepting an offer to develop a recommended standard, the Commission may require minor modifications of the offer as a condition of acceptance.

(c) The Commission shall publish in the **Federal Register** the name, address, and organizational affiliation of each person whose offer it accepts and a summary of the terms of each accepted offer including the date established for the submission of the recommended standard and the date specified for the Commission to make any necessary changes and prepare the recommended standard as a proposed consumer product safety standard.

(d) The Commission, at or near the time of the **Federal Register** acceptance notice, will issue a press release which:

(1) Identifies each person (name, address, and organizational affiliation) whose offer has been accepted;

(2) Summarizes the terms of each accepted offer including the date established for the submission of the recommended standard; and

(3) Invites all interested persons to participate in the development of the recommended standard and informs them of how they may participate.

(e) The Commission will transmit to appropriate persons and organizations, on a list maintained by the Commission, that have expressed an interest in participating in the development of one or more standards a copy of the **Federal Register** notice of proceeding as well as the notice of the acceptance of any offers.

(f) All persons submitting offers to develop recommended standards whose offers have not been accepted will be notified in writing by the Commission. If requested by an offeror, the reasons for the nonacceptance of the offer will be supplied.

(g) If the Commission does not accept an offer to develop a recommended consumer product safety standard, the Commission may independently develop a proposed consumer product safety standard in accordance with Subpart C. Notice of this decision will be published in the **Federal Register**.

(h) If the Commission accepts an offer to develop a recommended consumer product safety standard, the Commission may not develop a proposed rule or publish such rule unless (1) the offeror's development time expires, or (2) the offeror whose offer was accepted is making unsatisfactory progress in the development of the recommended standard or, (3) the sole offeror whose offer is accepted is a manufacturer, distributor, or retailer of the consumer product proposed to be regulated by the consumer product safety standard.

§ 1105.8 Development of recommended standards.

(a) The offeror shall comply with all Commission requirements for the development of recommended standards and with all terms of the acceptance and shall cooperate with Commission liaison personnel assigned to monitor the development of the standard.

(b) In developing a recommended standard, the offeror shall use the method agreed upon for interested persons to participate in the development of the standard and shall fully consider all of the suggestions and contributions of the respective participants. The offeror, after considering all suggestions and contributions, shall draft a recommended standard. The draft

standard shall be sent to all participants for their review and concurrence or nonconcurrence. Unanimity among all participants shall not be a prerequisite to the submission by the offeror to the Commission of a recommended standard which, in the offeror's judgment, optimally meets the terms of the offer accepted by the Commission.

(c) The offeror shall maintain complete written records of the development of the recommended standard. These records shall include:

(1) The names, addresses, and titles, if any, of all persons contacting the offeror for the purpose of participating in the development of the recommended standard;

(2) All written comments and any other information submitted by any person in connection with the development of the recommended standard including the dissenting views of participants and comments and information with respect to the need for the standard;

(3) A discussion describing the bases for resolution by the offeror of all of the substantive issues raised during the development of the recommended standard;

(4) A statement of the economic and environmental factors considered during the development of the recommended standard; and

(5) Records of all other matters relevant to the development and evaluation of the recommended standard.

(d) The records required in subsection (c) shall be submitted to the Commission at the termination of the offeror's development time. The Commission will make these records available for public inspection and will supply copies upon request, subject to the provisions of its regulations relating to the availability of Commission records (16 CFR Part 1015).

(e) The offeror shall provide monthly progress reports containing a summary of progress made, the work underway, the significant problems encountered and the work remaining to be accomplished. These reports shall be transmitted to the Office of Program Management, Consumer Product Safety Commission, Washington, D.C. 20207. The offeror shall cooperate fully with the Commission and permit the inspection of its facilities and development activities by duly authorized representatives of the Commission for the purpose of determining whether satisfactory progress is being made toward the completion of the recommended standard. The offeror shall be considered to be making satisfactory

progress if the Commission concludes that the recommended standard may reasonably be expected to be completed in accordance with the provisions of the accepted offer by the end of the offeror's development time.

(f)(1) If it appears to the Commission that an offeror is not making satisfactory progress, the offeror will be given the opportunity (i) to demonstrate ability and willingness to complete the development of the recommended standard by the end of its development time or (ii) to justify the need for an extension of the development time.

(2) The Commission, after consideration and due notice, may (i) terminate the offeror's role in the development process and require the offeror to submit to the Commission all information, records, and documents which pertain to the development of the recommended standard or (ii) extend the development period and publish notice of such extension in the Federal Register, with the justification for the extension. If the Commission terminates the offeror's role in the development process, the offeror shall remit all funds contributed by the Commission which have not been expended.

(g) The offeror shall submit, with the recommended standard, test instruments or devices constructed or acquired to perform compliance tests if the Commission determines that these instruments or devices are necessary for the evaluation of the standard. In such a case, the instrument or device shall be sold to the Commission at the offeror's cost or loaned to the Commission for the evaluation of the recommended standard.

Further, the offeror shall in any circumstance submit detailed descriptions or plans and specifications for the acquisition or construction of these instruments or devices.

§ 1105.9 Requirements for recommended standards developed by offerors.

(a) Recommended standards must be suitable for proposal and eventual promulgation under the act. To be considered suitable, a recommended standard shall be written in a manner appropriate for use as a Federal mandatory standard as specified in the format established by the Commission. The format of each standard will be made available by the Commission on or before the acceptance of an offer. Recommended standards shall be supported by test data or other documents or materials which the Commission requires. Recommended standards, if the Commission considers it to be appropriate, shall also contain

suitable test methods and be accompanied by reasonable testing programs, if the Commission requires. Test methods for the measurement of compliance with proposed standards shall be reasonably capable of being performed by the Commission and by persons subject to the act or by private testing facilities. Testing programs accompanying but not part of the recommended standard, if the Commission considers it to be appropriate and so states in the Federal Register notice of the acceptance of the offer, shall include sampling plans.

(b) Recommended standards shall consist of:

(1) Requirements as to performance, composition, contents, design, construction, finish, or packaging; or

(2) Requirements that a consumer product be marked with or accompanied by clear and adequate warnings or instructions or requirements respecting the form of warnings or instructions; or

(3) Any combination of (1) and (2).

(c) A recommended standard shall be supported by:

(1) An analysis demonstrating that each of the requirements is reasonably necessary to prevent or reduce the unreasonable risk of injury identified in the notice of proceedings;

(2) An analysis explaining why the recommended standard is in the public interest; and

(3) An analysis of the extent to which elderly and handicapped persons may be adversely affected by the recommended standard.

(d) Each requirement of a standard, other than requirements relating to labeling, warning, or instructions, shall whenever feasible be expressed in terms of performance. Whenever the requirements are not expressed in terms of performance, an explanation shall be provided to support the use of the nonperformance requirements.

(e) The offeror, in submitting a recommended standard, shall include data and information to demonstrate that compliance with the standard would be technologically practicable. The offeror shall also submit, to the extent that it can reasonably be obtained by the offeror, data and information on the potential economic effect of the standard, including the potential effect on small business and international trade. The economic information should include data indicating (1) the types and classes as well as the approximate number of consumer products which would be subject to the standard; (2) the probable effect of the standard on the utility, cost, and availability of the products; (3) any

potential adverse effects of the standard on competition; and (4) the standard's potential disruption or dislocation, if any, of manufacturing and other commercial practices. Further, the offeror shall include information, to the extent that it can reasonably be obtained by the offeror, concerning the potential environmental impact of the standard.

§ 1105.10 CPSC contributions to the offeror's cost of developing recommended standards.

(a) The Commission, in accepting an offer, may agree to contribute to the offeror's cost in developing a recommended consumer product safety standard in any case in which the Commission determines:

(1) That a contribution is likely to result in a more satisfactory standard than would be developed without a contribution; and

(2) That the offeror is financially responsible.

(b) In order to be eligible to receive a financial contribution, the offeror, in addition to furnishing the information required under § 1105.6, must submit:

(1) A request for a specific contribution with an explanation as to why the contribution is likely to result in a more satisfactory standard than would be developed without a contribution;

(2) A statement asserting that the offeror will employ an adequate accounting system (one in accordance with generally accepted accounting principles) to record standard development costs and expenditures; and

(3) A request for an advance payment of funds if necessary to enable the offeror to meet operating expenses during the development period.

(c) The Commission, in publishing the terms of the accepted offer, shall include a statement of the purpose and amount of the Commission's contribution.

(d) The offeror whose offer has been accepted shall, for a period of three years after final payment under the development agreement, maintain records which fully disclose the total cost and expenditures for the project and such other records which will facilitate an effective audit. The Commission and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access, for the purpose of audit and examination, to any books, documents, papers, and records relevant to the development of the recommended standard or to the expenditure of any contribution of the Commission for the

development of the recommended standard.

(e) The Commission, based upon a finding after an informal hearing that all or part of the Commission's contribution has been or is being misused, may seek reimbursement of that part of the contribution which has been or is being misused and shall have the right, after providing due notice, to terminate the development agreement and to discontinue payments towards the contribution. For the purpose of this Part 1105, "misuse of a contribution" means a use other than that agreed upon in writing by the parties.

(f) The items of cost toward which the Commission may contribute are those allowable direct and indirect costs allocable to the development project (as set forth in the applicable subparts of Part 1-15 of the Federal Procurement Regulations (41 CFR Part 1-15)). The Commission may contribute to the costs of assuring adequate consumer participation in the development of the standard. The Commission may make its contribution in advance and without regard to section 3648 of the Revised Statutes of the United States (31 U.S.C. 529).

(g) The items of cost toward which the Commission will not contribute include:

(1) Costs for the acquisition of any interest in land or buildings (however, the Commission may contribute toward the lease or rental of land or buildings);

(2) Costs for the payment of salaries in excess of the salaries paid by the offeror to individuals at the time immediately preceding the offer, except for longevity and other routine increases which may accrue during the development of the standard;

(3) Costs for the payment of items in excess of the offeror's actual cost;

(4) Costs for items having a usable lifespan in excess of the developmental period, except that a contribution may be made toward the proportionate value of the item during the development period determined by subtracting the item's estimated market value at the termination of the development period from the actual acquisition cost (the cost of items purchased by the Commission under § 1105.8(g) cannot be included in the Commission's contribution); and

(5) Costs determined not to be allowable under generally accepted accounting principles and practices or Part 1-15, Federal Procurement Regulations (41 CFR Part 1-15).

(h) Offerors who have received contributions from the Commission shall submit to the Commission a full accounting of these contributions and shall remit within 60 days after the

offeror submits the recommended standard all amounts not expended during the development of the recommended standard.

§ 1105.11 CPSC publication of proposed standards based on recommended standards.

(a) The Commission will normally publish a proposed standard within 45 days after the development period ends. The development period is the time the Commission allots for the offeror of an accepted offer to develop and submit to the Commission a recommended standard, and for the Commission staff to make any necessary revisions to the recommended standard and to prepare it for publication as a proposed standard. The Commission will specify the time periods in the Federal Register notices beginning a proceeding and accepting an offer to develop a recommended standard. The Commission may extend the development period by publishing a notice in the Federal Register announcing the extension(s) and providing reasons for the extension(s).

(b) If the Commission does not publish a proposed standard within 45 days after the specified development period, the Commission shall either (1) publish a Federal Register notice ending the proceeding or (2) publish a Federal Register notice stating the reasons for not publishing the proposed standard and specifying the time period within which the Commission will publish the proposed standard or will publish a notice ending the proceeding. For any good reason, the Commission may extend the time within which it will publish a proposed standard or end the proceeding. The reasons may include that the Commission is considering other approaches (such as a voluntary safety standard) to eliminate or reduce the unreasonable risk of injury that is the subject of the proceeding.

Subpart C—Development of Proposed Standards by the Commission

§ 1105.15 When CPSC may develop standards itself; procedures to be followed.

(a) The Consumer Product Safety Act authorizes the Commission to develop a proposed consumer product safety standard itself in the following five circumstances:

(1) Whenever it determines that it is more expeditious to develop a proposed standard itself without inviting offers to develop a recommended standard;

(2) When the Commission has published a notice inviting offers and does not, within 30 days after the date of

publication of the notice, accept an offer;

(3) If the Commission has accepted an offer to develop a recommended standard and the recommended standard has not been submitted to the Commission during the specified period for developing the recommended standard;

(4) If no offeror whose offer was accepted is making satisfactory progress in the development of the recommended standard; or

(5) If the sole offer accepted is from a manufacturer, distributor, or retailer of the consumer product proposed to be regulated.

(b) The Commission will use the following procedures in developing a proposed standard itself for each of the five circumstances:

(1) In cases where the Commission decides to develop a proposed standard itself without using the offeror process (§ 1105.15(a)(1)) the Commission will use the procedures in this Subpart C.

(2) Whenever the Commission has begun the development process by inviting offers to develop a recommended standard but has not accepted an offer (§ 1105.15 (a)(2)) the Commission will use the procedures in this Subpart C. However, the Commission need not publish a Federal Register notice of intent to develop a standard or a notice beginning a proceeding to develop a standard, as required in §§ 1105.16 and 17. Instead, the Commission will publish a notice in the Federal Register announcing (i) that no offer was accepted, (ii) that the Commission will develop the proposed standard itself, and (iii) the timetable for the remainder of the development proceeding and the method for interested persons to participate with the Commission in the development effort.

(3) In the remaining three situations where the Commission develops a proposed standard itself only after an offeror process has been used (§ 1105.15(a)(3) and (a)(4)) or an offeror process is being used (§ 1105.15(a)(5)), the Commission will use procedures it deems reasonable and appropriate. The Commission will publish a notice in the Federal Register announcing its decision to develop the proposed standard and stating the procedures it will use.

§ 1105.16 Statement of Commission Intent to develop a proposed standard.

(a) The Commission shall develop a proposed standard itself without first inviting offers to develop a recommended standard whenever it determines that it is more expeditious

for the Commission to follow this procedure to develop a standard that adequately protects the public from the identified risks of injury than to use the offeror process. The Commission shall consult with any interested parties it deems necessary before it makes its determination and it shall publish in the Federal Register a notice of its intent to develop the standard in this way. The Federal Register notice shall give interested persons 30 days to submit written comments on the determination. The Commission shall consider those comments before developing a proposed standard itself.

(b) The Federal Register notice of intent shall:

(1) Include a statement that the Commission itself intends to develop a proposed consumer product safety standard and specify the period of time in which it intends to develop the standard; and

(2) Include a determination that it is more expeditious for the Commission itself to develop a proposed standard that adequately protects the public from the identified risk of injury than to use the offeror process. In making this determination, the Commission shall consider:

(i) The nature of the risk of injury associated with the product;

(ii) The expertise of the Commission with respect to the risk of injury;

(iii) The expertise of the Commission in developing consumer product safety standards as well as that of persons or groups outside the Commission, including the comparative ability of the Commission and those outside persons or groups to translate technical results into understandable, enforceable standards; and

(iv) The resources available to the Commission and the priorities established by the Commission.

(c) In its discretion, the Commission may publish a notice of intent to develop a proposed standard itself before any notice beginning the development proceeding is published, or, it may combine the two notices. If the notice of intent is published before the notice beginning the development proceeding, however, the Commission shall begin the development proceeding as soon as practicable, or publish a notice in the Federal Register stating the reasons for any delay and estimating the time in which the proceeding will begin.

§ 1105.17 Beginning the proceedings for CPSC to develop proposed standards.

(a) If the Commission determines to develop a proposed consumer product safety standard itself (instead of using

the offeror process) it shall begin the proceeding by publishing a notice in the Federal Register that includes the following:

(1) A statement that the Commission itself intends to develop a proposed standard without using the offeror process. This statement shall be in accordance with § 1105.16 and need not be repeated in detail if it has been published separately before the notice beginning the proceeding has been published; and

(2) The Commission shall also specify the development period. The development period is the time the Commission allots to develop the provisions of a proposed standard and to prepare the standard for publication as a proposed standard.

(b) The Federal Register notice shall also:

(1) Identify the product and clearly describe the nature of the risk of injury associated with the product;

(2) State the Commission's preliminary determination that a consumer product safety standard is necessary to eliminate or reduce the specified unreasonable risk of injury;

(3) Include information with respect to any existing domestic, foreign or international standard known to the Commission which may be relevant to the proceeding, including information as to any deficiencies that the Commission recognizes in each identified standard that may make it not totally acceptable as a proposed standard;

(4) Provide information concerning the availability of Commission material relating to: (i) the specific nature of the risks of injury associated with the product, (ii) the basis for the Commission's determination concerning the need for a mandatory standard; and (iii) additional information relating to the development of the proposed standard by the Commission which may be helpful to potential participants;

(5) Include an invitation for any standards-writing organization, trade association, consumer organization, technical or professional society, testing laboratory, university or college department, wholesale or retail organization, Federal, State, or local government agency, engineering or research and development establishment, ad hoc association, or any company or person within 30 days after the date of Federal Register publication of the notices to submit to the Commission an existing standard as the proposed consumer product safety standard.

(6) Invite interested persons (including individual consumers, consumer

organizations, manufacturers, distributors, retailers, importers, trade associations, professional and technical societies, testing laboratories, Federal and State agencies, and educational institutions) to participate with the Commission in the development of the standard; and

(7) Describe the method whereby interested persons may participate in the development of the standard, either in person or through correspondence. This shall include an explanation of the availability of Commission financial contributions to participants.

(c) The Commission, for the purpose of providing greater public awareness of its actions, will issue a press release concerning the beginning of the proceeding during which it will itself develop the proposed standard. The press release will summarize the information contained in the Federal Register notice, including the invitation to any interested person or organization to participate with the Commission in the development of the proposed standard.

(d) The Commission will transmit a copy of the Federal Register notice, press release, and other relevant documents to appropriate persons and organizations, on a list maintained by the Commission, that have expressed an interest in participating with the Commission in the development of standards.

§ 1105.18 CPSC development of proposed standards.

(a) The Commission shall allow the public to participate with it in the development of a proposed standard.

(b) The Commission shall specify in detail in the Federal Register notice beginning each proceeding the method by which interested persons may participate with the Commission in developing the proposed standard.

(c) The procedures at a minimum, shall provide an opportunity for written comment from participants before the Commission staff submits a draft proposed standard to the Commission. The procedures may also provide participants with the opportunity to participate orally.

(d) The Commission staff shall fully consider all comments timely received and shall provide an analysis of the comments timely received and shall provide an analysis of the comments to the Commission with a recommended proposed standard.

(e) The Commission shall make the final decision on the provisions of any proposed standard.

(f) The Commission shall maintain complete written records of the development of the proposed standard. These records shall include:

(1) The names, addresses, and titles, if any, of all persons contacting the Commission and Commission staff for the purpose of participating in the development of the proposed standard;

(2) All written comments and any other information submitted by any person in connection with the development of the proposed standard, including the dissenting views of participants and comments and information with respect to the need for the standard;

(3) A discussion describing the bases for resolution by the Commission of all of the substantive issues raised during the development of the proposed standard;

(4) A statement of the economic and environmental factors considered during the development of the proposed standard; and

(5) Records of all other matters relevant to the development and evaluation of the proposed standard. The Commission will make these records available for public inspection and will supply copies upon request, subject to the provisions of its regulations relating to the availability of Commission records (16 CFR Part 1015).

(g) The Comptroller General of the United States or any of its duly authorized representatives shall have access, for the purpose of audit and examination to any books, documents, papers, and records relevant to the development of the proposed standard or to the expenditure of any contribution of the Commission for the development of such proposed standard.

§ 1105.19 CPSC contributions to costs of participants in the development of proposed standards.

(a) The purpose of this section is to encourage and insure representation of various viewpoints when the Commission develops a proposed standard itself by providing for Commission contributions to the cost of an individual, a group of individuals, a public or private organization or association, partnership or corporation (hereinafter "participant") who participates with the Commission in developing standards. The provisions of this section do not apply to and do not affect the Commission's ability and authority to contract with persons or groups outside the Commission to aid the commission in developing proposed standards.

(b) The Commission may, in developing a proposed standard itself, agree to contribute to the cost of a participant who participates with the Commission in developing a proposed standard in any case in which the Commission determines:

(1) That a contribution is likely to result in a more satisfactory standard than would be developed without a contribution; and

(2) That the participant to whom a contribution is made is financially responsible.

(c) In considering whether a contribution is likely to result in a more satisfactory standard, the Commission shall consider (i) the need for representation of one or more particular interests, expertise, or points of view in the development proceeding, and (ii) the extent to which particular interests, points of view, or expertise can reasonably be expected to be represented if the Commission does not provide any financial contribution.

(d) In order to be eligible to receive a financial contribution, a participant must request in advance a specific contribution with an explanation as to why the contribution is likely to result in a more satisfactory standard than would be developed without a contribution. The request for a contribution shall contain, to the fullest extent possible and appropriate, the following information:

(1) A description of the point of view, interest and/or expertise that the participant intends to bring to the proceeding;

(2) The reason(s) that representation of the participant's interest, point of view, or expertise can reasonably be expected to contribute substantially to a full and fair determination of the issues involved in the proceeding;

(3) An explanation of the economic interest, if any, that the participant has (and individuals or groups comprising the participant have) in any Commission determination related to the proceeding;

(4) A discussion, with supporting documentation, of the reason(s) a participant is unable to participate effectively in the proceeding without a financial contribution;

(5) A description of the participant's employment or organization, as appropriate; and

(6) A specific and itemized estimate of the costs for which the contribution is sought.

(e) Applications must be submitted to the Office of the Secretary, 1111 18th Street, NW., Washington, D.C. 20207, within the time specified by the Commission in its Federal Register

notice beginning the development proceeding.

(f) The Commission may authorize a financial contribution only for participants who meet all of the following criteria:

(1) The participant represents a particular interest, expertise or point of view that can reasonably be expected to contribute substantially to a full and fair determination of the issues involved in the proceeding;

(2) The economic interest of the participant in any Commission determination related to the proceeding is small in comparison to the participant's costs of effective participation in the proceeding. If the participant consists of more than one individual or group, the economic interest of each of the individuals or groups comprising the participant shall also be considered, if practicable and appropriate; and

(3) The participant does not have sufficient financial resources available for effective participation in the proceeding, in the absence of a financial contribution.

(g) The Commission may establish a limit on the total amount of financial compensation to be made to all participants in a particular proceeding and may establish a limit on the total amount of compensation to be made to any one participant in a particular proceeding.

(h) The Commission shall compensate participants only for costs that have been authorized and only for such costs actually incurred for participation in a proceeding.

(i) The participant shall be paid upon submission of an itemized voucher listing each item of expense. Each item of expense exceeding \$15 must be substantiated by a copy of a receipt, invoice, or appropriate document evidencing the fact that the cost was incurred.

(j) The Commission shall compensate participants only for costs that it determines are reasonable. As guidelines in these determinations, the Commission shall consider market rates and rates normally paid by the Commission for comparable goods and services, as appropriate.

(k) The Commission may compensate participants for any or all of the following costs:

(1) Salaries for participants or employees of participants;

(2) Fees for consultants, experts, contractual services, and attorneys that are incurred by participants;

(3) Transportation costs;

(4) Travel-related costs such as lodging, meals, tipping, telephone calls; and

(5) All other reasonable costs incurred, such as document reproduction, postage, baby-sitting, and the like.

(l) The Commission may make its contribution in advance upon specific request, and the contribution may be made without regard to section 3648 of the Revised Statutes of the United States (31 U.S.C. 529).

(m) The items of cost toward which the Commission will not contribute include:

(1) Costs for the acquisition of any interest in land or buildings;

(2) Costs for the payment of items in excess of the participant's actual cost; and

(3) Costs determined not to be allowable under generally accepted accounting principles and practices or Part 1-15, Federal Procurement Regulations (41 CFR Part 1-15).

(n) The Commission and the Comptroller General of the United States, or their duly authorized representatives, shall have access for the purpose of audit and examination to any pertinent books, documents, papers and records of a participant receiving compensation under this section. The Commission may establish additional guidelines for accounting, recordkeeping, and other administrative procedures with which participants must comply as a condition of receiving a contribution.

§ 1105.20 CPSC publication of proposed standards developed by the Commission.

(a) The Commission will normally publish a proposed standard within 45 days after the development period ends. The development period is the time the Commission allots to develop the provisions of a proposed standard and to prepare the proposed standard for publication. The Commission will specify the time periods in the Federal Register notice beginning a proceeding for a Commission developed standard. The Commission may extend the development period by publishing a notice in the Federal Register announcing the extension(s) and providing reasons for the extension(s).

(b) If the Commission does not publish a proposed standard within 45 days after the specified development period, the Commission shall either (1) publish a Federal Register notice ending the proceeding, or (2) publish a Federal Register notice stating the reasons for not publishing the proposed standard and specifying the time period within

which the Commission will publish the proposed standard or will publish a notice ending the proceeding. For good reason, the Commission may extend the time within which it will publish a proposed standard or end the proceeding. The reason may include the fact that the Commission is considering other approaches (such as a voluntary consumer product safety standard) to eliminate or reduce the unreasonable risk of injury that is the subject of the proceeding.

Subpart D—Use of Existing Standards as Proposed Standards

§ 1105.25 Submission of existing standards to CPSC as recommended standards.

(a) Whenever the Commission under section 1105.5(a)(3), has invited any person or organization to submit to the Commission an existing standard as either the proposed consumer product safety standard or an offer to develop a recommended standard, any standards-writing organization, trade association, consumer organization, professional or technical society, testing laboratory, university or college department, wholesale or retail organization, Federal, State, or local government agency, engineering or research and development establishment, ad hoc association, or any company or person may submit to the Commission an existing standard that contains safety-related requirements which the person or organization believes would be adequate to prevent or reduce the unreasonable risks of injury associated with the product identified by the Commission.

(b) Any submission of an existing standard should:

(1) To the extent possible, meet the requirements for standards developed by offerors contained in § 1105.9 as specified in each notice of proceeding;

(2) Identify the specific portions which are appropriate for inclusion in the proposed rule; and

(3) Be accompanied, to the extent that such information is available, by a description of the procedures used to develop the standard and a listing of the persons and organizations that participated in the development and approval of the standard.

§ 1105.26 CPSC publication of proposed standards based on existing standards.

(a) The Commission may publish as a proposed consumer product safety standard (i) an existing standard submitted under section 1105.25 in response to a Federal Register notice soliciting the submission of offers to

develop a standard or the submission of existing standards for use as a proposed standard or (ii) any standard issued, adopted, or proposed by any Federal department or agency (other than the Commission) or by any other qualified agency, organization, or institution.

(b) The Commission may publish standards described in (a)(ii) as a proposed standard without publishing a Federal Register notice soliciting the submission of existing standards.

(c) In order to publish a standard described in (a) as a proposed rule, the Commission must preliminarily determine that the standard, if issued in whole, in part, or in combination with the whole or part of another such standard, would eliminate or reduce the unreasonable risk(s) of injury associated with a consumer product.

(d) The Commission may publish a standard as a proposed rule under this section either in whole, in part, or in combination with the whole or part of another such standard. The Commission, in publishing such a standard as a proposed rule, may make any nonmaterial modifications it believes are necessary and appropriate.

(e) The Commission may publish a standard as a proposed rule under this section either (i) instead of accepting an offer to develop a standard submitted in response to the notice described in § 1105.5 or (ii) instead of beginning a proceeding described in Subparts B and C of this Part 1105 to develop a standard.

Dated: August 14, 1979.

Robert C. Blesdoe,

Acting Secretary Consumer Product Safety Commission.

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