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PART III

CONSUMER PRODUCT SAFETY COMMISSION

■

CONSUMER SAFETY STANDARDS

Requirements and Procedures

Title 16—Commercial Practices

CHAPTER II—CONSUMER PRODUCT SAFETY COMMISSION

SUBCHAPTER B—CONSUMER PRODUCT SAFETY ACT REGULATIONS

PART 1105—SUBMISSION OF EXISTING STANDARDS; OFFERS TO DEVELOP STANDARDS; AND THE DEVELOPMENT OF STANDARDS

Consumer Product Safety Standards; Requirements and Procedures

In the FEDERAL REGISTER of January 4, 1974 (30 FR 1152), and pursuant to section 7 of the Consumer Product Safety Act (15 U.S.C. 2056), the Consumer Product Safety Commission proposed regulations (16 CFR Part 1105) covering (1) the submission of existing standards to CPSC, (2) the submission to CPSC of offers to develop consumer product safety standards, and (3) the actual development of consumer product safety standards by organizations or individuals whose offers have been accepted by CPSC. Also proposed were requirements for cost contributions by CPSC toward the development of standards. The proposal invited interested persons to submit comments on or before February 4, 1974.

In response to the proposal, comments were received from the Air-Conditioning and Refrigeration Institute; American Institute of Architects; American National Standards Institute; American Society of Association Executives; American Society for Testing and Materials; Association of Home Appliance Manufacturers; Mr. Bruce I. Bertelsen, Prof. Joseph A. Page, and Ms. Nancy Southard of the Georgetown University Law Center; Borden, Inc.; Carpet and Rug Institute; Consumers Union of United States, Inc.; Mr. John T. Crandall; Mr. Arnold B. Elkind; Gas Appliance Manufacturers Association; Glass Container Manufacturers Institute, Inc.; Lehn & Fink Products Co., Division of Sterling Drug, Inc.; Massachusetts Public Interest Research Group; Montgomery Ward; Representative John E. Moss; National Association of Manufacturers; National Electrical Manufacturers Association; National LP-Gas Association; National Retail Merchants Association; National Swimming Pool Institute; Ohio Match Co., Subsidiary of Hunt-Wesson Foods, Inc.; Personal Safety Systems; Power Tool Institute; RCA Corp.; Sears, Roebuck & Co.; Mr. C. A. Swanson; Underwriters' Laboratories, Inc.; and Wheel Estates.

The principal issues raised by the comments and the Commission's conclusions thereon are as follows: Significant changes resulting from comments received and/or from Commission evaluations are discussed.

1. *Objectives of the act.* Proposed § 1105.1(b), regarding general policy considerations, states in part, "One of the major objectives of the Consumer Product Safety Act is to reduce unreasonable risks of injury associated with the use of consumer products by developing 'consumer product safety standards' for those products."

A comment notes that consumer product safety standards are only one of the tools available to the Commission in reducing unreasonable risk of injury and suggests adding at the end of the first sentence of proposed § 1105.1(b) the phrase "where necessary to eliminate or reduce the risk of injury."

The Commission agrees that promulgating mandatory standards is not the only means provided by the act for reducing or eliminating unreasonable risks of injury. To better express this fact, sec. 1105.1(b) has been revised to provide that the objectives of the act may be achieved through the development and promulgation of mandatory standards where they are considered necessary to eliminate or reduce the risk of injury.

2. *Description of consumer product safety standard.* A comment suggests that the description of "consumer product safety standard" in proposed § 1105.1(b) is not consistent with the act and with the description in proposed § 1105.8(b).

The Commission agrees that the description of "consumer product safety standard" should be consistent whenever it is used in these procedures and that the description should follow the congressionally established description. The Commission has therefore conformed the description of "consumer product safety standard" in §§ 1105.1(b) and 1105.8(b).

3. *Participation by the public.* a. A number of comments are directed toward the practicality and reasonableness of the Commission's policy of providing for the participation of any and all interested persons in the development of standards.

The Commission provided in proposed § 1105.5(a) that interested persons could participate in one of two levels of activity, "either in person or through correspondence." To clarify more fully the position of the Commission on participation by all interested persons, the Commission has, in § 1105.5(b)(1), provided for the identification by the offeror of the number and experience of the individuals the offeror intends to be directly involved (in person) in the development of standards. Others, including all of those persons who have requested the opportunity to participate in the development of the standard, will be able to contribute by corresponding directly with the offeror and conveying any information relating to hazardous product experiences or any suggestions relating to the scope and coverage of the standard. Additionally, § 1105.7(b) provides that the offeror shall send to all participants a copy of the draft standard developed by the offeror so they may review the draft standard and provide any comments on it with respect to its adequacy or effectiveness in reducing the unreasonable risks of injury.

b. Two comments question the offeror's being responsible for giving notice to individual consumers to participate in the standards development process. One addresses the need for the Commission to provide adequate notice. While the Commission accepts some of this re-

sponsibility, it recognizes that the act specifically charges the offeror with the responsibility for providing notice and opportunity for interested persons to participate in the development of standards. The Commission, in § 1105.5(a)(2), requires the offeror to develop and implement a specific plan to provide such participation.

c. In order to encourage and facilitate the participation of the public in the standards development process, the Commission, in response to another comment, has provided in § 1105.6(e) for the maintenance of a list of all persons and organizations expressing an interest in participating in the development of standards. Further, the Commission has provided in § 1105.6(f) for the transmission of a copy of the FEDERAL REGISTER notice of proceeding as well as the FEDERAL REGISTER notice of acceptance of any offer to appropriate persons and organizations on that list.

4. *Ultimate consumers.* Proposed § 1105.1(d) expresses the general policy that all interested persons, including the general public and especially ultimate consumers, are encouraged to become involved in the development of standards as offerors and participants.

Several comments object to the stress placed upon the involvement of ultimate consumers. One suggests removing this stress by placing emphasis on the involvement of qualified representatives of affected industries as well as ultimate consumers. Another suggests eliminating the word "especially" and adding the words "technical groups" after the words "interested persons".

The Commission reaffirms its policy that ultimate consumers are to be especially encouraged to become involved in the development of standards. This does not mean, however, that other persons and groups with experience and expertise are not needed or are not encouraged to participate. Accordingly, no change has been made in § 1105.1(d) regarding the importance of ultimate consumers in standards development proceedings.

5. *Ad hoc associations.* Proposed § 1105.5(c) provides for the submission of an offer by an individual member on behalf of the members of an ad hoc association which may be accepted after the Commission receives a notarized copy of a power of attorney from each member of the association authorizing the individual member to submit an offer.

Several comments express concern that ad hoc associations may not be technically competent or sufficiently well organized to develop a standard. Several of these comments suggest strengthening the requirements for ad hoc associations by emphasizing that the technical competency requirements apply to them or by requiring that ad hoc associations provide organizational documents and assurances that the association will be capable of completing the development of a standard.

One comment suggests that the procedures for power of attorney appear more onerous than is necessary and

questions whether a power of attorney is also necessary to enable an association to participate in the development of a standard by another offeror.

The concept of ad hoc associations has been introduced in these regulations to facilitate the development of standards by new or loosely formed groups. Although such groups must be capable of demonstrating competence prior to the acceptance of an offer, the Commission concludes that the procedures as proposed relating to ad hoc associations should not be made either more or less restrictive. The power of attorney requirements apply only to the submission of offers and not to participation in the development of a standard by another offeror. The power of attorney is necessary to help ensure that the person with whom the Commission is dealing is authorized to act for the other persons in the association. This requirement would become especially important in the event the Commission agrees to make a contribution toward the cost of the standards development.

In response to a comment, § 1105.5(c) has been clarified by deleting the phrase "Prior to acceptance of an offer from an ad hoc association," from the last sentence.

6. *Existing standards.* a. Several comments object to the requirement of proposed sec. 1105.4(b)(1) that existing standards submitted for consideration as proposed consumer product safety standards meet all of the requirements for standards developed by offerors.

The Commission agrees that this requirement is too broad and has revised § 1105.4(b)(1) to state that each notice of proceeding will establish the specific requirements for existing standards.

b. Several comments object to the requirement in proposed § 1105.4(b)(2) that the submission of an existing standard be accompanied 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.

The regulation (now § 1105.4(b)(3)) has been changed by adding the phrase "to the extent that such information is available" after the word "accompanied."

c. One comment suggests that § 1105.4 be changed to permit the submission of portions of existing standards.

In the Commission's view, existing standards should be submitted in their entirety. A provision has been added (now § 1105.4(b)(2)) to require the person submitting the existing standard to identify the portions that are appropriate for inclusion in the consumer product safety standard.

d. One comment suggests requiring that an existing standard be submitted with an evaluation of all comments received during its development.

The Commission concludes that such information would be of questionable usefulness and therefore declines to adopt the suggestion.

e. Regarding proposed § 1105.3(a)(3), one comment suggests that when the

Commission publishes information with respect to an existing standard that it include an evaluation of the existing standard.

Section 1105.3(a)(3) has been changed to state that the Commission will include information respecting any deficiencies in the existing standard that would make it not totally acceptable as a mandatory standard.

f. One comment suggests deleting the reference to "foreign" standards from proposed § 1105.3(a)(3). The commentor fears that foreign standards will not be suitable for domestic producers. The commentor suggests that while they may be studied during development, they should not be made mandatory unless great care is exercised.

The Commission concludes that since foreign standards will be subject to the same scrutiny and evaluation as other standards, no change is necessary.

g. In response to a comment noting that the Commission may decide both to publish an existing standard and accept an offer to develop a standard for the same consumer product, proposed § 1105.6(a) (now § 1105.6(a)(1)) has been changed to state that the Commission may accept one or more offers to develop a standard 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."

Additionally, for completeness, paragraph (c) has been added to § 1105.4 to prescribe the conditions under which the Commission may publish an existing standard as a proposed consumer product safety standard in lieu of accepting an offer to develop a standard.

h. In response to a comment noting that an existing standard may be submitted by anyone, the third sentence of proposed § 1105.2 has been changed by deletion of the word "their" between the words "submit" and "existing." The purpose of this change is to indicate that persons do not need to have a proprietary interest in the existing standard in order to submit it.

i. In response to a comment which notes that the Commission is not required to find that there is no acceptable existing standard before it can accept an offer to develop a standard, proposed § 1105.1(c) has been changed by deleting the phrase "If the Commission determines that there is no acceptable existing standard" from the third sentence. This change is consistent with the change indicated for § 1105.6(a) (mentioned in "g" above) and also reflects the fact that the Commission may decide to both publish an existing standard and accept an offer to develop a standard for different risks associated with the product. The third sentence of proposed § 1105.1(c) has also been amended by deleting the word "new" between the words "a" and "standard" to indicate that the standard developed

by the offeror may be a modification of an existing standard and may not be entirely "new."

7. *Development period.* a. Several comments object to the sentence contained in proposed § 1105.1(h) which reads "The Commission believes, however, that as a general rule, the public interest is best served by the development of standards in the shortest possible time." The comments contend that this phrase places an undue emphasis on speed as opposed to the development of an effective and workable standard.

The Commission did not intend to imply that speed was the single most important factor in the development of a standard. The sentence (now contained in § 1105.1(i)) has been revised to reflect this policy as follows: "The Commission believes, however, 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 this Part 1105."

b. Proposed §§ 1105.2 and 1105.6(a) provide that the Commission will normally accept one or more offers to develop a standard within 60 days after publication of the notice of proceeding. Several comments object to this provision because it encroaches on the already short 150-day statutory period for the development of standards and could leave as few as 90 days to develop a standard.

Section 7(b) of the act states in part that "An invitation [to offer to develop the proposed consumer product safety standard] shall specify a period of time during which the standard is to be developed which shall be a period ending 150 days after the publication of the notice, unless the Commission for good cause finds (and includes such finding in the notice) that a different period is appropriate." Section 7(b)(4) of the act provides that the offer to develop a standard shall be submitted to the Commission within 30 days after the date of publication of the notice.

The Commission will certainly do all within its power to evaluate and accept offers within or soon after the 30-day period. The Commission concludes, however, that up to 30 additional days may be necessary to properly evaluate and accept offers. Since the act stipulates that the 150-day period shall begin when the notice of proceeding is published, the Commission is not free to change the starting date to the day offers are accepted. To compensate for the fact that this may leave as few as 90 days for the actual development of the standard (as opposed to the 120 days Congress apparently anticipated), the Commission provided in proposed § 1105.3(a)(6) (now (a)(7)) that the notice of proceeding shall specify the period of time during which the standard is to be developed and submitted to the Commission. Section 1105.1(i) states that the Commission will adopt a reasonable approach in determining the amount of time necessary to develop standards. If

necessary, the Commission may change the length of time for the development of the standard. This may be accomplished in accepting an offer as provided for in proposed § 1105.6(e)(2) (now § 1105.6(d)(2)), or by later extending the period for development if good cause is shown and the reasons for such extension are published in the *FEDERAL REGISTER*. To more accurately reflect the intent of the Commission, it is concluded that the regulations as proposed should not be changed in response to the comments received on this issue, except that §§ 1105.2 and 1105.6(a) have been changed to provide that the Commission will as soon as possible, usually within 60 days, accept one or more offers to develop a standard.

c. One comment suggests that proposed § 1105.2 be changed to state that extensions of time will not be granted except in extraordinary circumstances, that 60 days shall be the maximum time for the extension of a development period, and that the general public and participants in the standards development proceeding be given the opportunity to comment on the desirability of granting an extension.

While the Commission agrees that extensions should only be granted when necessary and desirable, the Commission does not agree that an arbitrary maximum is in the best interest of the public. There may be occasions when the granting of an extension of longer than 60 days would result in the completion of a standard in a shorter period of time than if the Commission were required to begin the process over or to proceed to develop a standard independently. After receiving a request for an extension, the Commission will certainly consider the views of persons having information pertinent to making the decision. However, the Commission does not agree that soliciting the views of the general public on this issue would be very helpful. Additionally, as a practical matter, the solicitation and evaluation of public comments could cause an undue delay in the development process since such solicitation of comments would, almost of necessity, require publication of the proposed extension and invitation for public comment in the *FEDERAL REGISTER*.

8. *Technical competence.* To implement section 7(d)(1) of the act, which provides for the acceptance of offers from technically competent offerors, several sections of these regulations were proposed to aid the Commission in determining whether offerors are technically competent to develop standards. Proposed § 1105.5(a) and (b), regarding the submission of offers, would require that certain information be provided the Commission by the offeror in submitting an offer. Proposed § 1105.6(a) established the factors the Commission would utilize in determining technical competence.

a. Several comments recommend changes in these sections which would specify the factors necessary for evaluating the offeror's technical competence in greater detail and would set forth minimum requirements, especially in the area

of actual technical experience with the product to be regulated.

Although the factors to be utilized in determining technical competence might be specified in greater detail, the Commission considers the regulations as proposed to be sufficient in this respect until such time as the Commission gains sufficient experience to know which factors should be specified. Specific product experience need not be emphasized in these regulations since an offeror, in developing a plan for the participation of interested persons, should be able to overcome any personal lack of product experience by demonstrating managerial ability to obtain participants with appropriate product experience. Also, the Commission intentionally established evaluation criteria without providing minimum requirements in order to provide a degree of flexibility which would not otherwise be possible.

b. Regarding proposed § 1105.5(b)(1), which requires a statement listing the number and occupations of the personnel the offeror intends to utilize in developing the standard, several comments suggest that the phrase "personnel the offeror intends to utilize" be expanded and broken down into specific types of individual groups.

The Commission agrees and this section has been revised to require that the offeror distinguish and specify the status of the individuals the offeror plans to directly involve in the development process. Further, the term "occupations" has been replaced with the term "experience" in this section to provide the Commission with more relevant information.

c. Regarding proposed § 1105.6(a), which states that one of the factors to be considered by the Commission in determining technical competence is that the offeror has provided a rational approach to the solution of that problem, one comment suggests the deletion of this provision and the addition of the following: "that the offeror has described a rational procedure for solving that problem." The comment argues that as written, this provision would require that the offeror indicate the substance of the standard to be developed, rather than simply the procedures for developing the standard.

The Commission concludes that the suggested change should not be made since an indication of the type of standard the offeror plans to develop may be as relevant to the issue of technical competence as the procedures to be utilized in developing a standard.

9. *Commission requirements for the development of standards.* Proposed § 1105.6(a), dealing with the acceptance of offers, provides in part that the Commission will accept one or more offers if it determines that the offeror will comply with all of the requirements of the Commission for the development of a standard.

One comment contends that this section falls to specify with sufficient detail the requirements for the development of standards in general. The comment also contends that by using the word "standard" in the singular in this portion of

the regulations, the Commission is stating that the development of each standard will be subject to a different set of requirements and that this is not in line with the statutory provisions of section 7 of the act.

The Commission, having considered the comment, concludes that a change in the regulations on this issue is unwarranted. The regulations in this part for the development of standards will apply to the development of all standards and are as detailed as is presently possible and desirable. The Commission chooses not to specify more detail at this time in order to provide a degree of flexibility and to gain experience in working with these regulations.

Regarding the issue of whether any Commission requirements for the development of a specific standard should be prescribed other than in these regulations, the Commission concludes that this may be necessary because of the diverse nature of the products under the Commission's jurisdiction and the different types of standards to be developed. Any additional requirements will, however, be stated in each notice of proceeding.

10. *Acceptance of more than one offer.* Proposed § 1105.6(a) states that the Commission will accept one or more offers to develop a standard. One comment suggests that more than one offer should be accepted only in unusual and urgent circumstances since some of the participants in the standards development process, particularly manufacturers, would then be forced to participate with two or more offerors and that this would waste time and money.

The Commission recognizes that it has no statutory duty to accept offers from more than one offeror and that in many instances, active participants representing the same entity would be present during the development by each of the several offerors. Where the Commission determines, however, that a better standard would be developed if there are multiple offerors, it will accept more than one offer. This may occur, for example, where multiple offerors are deemed necessary to cover all of the identified risks; to permit development with diverse and unique approaches; or to expand the probability of success. The Commission will not accept multiple offerors simply because it has received offers from more than one technically competent offeror.

11. *Notification of nonacceptance.* When the Commission has determined that an offer to develop a standard should not be accepted, the Commission shall, as provided by proposed § 1105.6(g), notify the offeror in writing of the fact that the offer has not been accepted.

Several comments suggest that this section be changed to provide for the Commission to also inform the offeror of the reasons for nonacceptance. One comment suggests that in addition to notifying individual offerors of the reasons for the nonacceptance of their offers, that the section be changed to provide for the notification to include a general description of the types of defects encountered in other unacceptable offers. This com-

ment contends that the adoption of this suggestion would encourage unsuccessful offerors to continue to submit offers in the future.

The Commission concludes that unsuccessful offerors should, when they so request, be informed of the reasons for the nonacceptance of their offers and has changed the regulation (now § 1105.6(f)) accordingly. However, the Commission does not view the requirement that it include a discussion of the reasons for the nonacceptance of other offers as serving a useful purpose and therefore does not adopt this suggestion. Copies of letters to unsuccessful offerors will be available under the Freedom of Information Act to anyone requesting access to such information.

12. *Modification of offers.* Proposed § 1105.6(b), regarding the acceptance of offers, states as follows: "In accepting an offer to develop a standard, the Commission may require a modification of the offer as a condition of acceptance." The purpose of this provision is to permit an offeror to modify an offer which would be acceptable only if certain changes were made first.

Several comments express the concern that this provision would permit the Commission to change the offer after it had been accepted.

To more accurately reflect the Commission's intent, this provision has been changed by deleting the word "in" and replacing it with words "prior to" and adding the word "minor" to qualify "modifications."

13. *Amending standards.* Several comments express concern over the fact that the proposed regulations fail to provide procedures for updating or amending standards once they have been issued and suggest that the final regulations include such procedures. Two comments suggest the establishment of a procedure whereby the offeror who developed the standard would be appointed on a continuing basis to monitor and update the standard.

The Commission concludes that the changes suggested should not be adopted in the final regulations since section 9(e) of the act provides that where an amendment to a standard involves a material change, sections 7 and 9 of the act apply. Therefore, where the Commission believes a material change is required, it will initiate a proceeding in the same manner as it would initiate a proceeding for the development of a new standard. Where the required change is not considered material, it will amend the standard by rule in accordance with the procedure specified in section 9(a)(2) of the act.

14. *Consumer complaint letters.* One comment suggests that the regulations be changed to require all manufacturers and distributors of consumer products to file with the Commission a copy of each letter received by the company alleging a safety defect in one of its products. The purpose of this suggested requirement would be to provide the developer of a standard with information relating to consumer experiences with the product.

In response to this comment, the Commission concludes that this requirement is not appropriate for inclusion in these rules. The notice of proceeding should adequately define the risks of injury to be regulated and the Commission will make information relevant to the analysis of the hazard available to the offeror. Additionally, a Commission press release will indicate that any interested person may communicate directly with the offeror.

15. *Testing programs.* Proposed § 1105.8(a) states that recommended standards submitted by the offeror shall, where the Commission considers it to be appropriate, contain testing programs and that testing programs, where the Commission considers it to be appropriate, shall include sampling plans.

Several comments object to the requirement that sampling plans be included with the standards for one or more of the following reasons: (1) because the requirement would dilute the incentive for an offeror to develop a reasonable and technologically practicable standard; (2) because it would be better to require testing programs under section 14 of the act which deals with product certification rather than under section 7; (3) because mandatory test programs would increase compliance costs for the manufacturer without materially improving the condition causing the defect; (4) because no one testing program can be appropriately used by all manufacturers of a product; (5) because the propriety of including testing programs and sampling plans is questionable under the act; (6) because the penalties in the act for non-compliance provide all the incentives necessary to assure that products conform to Commission standards; (7) because manufacturers should have a choice of methods to determine quality control; (8) because the development of sampling plans is beyond the expertise of many would-be offerors; and (9) because sampling plans can only be developed after a standard is completed and would require an undue amount of time. Several comments endorse the concept of requiring testing programs with sampling plans. One comment suggests adding a requirement that sampling plans be based on standard acceptable quality control levels as established by the American Society for Quality Control.

The Commission concludes that it is neither necessary nor appropriate to resolve the issue of the correctness of requiring offerors to develop testing programs, including sampling plans, in these regulations. Therefore, § 1105.8(a) now provides that recommended standards shall, if the Commission considers it to be appropriate, contain reasonable testing programs, including sampling plans. This section has, however, been changed to delete the definition of the term "sampling plans." The meaning of the term will be made clear if and when the Commission determines that a sampling plan should be part of a particular standard.

16. *Test methods.* Proposed § 1105.8(a) provides that recommended standards shall be submitted, where the Commission considers it appropriate, with suitable test methods for the measurement of compliance with proposed standards which are reasonably capable of being performed by persons subject to the act or by private testing facilities.

Several comments endorse the inclusion of the requirement for test methods. One comment suggests that, except in cases where a standard is written in terms of a specific test, the requirement be changed to provide that manufacturers shall not be precluded from using other suitable test methods.

17. *Test instruments or devices.* Proposed § 1105.7(g) provides that if the Commission determines that test instruments or devices are necessary for the evaluation of the standard, the Commission may require the offeror to sell the instrument or device to the Commission at the offeror's cost.

Three comments object to this provision as being an unreasonable forced sale and suggest that the submission of plans and specifications should be sufficient.

The Commission concludes that there may be occasions where prompt evaluation of the standard requires immediate access to the use of the test instrument or device. In such a case, the mere receipt of plans and specifications may not be sufficient. The regulation has been changed, however, to provide that where the offeror does not wish to sell the instrument or device to the Commission, it may loan the instrument or device to the Commission for use during the evaluation. It has also been changed to provide that in any circumstance, detailed descriptions or plans and specifications shall be submitted.

18. *Economic and environmental impact information.* Proposed § 1105.7(c)(4) would require the offeror to maintain and submit to the Commission records consisting of a statement of the economic and environmental factors considered during the development of the standard. Proposed § 1105.8(e) would require the offeror to submit to the Commission information demonstrating that compliance with the standard would be technologically practicable as well as information, where it can reasonably be obtained, on the potential economic and environmental impact of the standard.

One comment contends that the regulations should be revised to require the offeror to take into account the economic impact of a proposed standard. Several other comments argue that offerors should not be required to prove technological practicability or to prepare economic and environmental impact statements since this responsibility properly belongs to the Commission.

The Commission recognizes that it has the responsibility for ultimately determining the technological practicability in addition to the economic and environmental reasonableness of consumer product safety standards. However, in order for the recommended standard to

be one which would be promulgated, it is necessary for offerors to at least consider these factors and keep a record of the issues discussed. Therefore, the Commission concludes that the proposed sections of the regulations relating to these issues strike the proper balance and should not be changed.

19. *Circulation of draft standards for comment.* Regarding proposed § 1105.7, dealing with the development of recommended consumer product safety standards, subsection (b) states in part as follows: "The offeror, after considering all suggestions and contributions, shall draft a standard. The draft standard shall be sent to all participants and to other appropriate persons (including a representative number of manufacturers or wholesalers and importers of the product proposed to be regulated and consumers) for their review and concurrence. Unanimity among all participants and appropriate persons shall not be a prerequisite to the submission by the offeror to the Commission of a standard which, in the offeror's judgment, optimally meets the terms of the offer accepted by the Commission."

a. A comment suggests that since the cost of reproducing and distributing draft standards may be quite large, the regulations should be changed to specifically provide that the Commission will bear the cost of reproducing and distributing draft standards.

The Commission concludes that since § 1105.9 already provides the mechanism for making requests for cost contributions, a special provision in these regulations is not necessary.

b. A comment notes that the phrase "for their concurrence" (as used in proposed § 1105.7(b)) is inconsistent with the sentence following since the phrase implies that agreement is necessary.

The Commission agrees and has revised § 1105.7(b) to state "for their review and concurrence or nonconcurrence."

c. One comment contends that the language of proposed § 1105.7(b) implies that the offeror may not begin drafting a standard until all suggestions and contributions have been received and suggests that the language be revised to state that the offeror shall draft the standard prior to or concurrent with the receipt of comments and suggestions.

The Commission concludes that the suggested revision should not be made since prior unilateral drafting by the offeror could vitiate the impact of the participation procedures. However, the Commission does not view the language as proposed as preventing the offeror from proceeding through a series of early drafts.

d. Several comments concern the language of proposed § 1105.7(b) referring to the persons and organizations to whom the draft standard shall be sent for comment.

One comment suggests that the offeror only be required to submit the draft to proper representatives of all participants, not to all participants. Another comment makes a similar suggestion to

transmit the draft to representatives of the necessary interests as opposed to individuals.

The Commission concludes that the Congress intended all interested persons to have the opportunity to participate in the development of standards and that reviewing the draft standard is one opportunity to which they are entitled. Therefore, the proposed requirement for transmitting the draft standard to all participants is unchanged.

In response to the comments concerning review by representatives of the necessary interests including persons and organizations other than participants, the Commission concludes that the draft standard should be transmitted only to persons and organizations who have previously become participants. All other interested persons will have ample opportunity to express their views concerning the standard during the rulemaking procedures under section 9 of the act. The portion of § 1105.7(b) dealing with this has therefore been revised to read "The draft standard shall be sent to all participants for their review and concurrence or nonconcurrence."

20. *Evaluation of comments.* Proposed § 1105.7(c)(3) provides that each offeror must maintain written records of an evaluation by the offeror of all of the comments received by the offeror during the development of the standard.

Two comments suggest that this requirement is overly burdensome and would be counterproductive. One of the comments suggests deleting § 1105.7(c)(3) as proposed and rewriting it to state as follows: "A statement or evidence by the offeror that all of the comments received by the offeror during the development of the standard received fair and responsible consideration."

The Commission concludes that the statutory requirement for the opportunity for public participation in the development of standards requires that substantive issues raised in the comments be considered by the offeror and that the best evidence of offeror consideration is a record of the offeror's evaluation. Section 1105.7(c)(3) has, however, been changed to require that a record be maintained of "a discussion describing the basis for resolution by the offeror of all of the substantive issues raised during the development of the standard."

21. *Independent evaluations.* One comment expresses the opinion that while participation in the development of standards is to be expected by those having a monetary interest in the outcome, it may be difficult to achieve consumer participation. This comment suggests that until such time as an act is passed which provides an official consumer advocate, these regulations should contain a requirement for an independent evaluation by a private testing laboratory of each standard submitted by an offeror.

While the Commission recognizes that an independent evaluation may be necessary under certain circumstances, it sees no need to impose this obligation on it-

self in evaluating each and every standard submitted. Where deemed necessary, however, the Commission certainly will seek independent evaluations.

22. *Analysis of standard by the offeror.* Proposed § 1105.8(c) provides that "Each requirement of a standard [developed by an offeror] shall be supported by: (1) An analysis demonstrating that the requirement is reasonably necessary to prevent or reduce the unreasonable risks of injury identified in the notice of proceeding; and (2) a statement explaining why the requirement is in the public interest."

a. Two comments contend that references throughout these regulations and specifically in this section should not be made to "unreasonable risks of injury." It is argued that this determination requires a balancing of various factors and should not be made prior to the promulgation of the standard.

The Commission agrees that the final determination of whether the risks are unreasonable must be reserved until the promulgation proceedings when the Commission will have all the necessary facts before it. Since section 7 of the act directs that any requirement of a standard be reasonably necessary to prevent or reduce an unreasonable risk of injury associated with a product, and also directs that the notice of proceeding state the Commission's determination that a consumer product safety standard is necessary to eliminate or reduce the risk of injury, the Commission must preliminarily identify what it believes at the time to be unreasonable risks in order that the offeror's efforts will be directed only to risks which may be unreasonable. However, neither the Commission's initial identification of unreasonable risks of injury, nor the offeror's analysis referring to the risks as being unreasonable binds the Commission to the determination in instituting its promulgation proceedings. Ample opportunity will be afforded in these proceedings for interested persons to comment on and object to the Commission's determinations.

b. One comment suggests that proposed § 1105.8(c) be changed to provide that the offeror must present an "analysis" demonstrating that each requirement is in the public interest rather than a "statement." Another comment recommends that the public interest statement be required only for the entire standard and not for each requirement of the standard.

The Commission agrees with both comments and has revised § 1105.8(c) accordingly.

c. One comment questions whether the Commission will provide offerors with a hazard analysis demonstrating that the requirements are necessary.

The Commission cannot provide the offeror with an analysis demonstrating that the requirements are necessary since the Commission will not know what requirements will be developed by the offeror. The Commission will, however, make material available to the offeror relating to the risks of injury, the need for a standard, and any other information which may be helpful to the offeror.

This is provided for in § 1105.3(a)(4) of the final regulations.

23. *Proprietary information.* Proposed § 1105.7(c) provides for the maintenance by the offeror of certain records concerning the development of the standard.

One comment suggests that this section be changed to require the offeror to carefully identify confidential information. Another comment suggests adding a sentence to the end of paragraph (c) as follows: "Except that nothing in this subsection (c) shall be considered to require or permit the disclosure of trade secrets or other proprietary or private data otherwise prohibited by the Product Safety Act." The comment argues that this sentence is necessary since the act prohibits the disclosure of proprietary data.

The Commission recognizes its duty not to disclose trade secrets and other confidential information. However, certain material may be necessary for the Commission to properly evaluate the standard. Where the Commission receives such information which is legitimately entitled not to be disclosed, the Commission will not disclose it. A change in these regulations is not necessary since the closing text of proposed § 1105.7(c) (now part of § 1105.7(c)(5)) provides that the availability of information is subject to the restrictions contained in the Freedom of Information Act and the Consumer Product Safety Act. A change to require that all confidential information be carefully identified is also not necessary since the Commission's regulations under the Freedom of Information Act will set forth provisions relating to the submission of confidential information to the Commission.

24. *Monitoring by Commission employees; technical assistance by the Commission.* Proposed § 1105.7(a) provides that offerors whose offers have been accepted shall cooperate with Commission liaison personnel assigned to monitor the development of the standard.

One comment asks how the Commission plans to monitor the development process. Another comment suggests that the Commission provide technical assistance to offerors in developing standards, particularly those lacking technical expertise.

The degree of Commission participation in the developmental process, especially through the device of "monitoring," has been intentionally left unspecified in these regulations. This matter is such that only experience will enable the Commission to reach the proper balance between what could be termed interference and what could be termed lack of cooperation.

25. *Satisfactory progress.* a. Regarding proposed § 1105.7(d), which provides for the submission of progress reports to the Commission for the purpose of determining whether the offeror is making satisfactory progress, two comments suggest that requirements for the submission of progress reports be more clearly specified.

The Commission agrees and has revised § 1105.7(d) to specify monthly progress reports containing certain information.

b. One comment objects to the inclusion in proposed § 1105.7(d) of a provision for Commission inspection of the offeror's facilities and developmental activities.

In the Commission's view, this authority is necessary as an aid to the Commission in determining whether the offeror is making satisfactory progress in the development of the standard.

c. Two comments suggest that satisfactory progress should not, as stated in proposed § 1105.7(d), be measured solely by completion of the development of the standard by the end of the development period. One of these comments suggests that the regulations be changed to permit the Commission to extend the development period as an alternative to terminating the offeror's role in the development process (as provided for in proposed § 1105.7(e)) when the offeror is found not to be making satisfactory progress.

The Commission agrees that there may be circumstance where extending the development period would be preferable to terminating the offeror's role in the development process and has revised § 1105.7(e) accordingly.

26. *Termination of the development proceeding.* Proposed § 1105.7(f) provides that the development proceeding may be terminated if no offeror is making satisfactory progress and that the Commission may then independently develop a proposed standard or contract with third parties for the development of a proposed standard.

Several comments address the topic of Commission policies and procedures following termination of the development proceeding. The Commission concludes that a discussion of the course of action to be taken following termination is not an appropriate subject for coverage in these regulations. Section 1105.7(f) has therefore been changed to eliminate the phrase "or contract with third parties for the development of a proposed standard," since this option would remain available to the Commission irrespective of the fact that it is not specified in these regulations.

27. *Development of standards by the Commission.* Section 7(e) of the Act provides that, except under certain circumstances, the Commission may not independently develop a proposed consumer product safety rule. These circumstances are essentially as follows: (1) that having published a notice of proceeding, the Commission has not accepted an offer to develop a standard within 30 days of the date of publication of the notice; (2) that the sole offeror whose offer has been accepted is the manufacturer, distributor, or retailer of the consumer product proposed to be regulated; or (3) that the Commission has determined that no offeror whose offer was accepted is making satisfactory progress in the development of the standard. These circumstances are restated in proposed §§ 1105.6(d) and (f) and 1105.7(f).

a. One comment suggests that proposed § 1105.6(f) be changed to state as follows: "In any case in which the sole offeror whose offer is accepted is the manufacturer, distributor, or retailer of the consumer product proposed to be regulated by the consumer product safety standard, the Commission shall independently proceed to develop a proposed standard during the development period." (emphasis added)

The Commission concludes that the addition of this requirement is not desirable since it could force duplicative efforts in situations not requiring independent development by the Commission. Had Congress believed that the development of a standard by the manufacturer, distributor, or retailer of a product to be regulated was inherently not in the public interest, it could have required independent development by the Commission.

b. One comment suggests that a phrase be added to proposed § 1105.6(f) as follows: "and shall independently proceed to develop or acquire the technical capability necessary to properly evaluate the standards recommended to it."

The Commission concludes that the addition of this phrase is unnecessary since it implies that the Commission will only acquire the technical capability necessary to properly evaluate standards recommended to it when the sole offeror whose offer has been accepted is the manufacturer, distributor, or retailer of the product proposed to be regulated. The Commission will always prepare itself to evaluate recommended standards irrespective of the type of offeror developing the standard.

c. A comment recommends that proposed § 1105.6(f) be changed to add a statement to the effect that when the sole offer accepted is that of a trade association the Commission may not proceed to develop a proposed standard.

The Commission concludes that the suggested change is not appropriate.

d. Several comments suggest that when the Commission proceeds to independently develop standards, it should provide for public participation in the same manner as offerors are required to provide for public participation.

Since these rules are intended to prescribe the manner in which standards will be developed by offerors, and are not intended to regulate the independent development of standards by the Commission, the Commission concludes that it is not appropriate for these rules to address the procedures for the independent development of standards by the Commission itself. Proposed § 1105.1(a) has been changed to eliminate the implication that these rules will govern the independent development of standards by the Commission.

28. *Format of recommended standards.* Proposed § 1105.8(a) provides that recommended standards shall be submitted in the format prescribed by the Commission. Proposed § 1105.8(b) provides that a standard shall be written in a manner appropriate for use as a federal mandatory standard as specified in the format established by the Commission.

Two formats have been submitted to the Commission with the comments for consideration for use as the Commission's format. One comment notes that the offeror will need the format before undertaking the development work and suggests that the regulations be changed to require that the Commission format be published in the FEDERAL REGISTER with the notice of the acceptance of an offer.

The Commission agrees that an offeror should have the format before commencing the development of the standard and has changed § 1105.8(a) to provide that the format for each standard will be made available to the offeror on or before the acceptance of an offer.

29. *Contributions to the offeror's cost.* a. Proposed § 1105.9(h)(1) provides that the Commission will not contribute toward "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."

One comment objects to Commission contributions toward the lease or rental of land or buildings as a violation of the prohibitions established in section 7(d)(2) of the act.

No change in the regulations (now § 1105.9(g)(1)) is considered necessary with respect to this comment since the Commission interprets the statutory prohibition of contributions for the acquisition of land or buildings not to include payments for leases or rentals during the period of development. It is the view of the Commission that to construe the word "acquisition" to exclude contributions toward leases or rentals would not be consistent with the congressional intent for the Commission to provide assistance to consumer organizations or groups which are less likely to be able to bear the costs of standards development than are industrial trade organizations.

b. Another comment suggests that a provision be added to proposed § 1105.9(a) that the Commission may agree to contribute to the offeror's cost only in those cases in which the Commission determines that the offeror "has the technical competence and other capabilities provided in the statute and defined in these regulations." This comment contends that the criteria for contributions does not include the test of competence and will therefore not adequately protect the Commission, the public, or competing offerors.

The Commission concludes that no change in the regulations is warranted by this suggestion since Commission contributions are already subject to the acceptance of an offer from a technically competent offeror. This is provided for in § 1105.9(a), which states in part: "The Commission may, in accepting an offer, agree to contribute to the offeror's cost * * *."

c. One comment contends that the requirements for the submission of offers (§ 1105.5) are so formal that it would require considerable time and money to prepare an offer. The comment suggests that to encourage the submission of offers by consumer groups, the Commis-

sion should enter into agreements to reimburse the offeror for standards development costs based upon a "brief prospectus" rather than a formal offer.

The Commission concludes that the regulations should not be changed in response to this comment. The requirements established for the submission of offers are minimal. They contain only what the Commission believes to be essential for the proper evaluation of submitted offers.

d. One comment recommends that the regulations be revised to provide that offerors whose offers have been accepted as well as "good faith offerors" whose offers have not been accepted, be reimbursed for their costs in preparing offers. The purpose of this change would be to encourage the preparation of offers by those who might otherwise hesitate to do so.

The Commission is authorized by section 7(d)(2) of the act to contribute only to the offeror's cost in developing proposed consumer product safety standards. Since the act does not expressly authorize the Commission to reimburse offerors for the cost of preparing offers, the suggested change is not warranted.

e. One comment recommends that the regulations be revised to state that the amount of contribution requested shall have no bearing on the acceptability of an offer. The argument presented in support of this recommendation is that otherwise acceptable offers should not be rejected on the basis of the contribution requested and that the act does not authorize rejection on this basis.

The Commission agrees that the evaluation of an offer should not be affected by the amount of contribution requested by the offerors. However, the Commission does not feel it necessary to revise the proposed regulations to eliminate any consideration of the amount of the contribution requested from the decision to accept an offer.

f. Proposed § 1105.9(g) and (h) (now § 1105.9(f) and (g)) sets forth statements of items of cost toward which the Commission may contribute and items of cost toward which the Commission will not contribute. Included is a reference to the Federal Procurement Regulations, 41 CFR Part 1-15.

One comment suggests that since these regulations extend over 60 pages, the Commission should either specifically refer to the applicable sections or delete the reference to the procurement regulations.

The Commission gave consideration to developing a set of principles for determining allowable costs for which it would reimburse offerors developing standards. However, it is not known what costs can be anticipated in the course of developing a standard. Accordingly, it was decided to adopt an established set of cost principles. Although the cost principles in 41 CFR Part 1-15 are extensive, only a subset of those principles will apply to any one development agreement, depending on the type of organization that is developing the offer. For example, if a university is developing a standard, the subpart principles governing educa-

tional institutions would apply. The Commission therefore declines to adopt the suggestion.

g. Proposed § 1105.9(h)(2) (now § 1105.9(g)(2)) provides that the Commission will not contribute toward "costs for the payment of salaries in excess of the salaries paid by the offeror to individuals at the time immediately preceding the offer."

A comment suggests amending this section by adding that "the Commission will contribute toward the salary costs of an offeror at the time that the offer is made, to pay longevity, overtime, or other routine increases to its personnel during the course of development of the standard, and will contribute toward the salaries of new employees or consultants hired by the offeror to aid in the development of the standard."

The Commission agrees that part of the suggestion has merit and has revised the subsection to provide an exception for the payment of longevity and other routine increases to individuals which may accrue during the development of the standard. The Commission does not agree to include contributions toward overtime since the offeror should schedule the development of the standard without planning on overtime. Any work during overtime hours will normally be the offeror's responsibility. It is not considered necessary to revise the subsection to allow for the payment of the salaries of new employees or consultants since the language of the subsection does not now prohibit this.

h. A comment suggests that the regulations be revised to specifically provide for the Commission to contribute toward the offeror's costs when the offeror is a trade association or business corporation. The reason given is that often these groups have small budgets and could not otherwise afford to develop standards.

Although the legislative history of the act indicates that Congress intended cost contributions to be used as an aid to permit consumer organizations to engage in standards development or to participate in the development of a standard by another offeror, neither the act nor these regulations preclude contributions to other types of groups. Since the Commission has not prescribed a list of those organizations to which it might contribute, the Commission concludes that the suggested revision should not be made.

i. Proposed § 1105.9(c) states as follows: "The offeror should normally finance at least 5 percent of the total project cost. If the offeror, however, has little or no nonfederal sources of funds from which to make a cost contribution, the requirement for cost sharing may be waived by the Commission."

The Commission, having considered comments relevant to the issue of the 5-percent financing requirement, concludes that proposed § 1105.9(c) should be deleted. Although the Commission does expect offerors to commit as much of their own resources toward the development of standards as is reasonably possible, a requirement for a specific per-

centage contribution does not appear to be necessary.

30. *Miscellaneous.* a. One comment recommends that before a press release is issued relating to the initiation of a proceeding for the development of a standard that the press release be circulated for comment to affected manufacturers. The purpose of this would be to prevent misrepresentation and unwarranted inferences by the press. The comment contends that this procedure would be consistent with section 6(b) and (c) of the act.

Since press releases relating to the initiation of a proceeding to develop a standard will generally not identify a product by manufacturer or brand name, the Commission concludes that this recommendation need not be adopted.

b. For the purpose of achieving consistency with the act, one comment suggests changing the word "risks" in proposed §§ 1105.3(a) (1) and (2) to the word "risk."

The Commission declines to make this change since it would be impractical in most cases to proceed with the development of a standard on the basis of a single risk where more than one risk can be identified with a single consumer product.

c. In response to a comment regarding proposed § 1105.3(a) (4), professional societies have been added to the list (now § 1105.3(a) (5)) of persons invited to submit an existing standard or offer to develop a proposed standard.

d. In response to several comments regarding proposed § 1105.3(a) (5), the regulations have been changed (now § 1105.3(a) (6)) to provide that a requirement for any additional information to be submitted to the Commission, either with an existing standard or with a standard developed by an offeror, will be included in the FEDERAL REGISTER notice of proceeding to the extent the need for such additional information is known at the time the notice of proceeding is published.

e. One comment suggests addition of the word "domestic" to the list of persons in proposed § 1105.5(a) who may submit offers to develop standards. The Commission declines to adopt this suggestion since the act itself neither makes nor implies this restriction. It is noted, however, that the Commission is of the view that it can only accept offers from those fully capable of providing the opportunity for public participation within the United States.

f. Several comments suggest including the terms "trade associations," "professional or technical societies," and "retailers" in the list of organizations contained in proposed § 1105.5(a) (1) of persons to receive notice of the right to participate in the development of the standard. The Commission agrees and has made the change.

g. In response to a comment suggesting that offers may be accepted from organizations as well as from persons, proposed § 1105.6 (c) and (d) (1) has been changed to provide for the identification

of the organizational affiliation of the person whose offer is accepted.

h. In response to a comment, proposed § 1105.8(e) has been changed by adding the phrase "by the offeror" between the words "obtained" and "concerning" in the last sentence and between the words "obtained" and "data" in the second sentence. This change is to indicate that potential economic and environmental effect information is to be submitted to the Commission with the standard developed by the offeror only to the extent it can reasonably be obtained by the offeror.

i. Proposed § 1105.8(e) has been changed in response to a comment by the addition of the words "small business" between the words "on" and "and" in the second sentence. This change was made in recognition of the fact that in submitting economic effect information, small business should not be overlooked.

Therefore, having evaluated the comments received, the Commission concludes that the proposed regulations, with changes, should be adopted as set forth below.

Accordingly, pursuant to provisions of the Consumer Product Safety Act (sec. 7, Pub. Law 92-573, 86 Stat. 1212-15; 15 U.S.C. 2056), a new Part 1105 is added to Title 16, Chapter II, Subchapter B, as follows:

- Sec.
- 1105.1 General policy considerations.
- 1105.2 Summary of time sequence for the development of standards.
- 1105.3 Commencement of proceedings.
- 1105.4 Submission of existing standards.
- 1105.5 Submission of offers.
- 1105.6 Acceptance of offers.
- 1105.7 Development of recommended consumer product safety standards.
- 1105.8 Recommended consumer product safety standards developed by offerors.
- 1105.9 Contributions to the offeror's cost.

AUTHORITY: Sec. 7, Pub. Law 92-573, 86 Stat. 1212-15; 15 U.S.C. 2056.

§ 1105.1 General policy considerations.

(a) The general policy under which the procedures in this Part 1105 are issued is that the interest and participation of the public is 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 by offerors will be open to the public and will afford the opportunity for any interested person to participate in the development of standards.

(b) The major objective of the Consumer Product Safety Act ("act") is to reduce unreasonable risks of injury associated with the use of consumer products. This objective may be achieved through the development and promulgation of mandatory "consumer product safety standards" where they are considered necessary to eliminate or reduce the risk of injury. A consumer product safety standard is a standard which will 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). Requirements other than those relating to labeling, warnings, or instructions, shall whenever feasible be expressed in terms of performance requirements.

(c) Under the act, consumer product safety standards may originate in three ways. First, the Commission, after publishing a "notice of proceeding" in the FEDERAL REGISTER, is authorized to publish as a proposed standard an existing standard which has been previously issued or adopted by a qualified public or private agency or organization. Second, the Commission is authorized to accept offers from one or more persons or organizations to develop a standard. Third, the Commission may under certain circumstances independently develop a standard.

(d) Since safety standards are intended to eliminate or reduce unreasonable risks of injury associated with consumer products, the Commission, in issuing this Part 1105, seeks the involvement of all interested persons, the general public, and especially ultimate consumers. Ultimate 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 by other offerors.

(e) 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."

(f) Public involvement 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 initiation of a proceeding. This release will invite any person to either submit an existing standard or offer to develop a standard. A press release will also be issued at the time an offer is accepted. This second press release will invite all interested persons to participate in the development of a standard and will describe the method by which interested persons, including ultimate consumers, may participate.

(g) The Commission will maintain a list of all persons and organizations that have expressed an interest in either being offerors or in participating in the development of standards. Copies of the FEDERAL REGISTER notice of proceeding, press release, and/or other relevant documents will be transmitted by the Commission to appropriate persons and organizations on the list that have expressed an interest in being offerors. Copies of the FEDERAL REGISTER notice of proceeding and the notice of acceptance of any offers will be transmitted by the Commission to appropriate persons and

organizations on the list that have expressed an interest in participating in the development of standards.

(h) The act enables the Commission to contribute to the offeror's cost in developing a 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 organizations will be able to develop 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.

(i) The act provides that the invitation for the submission of offers to develop a standard shall state the period of time during which the standard is to be developed. Congress anticipated that this period would normally end 150 days after the publication of the invitation. The act also provides that the Commission may extend or shorten the period for development if it finds for good cause that a different period of time is appropriate either at the time of the invitation or at a later time. The Commission expects to receive standards that will, if adopted, appropriately reduce the unreasonable risks of injury to the public. The Commission will adopt a reasonable approach to determining the amount of time necessary to develop standards. The Commission believes, however, 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 this Part 1105.

§ 1105.2 Summary of time sequence for the development of standards.

The notice of proceeding inviting the submission of existing standards and the submission of offers to develop standards will specify a period of time during which the standard is to be developed and submitted to the Commission. The act specifies that this period will end 150 days after the publication of the notice in the FEDERAL REGISTER, unless the Commission for good cause finds, and includes such finding in the notice, that a different period is appropriate. Under the act, persons must submit existing standards or offers to develop standards to the Commission within 30 days after the date of publication of the notice of proceeding in the FEDERAL REGISTER. The Commission will evaluate the submissions and publish a summary of the terms of any accepted offer or offers as soon as possible, usually within 60 days after the date of publication of the notice of proceeding. In submitting an offer to develop a standard, each offeror is required to include a realistic estimate of the time required to develop the standard, including a detailed schedule for each phase of the development period. In accepting an offer and publishing a notice of the summary of the terms of each accepted offer, the Commission will either reaffirm the original period of time for

the development of the standard, or, for good cause stated, establish and publicize a new period of time for the development of the standard. The standard, with all required accompanying information, must then be submitted to the Commission within the specified time, unless the Commission grants an extension and publishes a notice in the FEDERAL REGISTER stating its reasons for the extension.

§ 1105.3 Commencement of proceedings.

(a) A proceeding for the development of a consumer product safety standard shall be commenced by the publication of a "notice of proceeding" in the FEDERAL REGISTER which shall:

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

(2) State the Commission's determination that a consumer product safety standard is necessary to eliminate or reduce the specified unreasonable risks 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, 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, 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 proposed consumer product safety standard;

(6) Include, to the extent known at the time the notice of proceeding is published, any requirement for additional information which 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 period of time during which the standard is to be developed and submitted to the Commission.

(b) The Commission will, for the purpose of providing greater public awareness of its actions, issue a press release concerning the initiation of the proceed-

ing. 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 proposed consumer product safety standard.

(c) The Commission will transmit a copy of the FEDERAL REGISTER notice, press release, and/or 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.

§ 1105.4 Submission of existing standards.

(a) 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 a standard previously issued or adopted by any private or public organization or agency, domestic or foreign, or any international standards organization, that contains safety-related requirements which the person 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 section 1105.8 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.

(c) If the Commission determines that (1) there exists a standard which has been issued or adopted by any Federal agency or by any other qualified agency, organization, or institution, and (2) such standard if promulgated under the act would eliminate or reduce the unreasonable risks of injury associated with the product, then the Commission may, in lieu of accepting an offer to develop a standard under section 1105.6, publish the existing standard as a proposed consumer product safety standard.

§ 1105.5 Submission of offers.

(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 proposed consumer product safety standard.

Each offer shall include a detailed description of the procedure the offeror will utilize 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 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 standard; and

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

(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 voluntary participants, the offeror intends to utilize in developing the 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 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 standard; and

(2) A statement describing the type of facilities or equipment which the offeror plans to utilize in developing the 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 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.

§ 1105.6 Acceptance of offers.

(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 con-

sumer 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 possible, usually within 60 days of the date of publication of the notice of proceeding in the FEDERAL REGISTER, accept one or more offers to develop a proposed consumer product safety standard.

(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 standard, and will comply with all of the requirements of the Commission for the development of the 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 standard either as employees, consultants, or volunteers.

(b) Prior to accepting an offer to develop a 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 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 standard; and

(3) Invites all interested persons to participate in the development of the 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 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 proposed consumer product safety standard, the Commission may independently develop a

proposed consumer product safety standard. Notice of this decision will be published in the FEDERAL REGISTER.

(h) In any case in which 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, the Commission may independently proceed to develop a proposed standard during the development period.

§ 1105.7 Development of recommended consumer product safety standards.

(a) The offeror shall comply with all Commission requirements for the development of 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 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 standard. The draft standard shall be sent to all participants for their review and concurrence or non-concurrence. Unanimity among all participants shall not be a prerequisite to the submission by the offeror to the Commission of a 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 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 standard;

(2) All written comments and any other information submitted by any person in connection with the development of the 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 standard;

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

(5) Records of all other matters relevant to the development and evaluation of the standard. These records shall be submitted to the Commission at the termination of the development period. The Commission will make these records available for public inspection and will supply copies upon request, subject to the provisions of the Freedom of Information Act (5 U.S.C. 552), section 6 of the Consumer Product Safety Act (15 U.S.C. 2055), and regulations relating to the availability of Commission records.

(d) The offeror shall provide monthly progress reports containing a summary of progress made, the work under way, the significant problems encountered,

and the work remaining to be accomplished. These reports shall be transmitted to the Technical Analysis Division, Office of Standards Coordination and Appraisal, Consumer Product Safety Commission, Washington, D.C., 20207. The offeror shall cooperate fully with the Commission and permit the inspection of its facilities and developmental activities by duly authorized representatives of the Commission for the purpose of determining whether satisfactory progress is being made toward the completion of the standard. The offeror shall be considered to be making satisfactory progress if the Commission concludes that the standard may reasonably be expected to be completed in accordance with the provisions of the accepted offer by the end of the development period.

(e) (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 standard by the end of the development period, or (ii) to justify the need for an extension of the development period.

(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 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.

(f) If the Commission determines that no offeror whose offer was accepted is making satisfactory progress, the Commission may terminate the development proceeding, publish a notice of the decision to terminate in the FEDERAL REGISTER, and independently develop a proposed standard.

(g) The offeror shall submit with the 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 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.

§ 1105.8 Recommended consumer product safety standards developed by offerors.

(a) Recommended standards must be suitable for promulgation under the act. To be considered suitable, a 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 for 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 shall also, if the Commission considers it to be appropriate, contain suitable test methods and reasonable testing programs. 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 shall, if the Commission considers it to be appropriate and so states in the FEDERAL REGISTER notice of the acceptance of the offer, 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 risks of injury identified in the notice of proceeding; and

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

(d) Each requirement of a standard, other than requirements relating to labeling, warnings, 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 shall, in submitting a recommended standard, 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.

§ 1105.9 Contributions to the offeror's cost.

(a) The Commission may, in accepting an offer, agree to contribute to the offeror's cost in developing a proposed 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 § 1105.5, 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 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 parti-

icipation in the development of the standard.

(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 development

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 sec. 1105.7(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 all amounts not expended within

60 calendar days after the offeror submits the standard.

Since the regulations promulgated above, 16 CFR Part 1105, are procedural regulations and since their becoming effective will provide for commencement of proceedings to establish safety standards, delayed effective date is deemed inappropriate in this instance.

Effective date. The regulations promulgated above, 16 CFR Part 1105, shall become effective May 7, 1974.

(Sec. 7, Pub. Law 92-573, 86 Stat. 1212-15; 15 U.S.C. 2056)

Dated: May 1, 1974.

SADYE E. DUNN,
Secretary, Consumer Product
Safety Commission.

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