

**§9.6**

Label on or with each individual unit of appliance or equipment within the subject class and with the same brand name manufactured by him except for units exported from the United States. All models with the same brand name that fall within the class must be included in the program unless they are for export only.

(4) The manufacturer agrees at his expense to comply with any reasonable request of the Department of Commerce to have appliances or equipment manufactured by him tested to determine that testing has been done according to the relevant Specification.

(5) Manufacturers may reproduce the Department of Commerce Labels and Energy Conservation Mark in advertising provided that the entire Label, complete with all information required to be displayed at the point of retail sale, is shown legibly.

**§9.6 Termination of participation.**

(a) The Department of Commerce upon finding that a manufacturer is not complying with the conditions of participation set out in these procedures or in a Specification may terminate upon 30 days notice the manufacturer's participation in the program: *Provided*, That the manufacturer shall first be given an opportunity to show cause why the participation should not be terminated. Upon receipt of a notice of termination, a manufacturer may request within 30 days a hearing under the provisions of 5 U.S.C. 558.

(b) A manufacturer may at any time terminate his participation and responsibilities under this program with regard to a specific class of products by giving written notice to the Secretary that he has discontinued use of the Label and Energy Conservation Mark for all appliances or equipment within that class.

**§9.7 Department of Commerce energy conservation mark.**

The Department of Commerce shall develop an Energy Conservation Mark which shall be registered in the U.S. Patent Office under 15 U.S.C. 1054 for use on each Label described in a Specification.

**§9.8 Amendment or revision of voluntary energy conservation specifications.**

The Secretary may by order amend or revise any Specification published under §9.4. The procedure applicable to the establishment of a Specification under §9.4 shall be followed in amending or revising such Specification. Such amendment or revision shall not apply to appliances or equipment manufactured prior to the effective date of the amendment or revision.

**§9.9 Consumer education.**

The Department of Commerce, in close cooperation and coordination with interested Government agencies, appropriate industry trade associations and industry members, and interested consumers and environmentalists shall carry out a program to educate consumers relative to the significance of the labeling program. Some elements of this program shall also be directed toward informing retailers and other interested groups about the program.

**§9.10 Coordination with State and local programs.**

The Department of Commerce will establish and maintain an active program of communication with appropriate state and local government offices and agencies and will furnish and make available information and assistance that will promote to the greatest practicable extent uniformity in State, local, and Federal programs for the labeling of household appliances and equipment to effect energy conservation.

**§9.11 Annual report.**

The Secretary will prepare an annual report of activities under the program, including an evaluation of the program and a list of participating manufacturers and classes of appliances and equipment.

**PART 10—PROCEDURES FOR THE DEVELOPMENT OF VOLUNTARY PRODUCT STANDARDS****Sec.****10.0 General.****10.1 Initiating development of a new standard.**

## Office of the Secretary, Commerce

## § 10.0

- 10.2 Funding.
- 10.3 Development of a proposed standard.
- 10.4 Establishment of the Standard Review Committee.
- 10.5 Development of a recommended standard.
- 10.6 Procedures for acceptance of a recommended standard.
- 10.7 Procedure when a recommended standard is not supported by a consensus.
- 10.8 Standing Committee.
- 10.9 Publication of a standard.
- 10.10 Review of published standards.
- 10.11 Revision or amendment of a standard.
- 10.12 Editorial changes.
- 10.13 Withdrawal of a published standard.
- 10.14 Appeals.
- 10.15 Interpretations.
- 10.16 Effect of procedures.

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SOURCE: 51 FR 22497, June 20, 1986, unless otherwise noted.

### § 10.0 General.

(a) *Introduction.* The Department of Commerce (hereinafter referred to as the "Department") recognizes the importance, the advantages, and the benefits of voluntary standards and standardization activities. Such standards may cover, but are not limited to, terms, classes, sizes (including quantities of packaged consumer commodities), dimensions, capacities, quality levels, performance criteria, inspection requirements, marking requirements, testing equipment, test procedures and installation procedures. Economic growth is promoted through:

(1) Reduction of manufacturing costs, inventory costs, and distribution costs;

(2) Better understanding among manufacturers, producers, or packagers (hereinafter referred to as producers), distributors, users, and consumers; and

(3) Simplification of the purchase, installation, and use of the product being standardized.

(b) *Requirements for Department of Commerce sponsorship.* The Department may sponsor the development of a voluntary Product Standard if, upon receipt of a request, the Department determines that:

(1) The proposed standard is likely to have substantial public impact;

(2) The proposed standard reflects the broad interest of an industry group or

an organization concerned with the manufacture, production, packaging, distribution, testing, consumption, or use of the product, or the interest of a Federal or State agency;

(3) The proposed standard would not duplicate a standard published by, or actively being developed or revised by, a private standards-writing organization to such an extent that it would contain similar requirements and test methods for identical types of products, unless such duplication was deemed by the Department to be in the public interest;

(4) Lack of government sponsorship would result in significant public disadvantage for legal reasons or reasons of domestic and international trade;

(5) The proposed standard is not appropriate for development and maintenance by a private standards-writing organization; and

(6) The proposed standard will be funded by a proponent organization or government agency to cover costs for administrative and technical support services provided by the Department.

(c) *Role of the Department.* The Department assists in the establishment of a Voluntary Product Standard as follows:

(1) Acts as an unbiased coordinator in the development of the standard;

(2) Provides editorial assistance in the preparation of the standard;

(3) Supplies such assistance and review as is required to assure the technical soundness of the standard;

(4) Seeks satisfactory adjustment of valid points of disagreement;

(5) Determines the compliance with the criteria established in these procedures for such voluntary standards;

(6) Provides secretarial functions for each committee appointed by the Department under these procedures;

(7) Publishes the standard as a public document;

(8) Administers the funds for administrative and technical support services; and

(9) Seeks listing for standards developed under these procedures as American National Standards through the American National Standards Institute, when deemed appropriate by the Department.

## § 10.1

(d) *Role of producers, distributors, users, and consumers.* Producers, distributors, users, consumers, and other interested groups may contribute to the development of a Voluntary Product Standard as follows:

(1) Initiate and participate in the development of the standard;

(2) Provide technical or other relevant counsel, as appropriate, relating to the standard;

(3) Promote the use of, and support for, the standard; and

(4) Assist in keeping the standard current with respect to advancing technology and marketing practices.

(e) *Role of the National Institute of Standards & Technology.* The National Institute of Standards & Technology (NIST) administers these procedures for the Department. Any communications concerning these procedures (e.g., questions, clarifications, appeals) should be addressed to the Office of Product Standards Policy, National Institute of Standards & Technology, Gaithersburg, Maryland 20899.

[51 FR 22497, June 20, 1986, as amended at 55 FR 38315, Sept. 18, 1990]

### §10.1 Initiating development of a new standard.

(a) Any group or association of producers, distributors, users, or consumers, or a testing laboratory, or a State or Federal agency, may request the Department to initiate the development and publication of a Voluntary Product Standard under these procedures. Requests shall be in writing, signed by a representative of the group or agency, and forwarded to the Department. The initial request may be accompanied by a copy of a draft of the suggested standard.

(b) The request shall include a commitment to provide sufficient funding to cover all costs associated with the development and maintenance of the proposed Voluntary Product Standard.

(c) The Department may require additional information such as technical, marketing, or other appropriate data essential to discussion and development of the proposed standard, including, but not limited to, physical, mechanical, chemical, or performance characteristics, and production figures.

## 15 CFR Subtitle A (1-1-09 Edition)

(d) Upon receipt of an appropriate request and after a determination by the Department that the development of a Voluntary Product Standard is justified, the Department may initiate the development by requesting that a draft of the suggested standard be prepared by an appropriate committee, provided such a draft has not previously been submitted under paragraph (a) of this section.

(e) The Department may initiate the development of a Voluntary Product Standard, if such action is deemed by the Department to be in the public interest, notwithstanding the absence of a request from an outside source. A voluntary standard initiated by the Department shall be processed in accordance with all requirements of these procedures and shall be developed in the same manner as a voluntary standard initiated by any group referred to in paragraph (a) of this section.

(f) An agreement regarding funding procedures and receipt of a deposit estimated by the Department to be sufficient to cover the first year's costs shall occur prior to the initiation of any project.

### §10.2 Funding.

Groups who represent producers, distributors, consumers or users, or others that wish to act or continue to act as proponent organizations for the development or maintenance of a Voluntary Product Standard will be required to pay for administrative and technical support services provided by the National Institute of Standards & Technology and such other direct or indirect costs associated with the development or maintenance of that standard as may be deemed appropriate by the Department, including costs to the Department in connection with the operation of the Standard Review Committee and the Standing Committee. Funds may also be provided by a government agency at the request of a proponent organization or when acting on its own behalf for the development or maintenance of a Voluntary Product Standard. Proponents of standards that meet sponsorship criteria established in these procedures shall furnish an initial deposit of funds sufficient to cover the first year's services and other

costs. Estimated annual costs will be based on an hourly rate for salary and overhead established by the Department for the National Institute of Standards & Technology's administrative and technical support services plus estimates of direct costs to provide funds for such items as the travel of consumer representatives unable to otherwise attend committee meetings, travel for Department staff, and printing costs. Project funds will be reviewed annually. Excess funds may be refunded or applied to the next accounting period. Should funds from deposits be inadequate during an accounting period, work on the project will continue only if funds are restored to a level estimated adequate to complete the 12-month period.

[51 FR 22497, June 20, 1986, as amended at 55 FR 38315, Sept. 18, 1990]

### § 10.3 Development of a proposed standard.

(a) A proposed standard as submitted to the Department:

(1) Shall be based on adequate technical information, or, in the case of size standards (including standards covering the quantities for packaged consumer commodities), on adequate marketing information, or both, as determined to be appropriate by the Department;

(2) Shall not be contrary to the public interest;

(3) Shall be technically appropriate and such that conformance or non-conformance with the standard can be determined either during or after the manufacturing process by inspection or other procedures which may be utilized by either an individual or a testing facility competent in the particular field;

(4) Shall follow the format prescribed by the National Institute of Standards & Technology. (Copies of the recommended format may be obtained from the Office of Product Standards Policy, National Institute of Standards & Technology, Gaithersburg, Maryland 20899.);

(5) Shall include performance requirements if such are deemed by the Department to be technically sound, feasible, and practical, and the inclu-

sion of such is deemed to be appropriate;

(6) May include dimensions, sizes, material specifications, product requirements, design stipulations, component requirements, test methods, testing equipment descriptions, and installation procedures. The appropriateness of the inclusion in a standard of any particular item listed in this subparagraph shall be determined by the Department; and

(7) Shall be accompanied by rational statements pertaining to the requirements and test methods contained in the standard, if deemed necessary by the Department.

(b) A proposed standard that is determined by the Department to meet the criteria set forth in paragraph (a) of this section may be subjected to further review by an appropriate individual, committee, organization, or agency (either government or non-government, but not associated with the proponent group).

(c) A proposed standard may be circulated by the Department to appropriate producers, distributors, users, consumers, and other interested groups for consideration and comment as well as to others requesting the opportunity to comment.

(d) The proponent group or appropriate committee which drafted the initial proposal under § 10.1(d) shall consider all comments and suggestions submitted by the reviewer designated under paragraph (b) of this section, and those received by the Department as a result of any circulation under paragraph (c) of this section, and may make such adjustments in the proposal as are technically sound and as are believed to cause the standard to be generally acceptable to producers, distributors, users, consumers, and other interested parties. The proposal will then be submitted to the Department for further processing.

[51 FR 22497, June 20, 1986, as amended at 55 FR 38315, Sept. 18, 1990]

### § 10.4 Establishment of the Standard Review Committee.

(a) The Department shall establish and appoint the members of a Standard Review Committee within a reasonable

## § 10.5

time after receiving a proposed standard. The committee shall consist of qualified representatives of producers, distributors, and users or consumers of product for which a standard is sought or any other appropriate general interest groups such as State and Federal agencies. When requested by the Standard Review Committee, the Department shall appoint one voting member from among the representatives of the Federal agencies, other than the Department of Commerce. All other representatives of Federal agencies on the Standard Review Committees shall be advisory nonvoting members. (Alternates to committee members may be designated by the Department.) When deemed appropriate by the Department, project funds under §10.2 may be made available to assure participation by consumer interests on the committee at required meetings.

(b) A Standard Review Committee may remain in existence for a period necessary for the final development of the standard, or for 2 years, whichever is less.

(c) The Department shall be responsible for the organization of the committee. Any formal operating procedures developed by the committee shall be subject to approval by the Department. The committee may conduct business either in a meeting or through correspondence, but only if a quorum participates. A quorum shall consist of two-thirds of all voting members of the committee. A majority of the voting members of the committee participating shall be required to approve any actions taken by the committee except for the action of recommending a standard to the Department, the requirements for which are contained in §10.5(b).

### **§10.5 Development of a recommended standard.**

(a) The Standard Review Committee, with the guidance and assistance of the Department and, if appropriate, the reviewer designated under §10.3(b), shall review a proposed standard promptly. If the committee finds that the proposal meets the requirements set forth in §10.3(a), it may recommend to the Department that the proposal be circulated for acceptance under §10.6. If,

## 15 CFR Subtitle A (1-1-09 Edition)

however, the committee finds that the proposal being reviewed does not meet the requirements set forth in §10.3(a), the committee shall change the proposal, after consulting with the proponent group, so that these requirements are met, before recommending such proposal to the Department.

(b) The recommendation of a standard by the Standard Review Committee shall be approved by at least three-quarters, or rejected by more than one-quarter, of all of the members of the committee eligible to vote. The voting on the recommendation of a standard shall be conducted by the Department if conducted by letter ballot. If such voting is accomplished at a meeting of the committee, the balloting shall be either by roll call or by signed written ballot conducted by the Department or the chairman of this committee. If conducted by the chairman, a report of the vote shall be made to the Department within 15 days. If the balloting at the meeting does not result in either approval by at least three-quarters of all members (or alternates) eligible to vote (whether present or not), or rejection by more than one-quarter of the members (or alternates) or the committee eligible to vote, the balloting shall be disregarded and the Department shall subsequently conduct a letter ballot of all members of the committee.

(c) Any member of the committee casting a negative ballot shall have the right to support an objection by furnishing the chairman of the committee and the Department with a written statement setting forth the basis for the objection. The written statement of objection shall be filed within 15 days after the date of the meeting during which the voting on the standard was accomplished, or, in the case of a letter ballot, within the time limit established for the return of the ballot.

(d) At the time a recommended standard is submitted to the Department, the Chairman of the Standard Review Committee shall furnish a written report in support of the committee's recommendation. Such report shall include a statement with respect to compliance with the requirements as established by these procedures, a discussion of the manner in which any

objections were resolved, and a discussion of any unresolved objections together with the committee's reasons for rejecting such unresolved objections.

**§ 10.6 Procedures for acceptance of a recommended standard.**

(a) Upon receipt from the Standard Review Committee of a recommended standard and report, the Department shall give appropriate public notice and distribute the recommended standard for acceptance unless:

(1) Upon a showing by any member of the committee who has voted to oppose the recommended standard on the basis of an unresolved objection, the Department determines that if such objection were not resolved, the recommended standard:

(i) Would be contrary to the public interest, if published;

(ii) Would be technically inadequate; or

(iii) Would be inconsistent with law or established public policy; or

(2) The Department determines that all criteria and procedures set forth herein have not been met satisfactorily or that there is a legal impediment to the recommended standard.

(b) Distribution for acceptance or rejection for the purpose of determining general concurrence will be made to a list compiled by the Department, which, in the judgment of the Department, shall be representative of producers, distributors, and users and consumers.

(c) Distribution for comment will be made to any party filing a written request with the Department, and to such other parties as the Department may deem appropriate, including testing laboratories and interested State and Federal agencies.

(d) The Department shall analyze the recommended standard and the responses received under paragraphs (b) and (c) of this section. If such analysis indicates that the recommended standard is supported by a consensus, it shall be published as a Voluntary Product Standard by the Department: Provided, That all other requirements listed in these procedures have been satisfied.

(e) The following definitions shall apply to the term used in this section:

(1) "Consensus" means general concurrence and, in addition, no substantive objection deemed valid by the Department.

(2) "General concurrence" means acceptance among those responding to the distribution made under paragraph (b) of this section in accordance with the conditions set forth in paragraph (f) of this section.

(3) "Substantive objection" means a documented objection based on grounds that one or more of the criteria set forth in these procedures has not been satisfied.

(4) "Average industry acceptance" means a percentage equal to the sum of the percentages of acceptance obtained from responses to distribution of the recommended standard in the producer segment, the distributor segment, and the user and consumer segment, divided by three. No consideration will be given to volume of production or volume of distribution in determining average industry acceptance.

(5) "Producer segment" means those persons who manufacture or produce the product covered by the standard.

(6) "Distributor segment" means those persons who distribute at wholesale or retail the product covered by the standard.

(7) "User and consumer segment" means those persons who use or consume the product covered by the standard.

(8) "Acceptance by volume of production" means the weighted percentage of acceptance of those responding to the distribution in the producer segment. The weighting of each response will be made in accordance with the volume of production represented by each respondent.

(9) "Acceptance by volume of distribution" means the weighted percentage of acceptance of those responding to the distribution in the distributor segment. The weighting of each response will be made in accordance with the volume of distribution represented by each respondent.

(f) A recommended standard shall be deemed to be supported by general concurrence whenever:

## § 10.7

(1) An analysis of the responses to the distribution under paragraph (b) of this section indicates:

(i) An average industry acceptance of not less than 75 percent;

(ii) Acceptance of not less than 70 percent by the producer segment, the distributor segment, and the user and consumer segment, each segment being considered separately; and

(iii) Acceptance by volume of production and acceptance by volume of distribution of not less than 70 percent in each case: *Provided*, That the Department shall disregard acceptance by volume of production or acceptance by volume of distribution or both unless, in the judgment of the Department, accurate figures for the volume of production or distribution are reasonably available and an evaluation of either or both of such acceptances is deemed necessary by the Department; or

(2) The Department determines that publication of the standard is appropriate under the procedures set forth in paragraph (g) of this section and, in addition, an analysis of the responses to the distribution under paragraph (b) of this section indicates:

(i) An average industry acceptance of not less than 66% percent;

(ii) Acceptance of not less than 60 percent by the producer segment, the distributor segment, and the user and consumer segment, each segment being considered separately; and

(iii) Acceptance by volume of production and acceptance by volume of distribution of not less than 60 percent in each case: *Provided*, That the Department shall disregard acceptance by volume of production or acceptance by volume of distribution or both unless, in the judgment of the Department, accurate figures for the volume of production or distribution are reasonably available and an evaluation of either or both of such acceptances is deemed necessary by the Department.

(g) A recommended standard which fails to achieve the acceptance requirements of paragraph (f)(1) of this section, but which satisfies the acceptance criteria of paragraph (f)(2) of this section, shall be returned to the Standard Review Committee for reconsideration. The committee, by the affirmative vote of not less than three-quarters of

## 15 CFR Subtitle A (1-1-09 Edition)

all members eligible to vote, may re-submit the recommended standard without change to the Department with a recommendation that the standard be published as a Voluntary Product Standard. The Department shall then conduct a public rulemaking hearing in accordance with the requirements of law as set forth in section 553 of Title 5, United States Code, to assist it in determining whether publication of the standard is in the public interest. If the Department determines that publication of the standard is in the public interest, the standard shall be published as a Voluntary Product Standard.

### § 10.7 Procedure when a recommended standard is not supported by a consensus.

If the Department determines that a recommended standard is not supported by a consensus, the Department may:

(a) Return the recommended standard to the Standard Review Committee for further action, with or without suggestions;

(b) Terminate the development of the recommended standard under these procedures; or

(c) Take such other action as it may deem necessary or appropriate under the circumstances.

### § 10.8 Standing Committee.

(a) The Department shall establish and appoint the members of a Standing Committee prior to the publication of a standard. The committee may include members from the Standard Review Committee, and shall consist of qualified representatives of producers, distributors, and users or consumers of the product covered by the standard, and representatives of appropriate general interest groups such as municipal, State, and Federal agencies. When requested by the Standing Committee, the Department shall appoint one voting member from among the representatives of the Federal agencies, other than the Department of Commerce. When requested by the Standing Committee for PS 20-70, "American Softwood Lumber Standard," the Department shall appoint two voting

members from among the representatives of the Federal agencies, other than the Department of Commerce. All other representatives of Federal agencies shall be advisory nonvoting members of Standing Committees. (Alternates to committee members may be designated by the Department.) When deemed appropriate by the Department, project funds under §10.2, may be made available to assure participation by consumer interests on the committee at required meetings.

(b) Appointments to a Standing Committee may not exceed a term of 5 years. However, the committee may be reconstituted by the Department whenever appropriate, and members may be reappointed by the Department to succeeding terms. Appointments to the committee will be terminated upon the withdrawal of the standard.

(c) The Department shall be responsible for the organization of the committee. Any formal operating procedures developed by the committee shall be subject to approval by the Department. The committee may conduct business either in a meeting or through correspondence, but only if a quorum participates. A quorum shall consist of two-thirds of all voting members of the committee. A majority of the voting members of the committee participating shall be required to approve any actions taken by the committee except for the approval of revisions of the standard which shall be governed by the provisions of §10.5 (b), (c), and (d).

(d) The members of a Standing Committee should be knowledgeable about:

(1) The product or products covered by the standard;

(2) The standard itself; and

(3) Industry and trade practices relating to the standard.

(e) The committee shall:

(1) Keep itself informed of any advancing technology that might affect the standard;

(2) Provide the Department with interpretations of provisions of the standard upon request;

(3) Make recommendations to the Department concerning the desirability or necessity of revising or amending the standard;

(4) Receive and consider proposals to revise or amend the standard; and

(5) Recommend to the Department the revision or amendment of a standard.

#### § 10.9 Publication of a standard.

A Voluntary Product Standard published by the department under these procedures shall be assigned an appropriate number for purposes of identification and reference. Public notice shall be given regarding the publication and identification of the standard. A voluntary standard by itself has no mandatory or legally binding effect. Any person may choose to use or not to use such a standard. Appropriate reference in contracts, codes, advertising, invoices, announcements, product labels, and the like may be made to a Voluntary Product Standard published under these procedures. Such reference shall be in accordance with such policies as the Department may establish, but no product may be advertised or represented in any manner which would imply or tend to imply approval or endorsement of that product by the Department or by the Federal Government.

#### § 10.10 Review of published standards.

(a) Each standard published under these or previous procedures shall be reviewed regularly to determine the feasibility of transferring sponsorship to a private standards-writing organization. While the Department encourages the development of standards to replace Voluntary Product Standards by private standards-writing organizations, withdrawal of a Voluntary Product Standard, which meets the requirements of §10.0(b), shall not be considered until a replacement standard is published.

(b) Each standard published under these or previous procedures shall be reviewed by the Department, with such assistance of the Standing Committee or others as may be deemed appropriate by the Department, within 5 years after initial issuance or last revision and at least every 5 years thereafter. The purpose of this review shall be to determine whether the standard has become obsolete, technically inadequate, no longer acceptable to or used by the industry, or inconsistent with law or established public policy.



## § 10.11

(c) If any of the above conditions is found to exist, the Department shall initiate action to amend, revise, or withdraw the standard in accordance with § 10.11 or § 10.13. If none is found to exist, the standard shall be kept in effect provided adequate funding is maintained.

### **§ 10.11 Revision or amendment of a standard.**

(a) A published standard shall be subject to revision or amendment when it is determined to be inadequate by its Standing Committee or by the Department of one or more of the following reasons or for any other appropriate reasons:

(1) Any portion of the standard is obsolete, technically inadequate, or no longer generally acceptable to or used by the industry;

(2) The standard or any part of it is inconsistent with law or established public policy; or

(3) The standard or any part of it is being used to mislead users or consumers or is determined to be against the interest of users, consumers, or the public in general.

(b) A revision of a standard shall be considered by the Department to include changes which are comprehensive in nature, which have a substantive effect on the standards, which change the level of performance or safety or the design characteristics of the product being standardized, or which cannot reasonably be injected into a standard without disturbing the general applicability of the standard. Each suggestion for revision shall be submitted by the Department to the Standing Committee for appropriate consideration. The Standing Committee shall serve the same functions in the revision of a standard as the Standard Review Committee serves in the development of a new standard. The processing of a revision of a standard shall be dependent upon the age of the standard as computed from its effective date and shall be accomplished as follows:

(1) A proposed revision of a standard older than 5 years at the time such proposed revision is submitted to the Standing Committee by the Department shall be processed as a new stand-

## 15 CFR Subtitle A (1-1-09 Edition)

ard under these procedures and, when approved for publication, the standard shall be republished and reidentified to indicate the year in which the revision became effective. The revised standard shall supersede the previously published standard.

(2) A proposed revision of a standard less than 5 years at the time such proposed revision is submitted to the Standing Committee by the Department shall be processed as a new standard except that:

(i) Distribution for acceptance or rejection shall be made to an appropriate list of producers, distributors, and users and consumers compiled by the Department;

(ii) If the revision affects only one subsection of the requirement section and/or only one subsection of the test methods section, it may be circulated separately for determining consensus and subsequently published as an addendum to the standard with appropriate dissemination and public notice of the addendum; and

(iii) If the revision does not change the level of performance or safety or the design characteristics of the product being standardized, the standard need not be reidentified.

(c) An amendment to a standard shall be considered by the Department to be any non-editorial change which is not comprehensive in nature, which has no substantive effect on the standard, which does not change the level of performance or safety or the design characteristics of the product being standardized, and which reasonably can be injected into a standard without disturbing the general applicability of the standard. Each suggestion for amendment shall be submitted by the Department to the Standing Committee for appropriate consideration. An amendment to a standard recommended by not less than 90 percent of the members of the committee eligible to vote and found acceptable by the Department, shall be published as an addendum (until the standard is republished) and distributed to acceptors of record. Public notice of the amendment shall be given and copies of the amendment shall be distributed to those filing written requests.

**§ 10.12 Editorial changes.**

The Department may, without prior notice, make such editorial or other minor changes as it deems necessary to reduce ambiguity or to improve clarity in any proposed, recommended, or published standard, or revision or amendment thereof.

**§ 10.13 Withdrawal of a published standard.**

(a) Standards published under these and previous procedures may be withdrawn by the Director of the National Institute of Standards & Technology at any time. Such action will be taken if, after consultation with the Standing Committee as provided in paragraph (a)(1) of this section and after public notice, the Director determines that the standard is: Obsolete; technically inadequate; no longer generally acceptable to and used by the industry; inconsistent with law or established public policy; not in the public interest; or otherwise inappropriate; and revision or amendment is not feasible or would serve no useful purpose. Additionally, a standard may be withdrawn if it cannot be demonstrated that a particular standard has substantial public impact, that it does not duplicate a standard published by a private standards-writing organization, or that lack of government sponsorship would result in significant public disadvantage for legal reasons or for reasons of domestic and international trade. The Director may withdraw a standard if costs to maintain such a standard are not reimbursed by the proponent or other government agencies.

(1) Before withdrawing a standard published under these procedures, the Director will review the relative advantages and disadvantages of amendment, revision, development of a new standard, or withdrawal with the members of the Standing Committee, if such committee was appointed or reappointed within the previous five years.

(2) Public notice of intent to withdraw an existing standard published under these procedures shall be given and a 30-day period will be provided for the filing with the Director or written objections to the withdrawal. Such objections will be considered and ana-

lyzed by the Director before a determination is made to withdraw the standard. If the Director determines that a particular standard does not meet the criteria set out in §10.0(b), the standard will be withdrawn.

(b) The filing under paragraph (a) of this section of a request to retain a standard or standards shall operate to stay the withdrawal of such standard or standards until the Director's determination has been made. If the Director determines that the requested standard or standards shall be withdrawn, the stay will remain in effect, if an appeal is filed in accordance with the requirements of §10.14, until the decision of the Director is announced in the FEDERAL REGISTER. If, however, no appeal is received, the Director shall announce withdrawal of the particular standard or standards.

(c) Notice of the withdrawal action will be published in the FEDERAL REGISTER and such withdrawal will take effect 60 days from the date the withdrawal notice is published.

[51 FR 22497, June 20, 1986, as amended at 55 FR 38315, Sept. 18, 1990]

**§ 10.14 Appeals.**

(a) Any person directly affected by a procedural action taken by NIST or the Standard Review Committee under §§10.5, 10.6 or 10.7 regarding the development of a standard, by NIST or the Standing Committee under §10.10 regarding the review of a published standard, or under §10.11 regarding the revision of a standard, or under §10.13 regarding the withdrawal of a standard, may appeal such action.

(b) Such appeal shall be filed in written form with the body taking the action complained of (NIST, the Standard Review Committee, or the Standing Committee) within 30 days after the date of announcement of the action.

(c) If appeal is filed with the Standard Review Committee or the Standing Committee, the Committee shall attempt to resolve the appeal informally. If the appeal is filed with NIST, NIST with the consultation and advice of the Standard Review Committee or the Standing Committee, whichever is appropriate, shall attempt to resolve the appeal informally.

## § 10.15

(d) If the appeal is to the Standard Review Committee or the Standing Committee and the Committee is unable to resolve such an appeal informally, the Committee shall hold a hearing regarding the appeal. Announcement of the hearing shall be made to members of the Standard Review Committee or the Standing Committee and all the acceptors of record, when appropriate, as well as other known interests. Notice of the hearing shall be published in the FEDERAL REGISTER. The hearing will be an informal, nonadversary proceeding at which there will be no formal pleadings or adverse parties. Written statements will be furnished by witnesses prior to the hearing. A record of the hearing will be made. Copies of the written statements and the record of the hearing will be available at cost.

(e) Those members of the Committee hearing the appeal will develop a recommendation to the Committee concerning the resolution of the appeal. NIST will review the recommendation and if found acceptable will subject it to a letter ballot of the Committee. Approval by three-fourths of the members of the Committee eligible to vote will constitute acceptance by the Committee and by NIST. Notice of the Committee decision will be published in the FEDERAL REGISTER.

(f) If the appeal is to NIST and the attempt to resolve the appeal informally under paragraph (c) of this section is not successful, the Deputy Director of NIST will schedule a hearing with an appeals panel at an appropriate location. Announcement of the hearing shall be made to members of the Standard Review Committee or Standing Committee and all acceptors of record, when appropriate, as well as to other known interests. Notice of the hearing shall be published in the FEDERAL REGISTER.

(g) The Deputy Director of NIST will name two other persons, who have not been directly involved in the matter in dispute and who will not be directly or materially affected by any decision made or to be made in the dispute, to sit on the panel with the Deputy Director, who will act as presiding officer. The presiding officer will have the right to exercise such authority as nec-

## 15 CFR Subtitle A (1-1-09 Edition)

essary to ensure the equitable and efficient conduct of the hearing and to maintain an orderly proceeding.

(h) The hearing will be an informal, nonadversary proceeding at which there will be no formal pleadings or adverse parties. The hearing will be open to the public. Witnesses shall submit a written presentation for the record seven days prior to the hearing. A record will be made of the hearing. Copies of the written statements and the record of the hearing will be available at cost.

(i) The appeals panel will make a recommendation to the Director of NIST. The Director's decision on the appeal will be announced within 60 days following the hearing and will be communicated to the complainant and other interested parties by letter. Notice of the Director's decision shall be published in the FEDERAL REGISTER.

[51 FR 22497, June 20, 1986, as amended at 55 FR 38315, Sept. 18, 1990]

### § 10.15 Interpretations.

(a) An interpretation of a Voluntary Product Standard may be obtained through the submission of a written request. The request shall identify the specific section of the standard involved.

(b) In the case of PS 20-70, the "American Softwood Lumber Standard," interpretations shall be made by the American Lumber Standards Committee (ALSC) under the procedures developed by the ALSC and found acceptable to NIST.

(c) In the case of the other Voluntary Product Standards, interpretations shall be made by the appropriate Standing Committees under procedures developed by those committees and found acceptable to NIST.

[51 FR 22497, June 20, 1986, as amended at 55 FR 38315, Sept. 18, 1990]

### § 10.16 Effect of procedures.

Nothing contained in these procedures shall be deemed to apply to the development, publication, revision, amendment, or withdrawal of any standard which is not identified as a "Voluntary Product Standard" by the Department. The authority of the Department with respect to engineering

standards activities generally, including the authority to publish appropriate recommendations not identified as “Voluntary Product Standards,” is not limited in any way by these procedures.

### **PART 11—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS**

**AUTHORITY:** Section 213, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91-646, 84 Stat. 1894 (42 U.S.C. 4601) as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, Title IV of Pub. L. 100-17, 101 Stat. 246-256 (42 U.S.C. 4601 note).

#### **§ 11.1 Uniform relocation and real property acquisition.**

Regulations and procedures for complying with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91-646, 84 Stat. 1894, 42 U.S.C. 4601), as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Title IV of Pub. L. 100-17, 101 Stat. 246-255, 42 U.S.C. 4601 note) are set forth in 49 CFR Part 24.

[52 FR 48018, Dec. 17, 1987 and 54 FR 8912, 8913, Mar. 2, 1989]

### **PART 12—FAIR PACKAGING AND LABELING**

Sec.

12.1 Introduction.

12.2 Undue proliferation.

12.3 Development of voluntary product standards.

12.4 Report to the Congress.

**AUTHORITY:** Secs. 5(d), 5(e), 80 Stat. 1298, 15 U.S.C. 1454; sec. 3, Dept. Order 177 (31 FR 6746), as amended (32 FR 3110).

**SOURCE:** 32 FR 11074, July 29, 1967, unless otherwise noted.

#### **§ 12.1 Introduction.**

(a) These procedures apply to the discharge of the responsibility given to the Secretary of Commerce by sections 5(d) and 5(e) of the Fair Packaging and Labeling Act (Pub. L. 89-755, 80 Stat.

1299), hereinafter called the “Act”. The word “Secretary”, as used hereinafter, shall refer to the Secretary of Commerce or his authorized delegate.

(b) The Secretary does not have the responsibility or the authority under the Act to issue any regulations governing the packaging or labeling practices of private industry.

(c) The Secretary does have the responsibility and authority to:

(1) Determine whether the reasonable ability of consumers to make value comparisons with respect to any consumer commodity or reasonably comparable consumer commodities is impaired by undue proliferation of the weights, measures, or quantities in which such commodity or commodities are being distributed in packages for sale at retail.

(2) Request manufacturers, packers, and distributors, where a determination of undue proliferation has been made, to participate in the development of a voluntary product standard under the procedures governing the Department's voluntary standards program.

(3) Report to Congress with a recommendation as to whether legislation providing regulatory authority should be enacted, when after 1 year following the date private industry has been requested to participate in the development of a voluntary product standard it is determined that such a standard will not be published, or when following the publication of such a standard it is determined that the standard has not been observed.

(d) The Act does not furnish a detailed, definitive explanation of “undue proliferation”. It does, however, point out that the condition of “undue proliferation” must be one which “impairs the reasonable ability of consumers to make value comparisons” with respect to consumer commodities. Generally, therefore, the Department will determine “undue proliferation” on a case-by-case basis, and, accordingly, is establishing by these procedures an orderly process for such determinations.

(e) As used hereinafter the term “undue proliferation” shall refer to such undue proliferation—of the weights, measures or quantities in