§ 16.3 Definitions.

(a) The term Secretary means the Secretary of Commerce or her designee.

(b) The term consumer means the first person who purchases a consumer product for purposes other than resale.

(c) The term participant means a manufacturer, assembler or private brand labeler of consumer products or an importer of such products for resale and who participates in the program.

(d) The term consumer product means any article produced or distributed for sale to a consumer for the use, consumption, or enjoyment of such consumer. The term does not include products customarily intended primarily for business, commercial, or industrial use.

(e) The term person means an individual; a manufacturer; distributor; retailer; importer; private brand labeler; government agency at the Federal (including any agency of the Department of Commerce), State and local level; consumer organization; trade association; standards writing body; professional society; testing laboratory; or educational institution.

(f) The term performance characteristic means a performance characteristic of a consumer product that can be measured in an objective manner with respect to a given consumer product.

(g) The term Specification means a Performance Information Labeling Specification developed under §16.5.

(h) The term label means printed matter affixed to or otherwise provided with a consumer product and containing all of the performance characteristics as prescribed by the Specification applicable to that product.

(i) The term designated agent means a person as defined in paragraph (e) of this section, who has been designated by the Secretary to carry out appropriate operational procedures on behalf of more than one participant in this program in accordance with rules set out under §16.9.

§ 16.4 Finding of need to establish a specification for labeling a consumer product.

(a) Any person may request the Secretary to find that there is a need to label a particular consumer product with information concerning one or more specific performance characteristics of that product.

(b) Such a request shall be in writing and will, to the extent practicable, include the following information:

(1) Identification of the consumer product;

(2) Extent that the product identified in paragraph (b)(1) of this section is used by the public and, if known, what the production or sales volume is of such product;

(3) Nature and extent of difficulty experienced by consumers in making informed purchase decisions because of a lack of knowledge regarding the performance characteristics of the identified consumer product;
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(4) Potential or actual loss to consumers as a result of an incorrect decision based on an inadequate understanding of the performance characteristics of the identified consumer product;

(5) Extent of incidence of consumer complaints arising from or reasonably traceable to lack of knowledge regarding the performance characteristics of the identified consumer product;

(6) If known, whether there currently exist test methods which could be used to test the performance characteristics of the identified consumer product and an identification of those test methods;

(7) Reasons why it is felt, in cases where existing test methods are identified in responding to paragraph (b)(6) of this section, that such test methods are suitable for making objective measurements of the performance characteristics of the identified consumer product; and

(8) Estimated cost to participants to test and label the product.

(c) The Secretary may ask for more information to support a request made under paragraph (a) of this section if she feels it is necessary to do so, or, if she deems it to be in the public interest, may develop such information herself as by consultation on a one-time basis with consumers, consumer organizations, and others. The Secretary shall act expeditiously on all requests and shall notify the requester of her decision in writing. If the Secretary determines that there is no need to establish a Specification for labeling the requested consumer product performance characteristics, or because of a lack of resources, she will decline to act further on the request. In those instances where the Secretary declines a request, she shall state the reasons for so declining.

(d) If the Secretary finds that a need exists to establish a Specification for labeling a consumer product under this program, she shall publish a notice in the FEDERAL REGISTER setting out such finding and its basis and stating that she is developing a proposed Specification in accordance with §16.5.

§16.5 Development of performance information labeling specifications.

(a) If the Secretary makes a finding of need pursuant to §16.4, she will publish a proposed Performance Information Labeling Specification in the FEDERAL REGISTER with a notice giving the complete text of the proposed Specification and any other pertinent information. The notice will invite any interested person to submit written comments on the proposed Specification within 45 days after its publication in the FEDERAL REGISTER, unless another time limit is provided by the Secretary. Interested persons wanting to express their views in an informal hearing may do so, if within 15 days after the proposed Specification is published in the FEDERAL REGISTER, they request the Secretary to hold a hearing. Such informal hearings shall be held so as to give all interested persons an opportunity for the oral presentation of data, views, or arguments in addition to the opportunity to make written submissions. Notice of such hearings shall be published in the FEDERAL REGISTER. A transcript shall be kept of any oral presentations.

(b) Each Specification shall as a minimum include:

1. A description of the performance characteristics of the consumer product covered;

2. An identification by reference of the test methods to be used in measuring the performance characteristics. The test methods, where they exist and are deemed appropriate for inclusion in the particular Specification involved, shall be those which are described in nationally-recognized voluntary standards. Where appropriate test methods do not exist, they will be developed by the Department of Commerce in cooperation with interested parties and set out in full in the Specification;

3. A prototype label and directions for displaying the label on or with the consumer product concerned. Such directions will not prohibit the display of additional information by the participant on space adjacent to the marked boundaries of the label; and


(c) The Secretary, after consideration of all written and oral comments and other materials received in accordance