

§ 12.2

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requested to participate in the development of a voluntary product standard it is determined that such a standard will not be published, or when following the publication of such a standard it is determined that the standard has not been observed.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

15 CFR Subtitle A (1-1-02 Edition)

weights, measures or quantities in which any consumer commodity or reasonably comparable consumer commodities are being distributed for sale at retail—as impairs the reasonable ability of consumers to make value comparisons with respect to such consumer commodity or commodities, as set out in section 5(d) of the Act.

§ 12.2 Undue proliferation.

(a) *Information as to possible undue proliferation.* Any person or group, including a State or local governmental entity, is invited to communicate information to the Secretary concerning the possible existence of undue proliferation. Such communications should be in writing and include supporting information and explanations.

(b) *Initiation of inquiry as to undue proliferation.* Upon receipt of information regarding the possible existence of undue proliferation, the Secretary will determine whether there has been a showing of good cause warranting an inquiry. If the Secretary determines that good cause exists, he shall initiate an inquiry for the purpose of finding facts concerning the existence of undue proliferation.

(c) *Procedures for inquiry—(1) Cooperation with State and local officials.* Any inquiry initiated under paragraph (b) of this section may be conducted in cooperation with State and local weights and measures officials.

(2) *Participation by interested persons.* The Secretary may, during the course of the inquiry, afford interested persons or groups an opportunity to submit in writing comments, data, arguments, views, or other information relevant to the inquiry.

(d) *Proposed determination as to existence of undue proliferation.* (1) If, after consideration of all relevant information, the Secretary concludes that undue proliferation appears to exist, he shall publish a proposed determination to this effect. The proposed determination shall identify the particular consumer commodity or commodities involved and shall be accompanied by a concise statement of the facts upon which it is based.

(2) Within 60 days after publication of the proposed determination, any interested party may submit in writing

comments, data, arguments, views, or other information relevant to the proposed determination. All written submissions shall be made a part of the public record.

(3) Within 30 days after the proposed determination has been published, any interested party may request in writing an oral hearing to present his views. The granting of such a hearing shall be at the discretion of the Secretary. Any such hearing shall be public and notice thereof shall be published at least 15 days in advance. A transcript of the hearing shall be made part of the public record.

(e) *Final determination as to undue proliferation.* As soon as practicable following the conclusion of the proceedings described in paragraph (d) of this section, the Secretary shall either publish a final determination of undue proliferation, or he shall publish a notice withdrawing his proposed determination of undue proliferation. In no event shall the withdrawal of a proposed determination operate to preclude the initiation of another inquiry regarding the same or similar subject matter under paragraph (b) of this section.

§ 12.3 Development of voluntary product standards.

(a) *Invitation to participate in the development of a voluntary product standard.* Whenever the Secretary publishes a final determination of undue proliferation under § 12.2(e), he shall invite manufacturers, packers, and distributors of the commodity or commodities involved to participate in the development of a voluntary product standard in accordance with the terms of the Act and the Department's published procedures for voluntary product standards. The term "Voluntary Product Standard" as used in this section means a standard for weights, measures or quantities in which the commodity or commodities are being distributed in packages for sale at retail.

(b) *Determination that voluntary product standard will not be published.* (1) If a voluntary product standard has not been developed within one year from the date on which participation was invited, the Secretary may conclude that a voluntary product standard will not

likely be published. Upon reaching such a conclusion, the Secretary will publish a proposed determination that a voluntary product standard will not be published.

(2) Within 60 days after publication of the proposed determination, any interested party may submit in writing comments, data, arguments, views, or other information relevant to the proposed determination. All written submissions shall be made a part of the public record.

(3) Within 30 days after the proposed determination has been published, any interested party may request in writing an oral hearing to present his views. The granting of such a hearing shall be at the discretion of the Secretary. Any such hearing shall be public and notice thereof shall be published at least 15 days in advance. A transcript of the hearing shall be made part of the public record.

(4) As soon as practicable following the conclusion of the proceedings described in paragraphs (b)(2) and (3) of this section, the Secretary shall either publish a final determination that a voluntary product standard will not be published, or he shall publish a notice withdrawing his proposed determination under paragraph (b)(1) of this section. In no event shall the withdrawal of a proposed determination operate to preclude the publication of another proposed determination under paragraph (b)(1) of this section with respect to the same or similar subject matter.

(c) *Determination that a published voluntary product standard has not been observed.* (1) Whenever the Secretary has reason to believe that a voluntary product standard published under these procedures is not being observed he shall initiate an inquiry to determine such fact.

(2) If, on the basis of the information developed during the inquiry, the Secretary concludes that the voluntary product standard is not being observed, he shall publish a proposed determination to this effect. The proposed determination shall identify the particular standard involved and shall be accompanied by a concise statement of the facts upon which it is based.