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Federal Trade Commission Rulemaking Procedures and Reprint

Robert Schroeder
Federal Trade Commission

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On February 3, 1981 the Federal Trade Commission published a notice in the Federal Register announcing future steps in the standards and certification rulemaking. The notice directs the staff to complete its analysis of the record and submit a final report by July 15, 1981. The Presiding Officer’s report will be completed by September 15, 1981, and will be followed by a 60 day public comment period. During the comment period, the record will be reopened to receive information about the impact of OMB Circular A-119, Federal Participation in the Development and Use of Voluntary Standards, on the practices reflected in the record.

A copy of the Federal Register notice is enclosed. If you have any questions, please call me at (202)523-3935.

Sincerely,

Robert J. Schroeder
Division of Product Reliability

Enclosure
1 The following additional notices amending the notice of proposed rulemaking or providing information were published: 43 FR 58517 (Dec. 21, 1978); 44 FR 17718 (March 23, 1979); 44 FR 35530 (June 19, 1979); and 44 FR 70658 (Dec. 7, 1979).
believes that the most sensible way to address these issues is through analysis of the current rulemaking record in this proceeding, supplemented by information interested persons may wish to present on the impact of OMB Circular A–119. The Commission, therefore, has directed its staff to continue its analysis of the factual information and legal and policy arguments contained in the rulemaking record and preparation of a staff report. The staff has been directed to pay special attention to the issues raised during consideration of the Federal Trade Commission Improvements Act of 1980 when it examines the rulemaking record and prepares its recommendations. The Commission has also directed that the rulemaking record be reopened, during the post record comment period which will follow publication of the staff and Presiding Officer’s reports, for submission of information about the impact of OMB Circular A–119 on the practices reflected in the record.

Due to changes in Commission authority contained in the Federal Trade Commission Improvements Act of 1980, this rulemaking will no longer be conducted, in part, under the authority of Section 16 of the Federal Trade Commission Act, 15 U.S.C. 57a. The rulemaking will be conducted solely under § 6(g), 15 U.S.C. 60a. The notice of proposed rulemaking (45 FR 57299), and the procedures followed in this rulemaking to this time, fully satisfy the requirements of 5 U.S.C. 553 and Part I, Subpart C of the Commission’s procedures and rules of practice, as applicable to rulemaking under Section 6(g) authority. The Commission intends to follow the remaining procedural steps set forth in the notice of proposed rulemaking. The Commission also recognizes that, in considering a rule under Section 6(g) as one option, the record must be analyzed solely with respect to unfair methods of competition, and has not yet determined whether the current record supports the promulgation of any standards and certification rule under section 6(g). The Commission also believes it would benefit from a Presiding Officer’s report, which will be submitted not later than 60 days after the staff report. The Presiding Officer’s report will make a recommended decision based upon his findings and conclusions as to all relevant and material evidence, and taking into account the staff report. Both of these reports will be made available to the public, and the Commission will then invite all interested persons to submit their views on all issues relevant to this proceeding, including the issues raised in the Conference Report on H.R. 2313. Written comment and information will be requested specifically about the impact of OMB Circular A–119 on the practices reflected in the record. New factual material will be accepted only as to this issue. This written comment period will be for 60 days. Immediately following the comment period will be a period of 30 days to receive rebuttal submissions relating to comments about the impact of OMB Circular A–119. The Commission may also afford interested persons an opportunity to present their views orally on some or all issues, at the Commission’s discretion. By following these procedures, which are consistent with the requirements set forth in the notice of proposed rulemaking, the Commission believes it will have the best record on which to base its decisions about what actions, if any, are necessary in the area of standards and certification.

The Commission has not made any findings or conclusions in this matter. Such findings or conclusions can be made only after careful consideration of the rulemaking record and shall be based solely on this record.

By direction of the Commission.

Carol M. Thomas,
Secretary.