

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## FEDERAL TRADE COMMISSION

### 16 CFR Part 432

#### Trade Regulation Rule Relating to Power Output Claims for Amplifiers Utilized in Home Entertainment Products

**AGENCY:** Federal Trade Commission.

**ACTION:** Request for public comment.

**SUMMARY:** The Federal Trade Commission ("FTC" or "Commission") requests public comment on its Trade Regulation Rule Relating to Power Output Claims for Amplifiers Utilized in Home Entertainment Products ("Amplifier Rule" or "Rule"). The Commission solicits comment as part of its systematic review of all current FTC rules and guides.

**DATES:** Written comments relating to the Amplifier Rule review must be received by May 12, 2008.

**ADDRESSES:** Interested parties are invited to submit written comments relating to the Amplifier Rule review. To facilitate organization of comments, comments should refer to "Amplifier Rule Regulatory Review, 16 CFR Part 432, Comment, Project No. P974222." A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H-135 (Annex E), 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. Comments containing confidential material must be filed in paper form, must be clearly labeled "Confidential," and must comply with Commission Rule 4.9(c).<sup>1</sup> The FTC is requesting that any comment filed in paper form be sent

by courier or overnight service, if possible, because postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

Comments filed in electronic form should be submitted by following the instructions on the web-based form at <https://secure.commentworks.com/ftc-AmplifierRuleReview>. To ensure that the Commission considers an electronic comment, you must file it on that web-based form. You may also visit <http://www.regulations.gov> to read this notice, and may file an electronic comment through that website. The Commission will consider all comments that [www.regulations.gov](http://www.regulations.gov) forwards to it.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC website, to the extent practicable, at <http://www.ftc.gov>. As a matter of discretion, the FTC makes every effort to remove individuals' home contact information from the public comments it receives before placing those comments on the FTC website. To read our policy on how we handle the information you submit—including routine uses permitted by the Privacy Act—please review the FTC's privacy policy, at <http://www.ftc.gov/ftc/privacy.shtm>.

**FOR FURTHER INFORMATION CONTACT:** Jock Chung, Attorney, 202-326-2984, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

In response to misleading or confusing power distortion and other performance claims, the Commission issued the Amplifier Rule in 1974 to assist consumers purchasing power amplification equipment for home entertainment purposes by standardizing the measurement and disclosure of various amplifier performance characteristics (39 FR 15387). The Rule establishes uniform test standards and disclosures to aid consumers in making meaningful

comparisons of amplifier performance attributes.

## II. Regulatory Review of the Amplifier Rule

The Commission reviews each of its rules and guides periodically to assess the rule's or guide's efficacy, costs, and benefits; and to determine whether to retain, modify, or rescind it. This notice commences the Commission's review of the Amplifier Rule.

### A. General Areas of Interest for FTC Review

As part of its review, the Commission seeks comment on a number of general issues, including the continuing need for the Rule and its economic impact. The Commission believes that this review is important to ensure that the Rule is appropriately responsive to changes in the marketplace.

### B. Specific Areas of Interest for FTC Review

After its last revisions to the Rule in 2000, the Commission issued a Supplemental Notice of Proposed Rulemaking ("SNPR") soliciting comment on Commission proposals to amend the definition of "associated channels" in connection with the power rating testing of multichannel "home theater" amplifiers (65 FR 80798 (2000)). Multichannel amplifiers incorporate five or more amplification channels and are designed to decode and/or amplify digitally encoded multichannel movie soundtracks or music. Section 432.2(a) of the Rule requires an amplifier's continuous power output per channel to be "[m]easured with all associated channels fully driven to rated per channel power."<sup>2</sup> Thus, manufacturers of multichannel audio/video receivers and amplifiers must decide which of the five or more discrete channels of amplification are "associated" and, therefore, subject to simultaneous operation at full rated power. In its SNPR, the Commission solicited public comment on three alternative designations of "associated channels" for such audio amplifiers.<sup>3</sup>

<sup>1</sup> The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. See Commission Rule 4.9(c), 16 CFR 4.9(c).

<sup>2</sup> This continuous measurement represents the maximum per-channel power an amplifier can deliver over a five minute period.

<sup>3</sup> The three proposed alternatives were: (1) all channels associated as one group; (2) the front right and left channels and the center channel associated

Continued

The SNPR elicited one comment, submitted by the Consumer Electronics Association (“CEA”). CEA noted that there was no industry consensus on testing, measuring, and specifying the power output of multichannel amplifier products. Consequently, CEA formed an industry working group to establish a voluntary industry standard.

On January 15, 2002, at the request of CEA, the Commission deferred action on the proposed rule to allow a consensus procedure for the testing of multichannel amplifiers to develop (67 FR 1915). Although CEA subsequently issued a standard, designated CEA-490-A, “Test Methods of Measurement for Audio Amplifiers,”<sup>4</sup> the Commission’s review did not find widespread adoption of this standard in advertisements or product specifications.

With no universally adopted power rating standard for multichannel amplifiers, the Commission was faced with the prospect of making a regulatory decision affecting a growing market for “home theaters” based on an outdated record. Consequently, the Commission terminated its rulemaking on March 20, 2007, stating that the rulemaking record was insufficient for further regulatory decisions (72 FR 13052).

However, when it terminated the rulemaking, the Commission stated that it would place the Amplifier Rule on its regulatory review schedule for 2008, during which it would solicit comments to determine what, if any amendments are appropriate to address the testing of multichannel amplifiers. Some of the questions included in this notice, therefore, address issues regarding the usage of multichannel “home theater” amplifiers by consumers, and the costs and benefits of requiring different methodologies for rating the power output of multichannel “home theater” amplifiers. By including these issues, the Commission intends to facilitate comment, and the inclusion, or exclusion, of any issue is no indication of the Commission’s intent to make any specific modifications to the Rule.

### III. Issues for Comment

The Commission requests written comment on any or all of the following questions. Please make your responses as specific as possible, including a

as one group, and the surround channels associated as a second group; and (3) the front stereo channels associated as one group, the center channel treated as a second group, and the surround channels associated as a third group.

<sup>4</sup> Copies of the test procedures may be obtained for a fee from IHS Inc., 15 Inverness Way East, Englewood, CO 80112, or online from [http://global.ihs.com/doc\\_detail.cfm?item\\_s\\_key=00033449&item\\_key\\_date=970530&rid=CEA](http://global.ihs.com/doc_detail.cfm?item_s_key=00033449&item_key_date=970530&rid=CEA).

reference to the question being answered, and reference to empirical data or other evidence wherever available and appropriate.

#### A. General Issues

- (1) Is there a continuing need for the Rule? Why or why not?
- (2) What benefits has the Rule provided to consumers? What evidence supports the asserted benefits?
- (3) What modifications, if any, should be made to the Rule to increase its benefits to consumers?
  - (a) What evidence supports your proposed modifications?
  - (b) How would these modifications affect the costs and benefits of the Rule for consumers?
  - (c) How would these modifications affect the costs and benefits of the Rule for businesses, and in particular small businesses?
- (4) What impact has the Rule had on the flow of truthful information to consumers and on the flow of deceptive information to consumers?
- (5) What significant costs has the Rule imposed on consumers? What evidence supports the asserted costs?
- (6) What modifications, if any, should be made to the Rule to reduce the costs imposed on consumers?
  - (a) What evidence supports your proposed modifications?
  - (b) How would these modifications affect the costs and benefits of the Rule for consumers?
  - (c) How would these modifications affect the costs and benefits of the Rule for businesses, and in particular small businesses?
- (7) Please provide any evidence that has become available since 2000 concerning consumer perception of home entertainment amplifier power rating claims, including claims not currently covered by the Rule. Does this new information indicate that the Rule should be modified? If so, why, and how? If not, why not?
- (8) Please provide any evidence that has become available since 2000 concerning consumer interest in particular home entertainment amplifier power rating issues. Does this new information indicate that the Rule should be modified? If so, why, and how? If not, why not?
- (9) What benefits, if any, has the Rule provided to businesses, and in particular to small businesses? What evidence supports the asserted benefits?
- (10) What modifications, if any, should be made to the Rule to increase its benefits to businesses, and in particular to small businesses?
  - (a) What evidence supports your proposed modifications?

(b) How would these modifications affect the costs and benefits of the Rule for consumers?

(c) How would these modifications affect the costs and benefits of the Rule for businesses?

- (11) What significant costs, including costs of compliance, has the Rule imposed on businesses, and in particular on small businesses? What evidence supports the asserted costs?
- (12) What modifications, if any, should be made to the Rule to reduce the costs imposed on businesses, and in particular on small businesses?
  - (a) What evidence supports your proposed modifications?
  - (b) How would these modifications affect the costs and benefits of the Rule for consumers?
  - (c) How would these modifications affect the costs and benefits of the Rule for businesses?
- (13) What evidence is available concerning the degree of industry compliance with the Rule?
  - (a) To what extent has there been a reduction in deceptive home entertainment amplifier power rating claims since the Rule was issued? Please provide any supporting evidence. Does this evidence indicate that the Rule should be modified? If so, why, and how? If not, why not?
  - (b) To what extent has the Rule reduced marketers’ uncertainty about which claims might lead to FTC law enforcement actions? Please provide any supporting evidence. Does this evidence indicate that the Rule should be modified? If so, why, and how? If not, why not?
- (14) Are there claims addressed in the Rule on which regulation is no longer needed? If so, explain. Please provide supporting evidence.
- (15) What potentially unfair or deceptive home entertainment amplifier power rating claims, if any, are not covered by the Rule?
  - (a) What evidence demonstrates the existence of such claims?
  - (b) With reference to such claims, should the Rule be modified? If so, why, and how? If not, why not?
- (16) What modifications, if any, should be made to the Rule to account for changes in relevant technology or economic conditions? What evidence supports the proposed modifications?
- (17) Does the Rule overlap or conflict with other federal, state, or local laws or regulations? If so, how?
  - (a) What evidence supports the asserted conflicts?
  - (b) With reference to the asserted conflicts, should the Rule be modified? If so, why, and how? If not, why not?

(c) Is there evidence concerning whether the Rule has assisted in promoting national consistency with respect to the regulation of home entertainment amplifier power rating claims? If so, please provide that evidence.

(18) Are there international laws, regulations, or standards with respect to home entertainment amplifier power rating claims that the Commission should consider as it reviews the Rule? If so, what are they? Should the Rule be modified in order to harmonize with these international laws, regulations, or standards? If so, why, and how? If not, why not?

(19) Do current or impending changes in technology affect whether and how the Rule should be modified?

### B. Specific Issues

(1) Should the Rule be revised to include additional guidance regarding power ratings for multichannel "home theater" amplifiers? If so, why, and what guidance should be provided? If not, why not? What evidence supports your answer(s)?

(2) What methods are currently used to measure the power outputs of multichannel "home theater" amplifiers? Does use of these methods cause consumer injury? What evidence supports your answer(s)?

(3) How often during typical usage, i.e., for what percentage of usage time, are multichannel "home theater" amplifiers required to produce full rated output in all channels simultaneously? What evidence supports your answer?

(4) How often during typical usage, i.e., for what percentage of usage time, are multichannel "home theater" amplifiers required to produce full rated output in the three front channels simultaneously? What evidence supports your answer?

(5) What are the incremental effects on power ratings for multichannel "home theater" amplifiers of driving two, three, four, five, six, or more channels simultaneously? What evidence supports your answers?

(6) For a given rated power output, e.g., 100 Watts per channel, what is the added cost of producing a multichannel "home theater" amplifier that can provide full rated power in all channels simultaneously rather than in only one channel? What evidence supports your answer?

(7) Should the Rule require that any channels be designated as associated when testing the power output of multichannel "home theater" amplifiers? If so, which channels should be designated as associated? What evidence supports your answer?

(8) Should Consumer Electronics Association protocol CEA-490-A be incorporated into the Rule? Why or why not? What evidence supports your answer?

(9) Do current or impending changes in technology, such as the development of self-powered wired and wireless speakers, affect whether and how the Rule should be modified regarding power rating protocols for multichannel "home theater" amplifiers?

### List of Subjects in 16 CFR Part 432

Amplifiers, Home entertainment products, Trade practices.

**Authority:** 15 U.S.C. 41-58.

By direction of the Commission.

**Donald S. Clark,**

*Secretary*

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[BILLING CODE 6750-01-S]

## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

#### 29 CFR Part 2550

#### Hearing on Reasonable Contracts or Arrangements Under Section 408(b)(2)—Fee Disclosure

**AGENCY:** Employee Benefits Security Administration, U.S. Department of Labor.

**ACTION:** Notice of hearing.

**SUMMARY:** Notice is hereby given that the Department of Labor will hold a hearing on the Department's proposed regulation under section 408(b)(2) of the Employee Retirement Income Security Act of 1974 (ERISA) and the related proposed class exemption.

**DATES:** The hearing will be held on March 20, 2008, and March 21 (if necessary), beginning at 9 a.m., EST.

**ADDRESSES:** The hearing will be held at the U.S. Department of Labor, Room S-4215 A-C, 200 Constitution Avenue, NW., Washington, DC 20210.

**FOR FURTHER INFORMATION CONTACT:** Fil Williams, Office of Regulations and Interpretations, Employee Benefits Security Administration, (202) 693-8510. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** On December 13, 2007, notice was published in the **Federal Register** (72 FR 70988) that the Department of Labor (the Department) has under consideration a proposal to amend its regulation 29 CFR 2550.408b-2(c) under ERISA section 408(b)(2) relating to the

provision of services to employee benefit plans. The proposed regulation would provide that a "reasonable" contract or arrangement under ERISA section 408(b)(2)<sup>1</sup> between an employee benefit plan and certain service providers must include, among other things, certain disclosures concerning service provider compensation and conflicts of interest.<sup>2</sup>

Specifically, upon adoption, the proposal would require contracts and arrangements between employee benefit plans and certain providers of services to such plans to be in writing and to include provisions to ensure certain disclosures to enable the plan fiduciary to assess the reasonableness of compensation or fees that the service provider would receive (from the plan and third parties) in connection with services rendered to the plan. The disclosures are also designed to enable the plan fiduciary to evaluate potential conflicts of interest that may affect the service provider's performance under the contract or arrangement.

In the notice of proposed regulation, the Department invited all interested persons to submit written comments on or before February 11, 2008. To date, the Department has received approximately 90 written comments on the proposal, many of which were from major industry groups and plan fiduciaries. All written comments are available to the public, without charge, online at <http://www.dol.gov/ebsa> and at the Public Disclosure Room, N-1513, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

In addition, the Department published in the **Federal Register** on December 13, 2007 (72 FR 70893), a notice of proposed class exemption that would provide relief from certain prohibited transaction restrictions of ERISA. The proposed class exemption would relieve the responsible plan fiduciary from any liability for a prohibited transaction that would result from entering into a contract or arrangement for the provision of services when the service provider failed to comply with the

<sup>1</sup> Section 408(b)(2) of ERISA provides relief from the prohibited transaction rules for service contracts or arrangements between a plan and a party in interest if the contract or arrangement is reasonable, the services are necessary for the establishment or operation of the plan, and no more than reasonable compensation is paid for the services. Regulations issued by the Department clarify each of these conditions to the exemption. See 29 CFR § 2550.408b-2.

<sup>2</sup> Currently, the regulation at 29 CFR § 2550.408b-2(c) states only that a contract or arrangement is not reasonable unless it permits the plan to terminate without penalty on reasonably short notice.