

reasons for wishing to appear at an oral hearing, and a summary of the matters concerning which such person wishes to give testimony at such oral hearing. The Board subsequently will designate a time and place for any hearing ordered, and will give notice of such hearing to the transferor, the transferee, and all persons that have requested an oral hearing. In the absence of a request for an oral hearing, the Board will consider the requested determination on the basis of documentary evidence filed in connection with the application.

Board of Governors of the Federal Reserve System, July 2, 1976.

THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc.76-19819 Filed 7-8-76;8:45 am]

WESTERN MICHIGAN CORP.

Order Denying Acquisition of Bank

Western Michigan Corporation, Niles, Michigan, a bank holding company within the meaning of the Bank Holding Company Act, has applied for the Board's approval under section 3(a)(3) of the Act (12 U.S.C. 1842(a)(3)) to acquire 100 percent of the voting shares (less directors' qualifying shares) of the successor by merger to The First National Bank of Cassopolis, Cassopolis, Michigan ("Bank"). The bank into which Bank is to be merged has no significance except as a means to facilitate the acquisition of the voting shares of Bank. Accordingly, the proposed acquisition of shares of the successor organization is treated herein as the proposed acquisition of the shares of Bank.

Notice of the application, affording opportunity for interested persons to submit comments and views, has been given in accordance with section 3(b) of the Act. The time for filing comments and views has expired, and the Board has considered the application and all comments received including the denial recommendation of the Department of Justice, in light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Applicant is the 34th largest banking organization in Michigan and through its sole subsidiary, First National Bank of Southwestern Michigan, Niles, Michigan ("FNB"), holds deposits of approximately \$108.7 million, representing 0.4 percent of the total deposits held by commercial banks in the State.¹ Acquisition

¹ Unless otherwise indicated, all banking data are as of June 30, 1976, and reflect bank holding company formations and acquisitions approved through May 31, 1976.

existing and potential competition.

On the basis of the foregoing and other facts of record, the Board concludes that the competitive considerations relating to this application weigh sufficiently against approval so that it should not be approved unless the anticompetitive effects are clearly outweighed by benefits to the public in meeting the convenience and needs of the communities to be served.

The financial and managerial resources and prospects of Applicant, its subsidiary bank, and Bank are regarded as satisfactory and consistent with approval of the application; however, such considerations do not provide significant weight for approval of the application. Acquisition of Bank by Applicant would enable Bank to expand its trust department, increase its lending capacity through loan participations, upgrade its agricultural loan services, and create new time deposit services and municipal and corporate savings programs. These considerations relating to convenience and needs lend some weight toward approval of the application. The Board finds, however, that neither the considerations relating to banking factors nor to convenience and needs are sufficient to outweigh the adverse competitive effects of Applicant's proposal.

On the basis of the facts in the record,² and in light of the factors set forth in section 3(c) of the Act, it is the Board's judgment that approval of the proposal would not be in the public interest. Accordingly, the application is denied for the reasons summarized above.

By order of the Board of Governors,³ effective June 30, 1976.

GRIFFITH L. GARWOOD,
Assistant Secretary of the Board.

[FR Doc.76-19820 Filed 7-8-76;8:45 am]

FEDERAL TRADE COMMISSION

DETERMINATION OF APPLICABILITY OF CALIFORNIA STATE LAW TO WARRANTORS COMPLYING WITH MAGNUSON-MOSS WARRANTY ACT

Proceeding, Invitation To Comment, and Public Hearings

The State of California has applied for a determination, under the provisions of

² The Cass County banking market is approximately by all of Cass County except the two extreme southwestern townships of Howard and Milton, which are part of the Niles, Michigan-South Bend/Elkhart, Indiana banking market.

³ FNB operates eight banking offices in this market.

⁴ The other eight banking offices of Applicant's lead bank are all within 25 miles of Bank's head office in Cassopolis, albeit in a different market.

⁵ Among the facts of record regarded by the Board as evidencing the elimination of existing competition are the amount of deposits and loans derived from Bank's service area by Applicant's subsidiary bank, which represent 9.9 and 18.2 percent of Bank's total deposits and loans, respectively.

⁶ Dissenting Statement of Governor Lilly filed as part of the original document. Copies are available upon request to Board of Governors of the Federal Reserve System, Washington, D.C. 20551 or to the Federal Reserve Bank of Chicago.

⁷ Voting for this action: Vice Chairman Gardner and Governors Jackson and Partee. Voting against this action: Governor Lilly. Absent and not voting: Chairman Burns and Governors Wallich and Coldwell.

Title I, Section 111(c)(2) of the Magnuson-Moss Warranty—Federal Trade Commission Improvement Act, Pub. L. 93-637, 15 U.S.C. 2301, et seq. (hereinafter the "Warranty Act"), that certain provisions of California law afford protection to consumers greater than the requirements of the Warranty Act and do not unduly burden interstate commerce.

Under Section 111(c) of the Warranty Act, a State requirement which relates to labeling or disclosure with respect to written warranties or performance thereunder is rendered inapplicable to written warranties meeting Federal standards if it is within the scope of an applicable requirement of the Warranty Act governing warranty disclosure provisions, designations or minimum standards (sections 102, 103 and 104 or rules thereunder) and not identical to such requirement. State requirements may be declared applicable to such transactions by the Federal Trade Commission, according to paragraph two of this provision, if an appropriate State agency applies and the Commission determines (pursuant to a rulemaking proceeding under section 109) that the requirement in question gives more protection to consumers than does the Warranty Act and that it does not unduly burden interstate commerce. The State requirement will then be applicable to the extent specified by the Commission for as long as the State administers and enforces the requirement effectively. Another exception to Section 111(c) is Section 111(b), which preserves consumer rights or remedies under State law.¹

The Commission has concluded that three sections of the California laws submitted will be affected by operation of section 111(c) of the Warranty Act—§§ 1793.1, 1797.3 and 1797.5 of the California Civil Code.

(1) Section 1793.1(b) of the Song-Beverly Consumer Warranty Act, while similar to disclosures required by 16 CFR § 701.3(a)(5) of the regulations implementing § 102 of the Warranty Act, is not identical to that requirement;

(2) The "Mobile Home Warranty" designation requirement of California Civil Code § 1797.3 is not identical to the provisions of § 103 of the Warranty Act;

(3) That part of § 1797.3(d) of the California Civil Code which requires disclosure of telephone numbers is not identical to the disclosure provided for by 16 CFR 701.3 (a)(5); and

(4) The pre-sale availability requirements of § 1797.5 of the California Civil Code are not identical to the requirements of 16 CFR Part 702 which also implements Warranty Act § 102.

It should be noted, however, that provisions (1), (3) and (4) would be affected

¹ The Commission believes it is Congress' intent to permit warrantors to use the same warranty forms on a nationwide basis. Accordingly, provisions relating to warranty labeling or disclosures that are rendered inapplicable by virtue of section 111(c) are not preserved by section 111(b), and can only remain applicable pursuant to a Commission determination under section 111(c)(2).

only after the rules implementing section 102 of the Warranty Act are effective. (See, 40 FR 60163, Dec. 31, 1975, 16 CFR Parts 701, 702. The Rules effective December 31, 1976.)

It should also be noted that the Commission expresses no view as to the effect of the Warranty Act on the Song-Beverly Act should the state, rather than a consumer, undertake to enforce it. Since the Song-Beverly Act does not explicitly provide for state enforcement, and since the Commission is not aware of any judicial decision on the question, the Commission will not consider the issue at the present time.

In view of the foregoing, the Commission hereby initiates a proceeding to determine, pursuant to the California petition and the provisions of section 111(c)(2) of the Warranty Act (15 U.S.C. 2311(c)(2)), whether the above described State requirements afford protection to consumers greater than the requirements of the Warranty Act and do not unduly burden interstate commerce. If it is determined that a provision of the State law affords protection to consumers greater than the requirements of the Warranty Act and that such provision does not unduly burden interstate commerce, then the provision will be applicable to written warranties in compliance with the federal requirements to the extent specified in such determination for as long as the State of California administers and enforces effectively such greater requirement.

All interested persons are hereby notified that they may file written data, views, and arguments concerning this matter with the Special Assistant Director for Rulemaking, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580, no later than September 7, 1976.

All interested persons are also given notice of the opportunity to orally present data, views, and arguments pursuant to section 109 of the Warranty Act (15 U.S.C. 2309), at public hearings to be held commencing at 9:30 a.m., September 13, 1976 in Room 13209, 11000 Wilshire Boulevard, Los Angeles, California 90024. Additional hearings will be held commencing at 9:30 a.m., September 20, 1976 in Room 532, Federal Trade Commission Building, Pennsylvania Avenue at 6th Street, NW., Washington, D.C.

Any persons desiring to orally present his or her views, data, and arguments at any of the hearings should so inform the following designated people, no later than September 7, 1976, and state the estimated time required for his or her oral presentation. For the Los Angeles hearings notify the Director of the Commission's Los Angeles Regional Office at the above address. For the Washington, D.C. hearings notify the Special Assistant Director for Rulemaking, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580. Reasonable limitations upon the length of time allotted to any person may be imposed.

In addition, all persons desiring to deliver a prepared statement at either of the hearings should file such statement together with supporting factual material with the Special Assistant Director for Rulemaking no later than September 7, 1976. To the extent practicable, persons wishing to file written presentations in excess of two pages should submit five copies, except that supporting materials need not be duplicated.

The data, views, and arguments presented will be available for examination by interested persons in Room 120 of the Division of Legal and Public Records, Federal Trade Commission, Washington, D.C., and will be considered fully by the Commission in making its final determination.

For the further information of interested persons, the following Commission staff analysis of the California State law provisions in question is set forth:

COMMISSION'S STAFF ANALYSIS

SONG-BEVERLY CONSUMER WARRANTY ACT (California Civil Code, §§ 1790-1795.7)

Article 1. General Provisions. Section 1790 names the short title of the Act. Section 1790.1 prohibits a waiver of the act's protections except as expressly provided. Section 1790.2 provides for the severability of the sections. Section 1790.3 provides that this act prevails where the consumer's rights conflict with the commercial code. Section 1790.4 provides for the cumulative effect of the act's remedial provisions.

The above five provisions are unaffected by the Warranty Act since they are general provisions which do not impose duties or obligations on warrantors or consumers.

Article 2. Definitions. Section 1791 defines terms such as "buyer", "manufacturer", "distributor", "seller", "soft goods", and "consumables."

These terms involve definitional provisions which are unaffected by the Warranty Act.

Section 1791.1 defines "implied warranties."

Subsection (a) defines the implied warranty of merchantability and Subsection (b) the implied warranty of fitness. Subsection (c) provides that the duration of an implied warranty shall be coextensive with an express warranty, provided it is reasonable; however, such implied warranty must have a duration of 60 days at a minimum and one year as a maximum.

As defined by section 101(7) of the Warranty Act, the term "implied warranty" means "an implied warranty arising under state law (as modified by sections 108² and 104(a)) in connection with the sale by a supplier of a consumer product." Staff's view is that the language of Section 101(7) stating that implied warranties "arise" under state law is evidence of Congressional intent to allow state law to govern creation and duration of implied warranties.³ The fact

² Section 108(a) of the Warranty Act prohibits suppliers from disclaiming or modifying implied warranties, except as specified in § 108(b). This section provides that "implied warranties may be limited in duration

that the key Warranty Act provisions regulating limitation of implied warranties as to duration are directed to "suppliers" (Section 108(a)) and "warrantors" (Section 104(a)(2)) rather than states buttresses this position. Additionally, it is suggested that if Congress had wanted to affect the duration of implied warranties created under state law it would have done so expressly. Consequently, staff concludes that this California provision is unaffected by the Warranty Act.¹

Subsection 1791.1(d) provides for a cause of action for damages for breach of implied warranties by a buyer or consumer injured thereby.

This state provision is not a requirement which relates to labeling or disclosure with respect to written warranties, or performance thereunder; nor is it within the scope of an applicable requirement of sections 102, 103, or 104 since it does not relate to standards concerning written warranty disclosures, designa-

tion, or minimum content requirements. Consequently, it is not within the purview of section 111(c) of the Warranty Act.

While section 110(d) of the Warranty Act also provides for a cause of action for a consumer who is damaged by warrantor failure to comply with an obligation under an implied warranty, no conflict exists between the federal provision and the state law. Moreover, this subsection provides for a consumer cause of action, and, according to section 111(b)(1) of the Warranty Act, nothing in the Act "shall invalidate or restrict any right or remedy of any consumer under State law." This provision, therefore, is not affected by the Warranty Act.

Section 1791.2 defines "express warranty." Section 1791.3 defines "as is" or "with all faults".

Section 1791.2 defines "express warranty." Section 1791.3 defines "as is" or "with all faults".

These two definitions do not create any substantive rights or duties and, therefore, are not within the scope of section 111(c), nor are they affected by any other provision of the Warranty Act.

Article 3. Sale Warranties. The first six sections of this article provide that warranties of merchantability and fitness for a particular purpose attach to goods in consumer sales and define the circumstances under which these warranties may be disclaimed.

Section 1792 provides that unless disclaimed in the manner prescribed, a manufacturer's implied warranty of merchantability accompanies every sale or consignment for sale of consumer goods at retail.

Section 1792.1 provides that where applicable the sale or consignment is also accompanied by the manufacturer's implied warranty of fitness.

Section 1792.2 provides that where applicable an implied warranty of fitness from the retailer accompanies such sale or consignment.

The provisions of state law concerning the creation of implied warranties are unaffected by the Warranty Act because the Act makes clear that implied warranties are created by operation of state law.²

Section 1792.3 provides that these implied warranties may not be waived except when a consumer product is sold "as is" or "with all faults", and all other provisions of the chapter are strictly complied with.

Section 1792.4 provides that the disclaimer will not be effective unless there is a conspicuous writing attached to the goods clearly informing the buyer, prior to sale, in simple and concise language: (1) that the goods are being sold on an "as is" or "with all faults" basis; (2) that the entire risk as to quality and performance of the goods is with the buyer; and, (3) that should the goods prove defective, the buyer alone assumes the entire costs of all necessary servicing and repair.

Section 1792.5 states that if the requirements are met as to "as is" sales there can be a waiver of implied warranties.

¹ See, section 101(7) of the Warranty Act, and the discussion of § 1791.1 of the Song-Beverly Consumer Warranty Act (hereinafter "Song-Beverly Act"), *supra*.

Since the purpose of these provisions is to provide for the sale of consumer goods without any warranty, express or implied, they do not relate to written warranties and are therefore outside the scope of section 111(c) of the Warranty Act. These sections could, however, be affected in the future by regulations promulgated by the Commission under section 109(b) of the Warranty Act. That section provides that the Commission "may require disclosure that a used motor vehicle is sold without any warranty and specify the form and content of such disclosure." At the present time, however, the state law is unaffected by the Warranty Act.

Section 1793 provides that nothing shall affect the right of a manufacturer, distributor, or retailer to make express warranties; however, the maker of express warranties may not limit, modify or disclaim implied warranties as to consumer goods.

The first part of this provision is permissive and consistent with the Warranty Act. The second portion is identical to one of the federal minimum standards for a written warranty under the Warranty Act and not thereby affected. With respect to written warranties which fail to meet these federal minimum requirements and which attempt to limit duration of implied warranties under section 108(b), the state provision creates a consumer right preserved by operation of section 111(b)(1) of the Warranty Act.³ Consequently, this state provision is unaffected by the Warranty Act.

Section 1793.1 requires certain disclosures in making express warranties.

Subsection (a) requires that the language used be readily understood and that the warrantor be clearly identified.

Subsection (b) provides that a warrantor who maintains service or repair facilities in California shall: (1) give the buyer a list of each such repair facility with its name and address; or, (2) give the name, address and telephone number of the repair facility central directory within the state or toll free number; or, (3) maintain at the seller's premises a list of authorized service facilities. (In the latter instance, it shall be the duty of the seller to provide the name, address and telephone number of the nearest repair facility upon request.)

Section 102 of the Warranty Act mandates Commission promulgation of rules requiring full disclosure of written warranty terms and conditions. Commission rules dealing with disclosure of written consumer product warranty terms and conditions, and implementing section 102 have been recently promulgated.⁴ These

² The Commission recently proposed a rule implementing section 109(b) of the Warranty Act. See, 41 F.R. 1089 (Jan. 6, 1976).

³ § 111(b)(1) of the Warranty Act states "Nothing in the Act shall invalidate or restrict any right or remedy of any consumer under State law."

⁴ See, 40 FR 60168 (Dec. 31, 1975), 16 CFR Parts 701, 702.

⁵ Therefore, in California a consumer product with a two-year "full" written warranty may be accompanied by an implied warranty of merchantability of maximum one-year duration. However, without a clear and conspicuous disclosure of this limitation, such warranty would appear to be "deceptive" under section 110(e)(2) of the Warranty Act since it would tend to mislead a reasonable individual exercising due care.

rules become effective December 31, 1976."

By operation of section 111(c) of the Warranty Act, the state disclosure provisions of § 1793.1(b) "will be rendered inapplicable to written warranties complying with the federal requirements, when effective, since they are not identical to these requirements. Under section 111(c)(2), however, these state provisions may be subject to examination in a Commission rulemaking proceeding pursuant to section 109 of the Warranty Act. If the Commission determines that the state provisions afford greater protection to consumers than the requirements of the Warranty Act and that they do not unduly burden interstate commerce, these requirements will be applicable as long as they are effectively enforced. In view of the above discussion, staff recommends commencement of such a rulemaking proceeding.

Section 1793.2. Subsection (a) provides that a manufacturer who sells consumer goods with an express warranty shall either maintain sufficient service and repair facilities in California to carry out the terms of such warranties or be subject to the provisions of § 1793.5."

Subsection (b) provides that service or repair necessary to conform the goods to express warranties must be commenced within a reasonable time and (unless the buyer agrees in writing to the contrary) must be completed within 30 days (unless delays are beyond the control of the manufacturer).

Subsection (c) provides for return of nonconforming goods by the buyer, except that if the size, weight or method of attachment or installation of a product is such that delivery to the manufacturer or seller cannot reasonably be accomplished, the buyer may notify the manufacturer or its nearest repair facility and the manufacturer is required to pick up the goods for service and repair or arrange for transportation, at its expense.

Subsection (d) provides for replacement or refund (less the amount attributable to use) if the manufacturer cannot repair or service the goods to conform with the applicable express warranties.

This section imposes certain statutory duties and performance requirements, enumerated in (b), (c), and (d), on manufacturers selling consumer goods with an express warranty with regard to maintenance of service and repair facilities in California. While these provisions arguably set forth requirements within the scope of section 104 of the

Warranty Act, it is unnecessary to consider the effect of § 111(c) on these provisions since they also create, in conjunction with section 1794,¹¹ consumer rights and remedies within the meaning of section 111(b)(1)¹² of the Warranty Act.¹³ As a result, the state provisions in question remain unaffected by the Warranty Act.¹⁴

Section 1793.3 provides that if a manufacturer of consumer goods, for which an express warranty is given, does not provide service or repair facilities within the state pursuant to § 1793.2, the buyer may: (a) return the goods to the retail seller for repair, replacement, or refund, at the retailer's option, or, (b) return the goods to any retail seller within the state who sells like goods of the same manufacturer for replacement or refund, at the retailer's option. This section also provides in subsection (c) that if the buyer is unable to return the goods because of size, weight or method of attachment or installation, the buyer shall give notice to the retailer who shall, at his expense, repair the goods at the buyer's residence or pick up the goods (or arrange for transportation of the goods to his place of business).

Section 1793.4 provides that where a manufacturer is subject to the provisions of § 1793.3 (because service and repair facilities are not maintained in California) such service and repair must be commenced within a reasonable time and, unless the buyer agrees otherwise in writing, goods conforming to the applicable express warranties shall be tendered within 30 days.

Section 1793.5 requires that manufacturers who make express warranties but who do not provide the required service and repair facilities within the state shall be liable for costs and expenses to any retailer who is required under the provisions of this act to honor the manufacturer's warranties.

Section 1793.3 (providing for return of nonconforming goods of manufacturers failing to provide minimum service or repair facilities within the state) must be read together with section 1793.4 (requiring tender of conforming goods with-

in 30 days) and section 1793.5 (holding the manufacturer liable to the retail seller for expenses incurred in honoring the manufacturer's warranties). These three sections create a statutory scheme to ensure that manufacturer's warranties are honored by out-of-state sellers not maintaining sufficient service or repair facilities in California. These sections establish performance obligations upon the retailer to repair, replace or refund, and impose a duty to reimburse on the manufacturer-warrantor. These sections constitute consumer rights and remedies since, by virtue of section 1794 of the Song-Beverly Act, a buyer of consumer goods injured by a willful violation of these provisions may bring an action for recovery of treble damages and attorney fees. Although these obligations arguably constitute warranty performance requirements within the scope of section 104, they come within the limitation of section 111(b)(1)¹⁵ and remain unaffected by the Warranty Act.

Section 1793.5. Subsection (a) provides that where the retail sale of soft goods or consumables is accompanied by an express warranty and the items do not conform to the warranty, the buyer may return the goods within 90 days (or greater time if provided in the warranty).

Subsection (b) provides that when such goods are returned the retailer shall replace the nonconforming goods where the manufacturer has directed replacement in the warranty or, where there is no such direction, the retailer may (at his option) replace the nonconforming goods or reimburse the buyer. (Section 1793.5 provides for retailer reimbursement for these expenses.)

These obligations also constitute consumer rights and remedies since, by virtue of section 1794 of the Song-Beverly Act, a buyer of consumer goods injured by a willful violation of these provisions may bring an action for recovery of treble damages and attorney fees. Although these obligations arguably constitute warranty performance requirements within the scope of section 104, they come within the limitation of section 111(b)(1) and remain unaffected by the Warranty Act.

Section 1794 states that a consumer injured by a willful violation of these provisions may maintain a treble damage action and recover attorney fees.

This state provision is not a requirement which relates to labeling or disclosure with respect to written warranties or performance thereunder; nor is it within the scope of an applicable requirement of sections 102, 103 or 104 since it does not relate to standards concerning written warranty disclosures, designations, or minimum content requirements. Consequently, it is not within the purview of section 111(c) of the Warranty Act.

While section 110(d) of the Warranty Act provides for a cause of action for a consumer who is damaged by the warrantor's failure to comply with an obligation,

¹¹ See n. 8, *supra* for the text of this provision.

¹² These rules will not take effect until one year after their promulgation in order to allow ample time for warrantors and other affected persons to revise written warranties, packaging and related materials and to allow the Commission time in which to promulgate related regulations under the Warranty Act. The period between the promulgation and the effective date of these rules will also permit the Commission to conduct hearings on state applications concerning future applicability of state warranty provisions under section 111(c)(2) of the Warranty Act.

¹³ The substance of paragraph (a) of this section is identical to requirements of section 102(a) of the Warranty Act and rules implementing such section. (16 CFR 701.3 (a)).

¹⁴ See the discussion at p. 15, *infra*.

¹⁵ By virtue of section 1794 of California's Song-Beverly Act, a buyer of consumer goods injured by a willful violation of the requirements enumerated in § 1793.2 may bring an action for recovery of treble damages and attorney fees.

¹⁶ See note 8, *supra* for the text of this provision which preserves consumer rights and remedies under state law. If these requirements were rendered inapplicable, obviously the consumer rights and remedies contained therein would be invalidated or restricted.

¹⁷ It may be noted here that there are no express provisions for state enforcement of either the Song-Beverly Act or the California mobile home warranty sections *infra*, although it has been suggested that these statutes are nevertheless enforceable under other provisions of the California Civil Code (e.g., section 3369, the state's unfair trade practices act, or, with respect to the mobile home law, the licensing authority) by state action. Such authority has never been confirmed in a reported court decision, however.

¹⁸ While the rights and remedies of consumers under such state law may not be identical to, nor be in every respect as great as, the rights and remedies provided under the Warranty Act, the two are separate and distinct, and the effect of section 111(b)(1) of the Warranty Act is to preserve for the consumer the alternate right or remedy under state law.

gation under the Act, there is no conflict between the federal provision and state law. Moreover, even if there were a conflict, section 111(b)(1) of the Warranty Act expressly provides that nothing in the Act shall invalidate or restrict such a consumer right or remedy. This provision, therefore, is not affected in any way by the Warranty Act.

Section 1794.1 permits a cause of action for a retail seller injured by willful or repeated violations of the act and provides for recovery of treble damages and attorney fees.

Section 1794.2 limits treble damage claims to individual actions and actions other than those based solely on implied warranties.

These state provisions are not requirements relating to labeling or disclosure with respect to written warranties or performance thereunder; nor are they within the scope of an applicable requirement of sections 102, 103 or 104 since they do not relate to standards concerning written warranty disclosures, designations, or minimum content requirements. Consequently, they are not within the purview of section 111(c), and are not otherwise affected by the Warranty Act.

Section 1794.3 states that the provisions of the act do not apply to defects caused by unauthorized or unreasonable use of the goods following sale.

The substance of this provision is identical to section 104(c) of the Warranty Act and is unaffected thereby.

Section 1794.4 provides that the act does not preclude the sale of service contracts to consumers, with or without an express warranty, as long as the terms and conditions are fully and conspicuously disclosed in simple and readily understood language.

Section 106(b) of the Warranty Act states: "Nothing in this title shall be construed to prevent a supplier or warrantor from entering into a service contract with the consumer in addition to or in lieu of a written warranty if such contract fully, clearly, and conspicuously discloses its terms and conditions in simple and readily understood language." Thus, the substance of the state provision is identical to the Warranty Act provision and is unaffected thereby. It should be noted however, that section 106(a) of the Warranty Act provides that the Commission may prescribe by rule the manner and form in which the terms and conditions of service contracts shall be fully, clearly and conspicuously disclosed."

Section 1794.5 provides that a manufacturer may suggest methods of effecting service and repair other than those required by the act.

Section 110 of the Warranty Act provides for establishment of informal dispute settlement mechanisms by warrantors whereby consumer disputes are fairly and expeditiously settled and fur-

"While no such rule has yet been promulgated or proposed, adoption of such a rule could well effect § 1794.4 of the Song-Beverly Act, thereby requiring a future Commission determination in this regard.

ther provides for Commission oversight of such procedures." The state provision is permissive, rather than mandatory, and since there is no conflict between the state and federal provisions, the state provision remains unaffected thereby.

Section 1795 provides that if express warranties are made by persons other than the manufacturer, the obligation of that person shall be the same as those imposed on the manufacturer.

This provision merely incorporates by reference obligations and duties imposed upon manufacturers in other sections. The persons affected by this provision would, however, be subject to such other state provisions of the Song-Beverly Act only to the extent that they are not affected by the Warranty Act, as described in this memorandum.

Section 1795.1 provides for an exception from the requirements of the act for equipment and parts of a heating, cooling or air conditioning system that become fixed parts of a structure unless an express warranty has been made by the retailer who shall in such case have the duty to follow these provisions.

This section provides for an exception to the Song-Beverly Act and is completely outside the scope of the Warranty Act and unaffected thereby."

Section 1795.3 states that if a distributor or retailer of "used" goods makes express warranties, the obligation of the warrantor shall be the same as the warrantor of a new product except that it shall be the obligation of the seller rather than the manufacturer to maintain sufficient service and repair facilities within the state. (Any implied warranty attaching to used goods may be coextensive with any express warranty, except there is a 30 day minimum and three month maximum duration for such warranty.")

This provision merely incorporates by reference obligations and duties set out in other sections. The persons affected by this provision would, however, be subject to such other state provisions of the Song-Beverly Act only to the extent that they are not affected by the Warranty Act, as described in this memorandum.

Section 1795.6. Subsection (a) tolls the warranty period for implied and express warranties during the time the product is being repaired if the product sells for \$50 or more).

Subsection (b) defines "manufacturer" (for purposes of this section) to include its service or repair facility.

Section 102(b)(3) of the Warranty Act provides that the Commission may prescribe rules "for extending the period of time a written warranty . . . is in effect . . . [where] the consumer is deprived of the use of such consumer product by reason of failure of the prod-

"The Commission recently promulgated a rule implementing section 110 of the Warranty Act. See, 40 FR 60190 (Dec. 31, 1975), 16 CFR Part 703.

"While this provision exempts certain products from the requirements of state law, it should be emphasized it exempts no one from complying with the Warranty Act.

"State law creating an implied warranty may set limits on duration. See, section 101 (7) of the Warranty Act, and the discussion of § 1791.1 of the Song-Beverly Act, *supra*.

uct to conform with the written warranty or by reason of the failure of the warrantor . . . to carry out such warranty within the period specified in the warranty. . . ." Such rules have not been promulgated under this section as yet, however, and since there is currently no conflict between the Warranty Act and § 1795.6, this provision remains unaffected by the Warranty Act.

Subsection (c) requires that sellers of consumer goods selling for \$50 or more provide a receipt showing the date of purchase by the buyer. This provision also requires that manufacturers or sellers performing warranty work "provide to the buyer a work order or receipt with the date of return and either the date the buyer was notified that the goods were repaired or serviced or, where applicable, the date the goods were shipped or delivered to the buyer."

This state provision is not a requirement which relates to labeling or disclosure with respect to written warranties, or performance thereunder; nor is it within the scope of an applicable requirement of sections 102, 103 or 104 since it does not relate to standards concerning written warranty disclosures, designations, or minimum content requirements. Consequently, it is not within the purview of section 111(c), nor is it otherwise affected by the Warranty Act.

Section 1795.7 provides for the tolling of the period during which the manufacturer is liable to the seller in the case of a manufacturer's warranty.

This state provision is also not within the purview of section 111(c) of the Warranty Act, nor is it affected by any other provision of that Act.

MOBILE HOME WARRANTY PROVISIONS (California Civil Code, §§ 1797-1797.5)

These provisions establish a statutory warranty for all mobile homes sold by licensed dealers, and also provide for terms and disclosures required in such warranty.

Section 1797 provides that all new mobile homes sold by a dealer licensed by the Department of Motor Vehicles be covered by a warranty, the minimum requirements of which are set forth in this chapter.

Section 1797.1 defines a "mobile home."

Section 1797.2 provides that the required warranty applies to the manufacturer as well as to the dealer.

Section 1797.3 provides that the warranty be set forth in a separate written document entitled "Mobile Home Warranty" and be delivered to the buyer at the time the contract for sale is signed, and that such warranty must contain the following terms:

(a) that the mobile home is free from any substantial defects in material or workmanship;

(b) that the manufacturer or dealer or both shall take the appropriate corrective action at the site of the mobile home in instances of substantial defects in materials or workmanship which become evident within one year from the date of delivery of the mobile home to the buyer, provided the buyer or his transferee gives written notice of such defects to the manufacturer or dealer at their business address not more than one year and ten days after date of delivery;

(c) that the manufacturer and dealer shall be jointly and severally liable under the warranty;

(d) that the address and telephone number where to mail or deliver written notices of defects be set forth in the document;

(e) that the one-year warranty period applies to structures, plumbing, heating, electrical systems and all appliances and other equipment installed and included therein by the manufacturer or dealer; and,

(f) that the primary responsibility for appropriate corrective action under the warranty rests with the dealer and manufacturer, and the buyer should report all complaints to these parties initially, even though the manufacturers of any or all appliances may also issue their own separate warranties.

Section 1797.4 provides that the remedies under the chapter are cumulative and may not be waived.

Nothing in the Warranty Act prohibits a state from requiring that there be a warranty on a particular consumer product. Further, a state may set the duration of such statutory warranty. Also, states may mandate substantive terms if they are not requirements relating to performance under a written warranty, within the scope of a requirement under section 104 of the Warranty Act (or if they are identical to such requirements). Finally, a state may require disclosure of such requirements in a written warranty if they are also items required to be disclosed under the provisions of 16 CFR Parts 701-702, the rules implementing section 102 of the Warranty Act.

The mandatory terms contained in § 1797.3 paragraphs (b), (c) and (f) of the California statute set forth requirements under a written warranty within the scope of section 104 of the Warranty Act.²² By operation of section 111(c) of the Warranty Act these state requirements may be rendered inapplicable to written warranties in compliance with federal requirements, if not identical therewith, except to the extent they provide for consumer rights and remedies.²³ Since the substance of these provisions is identical to requirements contained in section 104(a)(1) of the Warranty Act, however, they are unaffected thereby.²⁴

²² Paragraphs (a) and (e) are not within the scope of the language of § 111(c) because state law may provide for the creation of a statutory warranty and set its duration. Paragraph (d) is strictly a disclosure provision and the effect of the Warranty Act on this section is discussed *infra*.

²³ Section 111(b)(1), an exception to section 111(c), states: "Nothing in this title shall invalidate or restrict any right or remedy of any consumer under State law or any other Federal law." Under California law a mobile home buyer has a right to the above described statutory warranty. The Warranty Act preserves this right. State enforcement, however, is subject to the rules set out in section 111(c) of the Warranty Act.

²⁴ While no time provision for commencing and completing required "corrective action" is specified, the underlying law of contracts is that such obligations will be fully performed within a reasonable time. See, U.C.C. section 2-309(1). Also, the notification provisions of paragraphs (b) and (f) are consistent with section 104(b)(1) in that they do not impose any duty other than notification as a condition for securing remedy under the warranty.

The state provision also sets forth disclosure duties and obligations. Section 102 of the Warranty Act mandates Commission promulgation of rules requiring full disclosure of written warranty terms and conditions and rules dealing with this subject were recently promulgated.²⁵ By operation of section 111(c) of the Warranty Act, the state disclosure provisions of the California law would be rendered inapplicable to written warranties complying with Federal requirements, when effective.²⁶ If not identical to these requirements. However, the terms required to be contained in a written warranty under the California statute are, with one exception, also items required to be disclosed by the rules implementing section 102²⁷ and so they would not be affected by the Warranty Act.²⁸ The exception is the requirement in term (d) that the warranty contain the telephone numbers of the dealer and manufacturer where notices of defects may be given. 16 CFR Part 701 implements section 102 of the Warranty Act and section 701.3(a)(5) thereof does not mandate disclosure of telephone numbers in a written warranty, it merely makes such disclosure optional.

Finally, the state provision that the warranty be set forth in a separate written document entitled "Mobile Home Warranty" comes within the scope of section 103 of the Warranty Act. Section 103 provides that a written warranty on a consumer product must be designated either "full" or "limited" warranty, and any written warranty not satisfying the federal minimum requirements for a "full" written warranty (as set forth in section 104) must be designated a "limited warranty." By operation of section 111(c) of the Warranty Act the California written warranty designation requirement would not be applicable to a written warranty designated "full" or "limited" in accordance with

the requirements of section 103 of the Warranty Act.²⁹

Therefore, by operation of section 111(c) of the Warranty Act the "Mobile Home Warranty" designation requirement of section 1797.3 and the requirement in that section in term (d) that the warranty contain the telephone numbers of the dealer and manufacturer where notices of defects may be given will be rendered inapplicable to written warranties complying with federal requirements since they are not identical to such requirements. Under section 111(c)(2), however, these state provisions may be subject to examination in a Commission rulemaking proceeding pursuant to section 109 of the Warranty Act. If the Commission determines that the state provisions afford greater protection to consumers than the requirements of the Warranty Act and do not unduly burden interstate commerce, these requirements will be applicable as long as they are effectively enforced. In view of the above discussion, staff recommends commencement of such a rulemaking proceeding.

Section 1797.8 requires dealers to post signs announcing the existence of the warranty and the availability of sample copies.

This is a requirement within the scope of section 102(b)(1)(A) of the Warranty Act which provision authorizes the Commission to prescribe rules "requiring that the terms of any written warranty on a consumer product be made available to the consumer (or prospective consumer) prior to the sale of the product to him." A rule implementing this provision was recently promulgated by the Commission and becomes effective December 31, 1976.³⁰

By operation of section 111(c) of the Warranty Act, the state disclosure provisions of § 1797.5 will be rendered inapplicable to written warranties complying with the federal requirements, when effective, since they are not identical to these requirements. Under section 111(c)(2) however, these state provisions may be subject to examination in a Commission rulemaking proceeding pursuant to section 109 of the Warranty Act. If the Commission determines that the state provisions afford greater protection to consumers than the requirements of the Warranty Act and do not unduly burden interstate commerce, these requirements will be applicable as long as they are effectively enforced. In view of the above discussion, staff recommends commencement of such a rulemaking proceeding.

²⁵ As written, the required California written warranty would have to be designated a "limited" warranty unless it also included all of the minimum requirements for a "full" federal warranty contained in section 104 of the Warranty Act.

²⁶ See, 40 FR 60189 (Dec. 31, 1975), 16 CFR Part 702.

²⁷ See, 40 FR 60188 (Dec. 31, 1975) 16 CFR Parts 701, 702.

²⁸ The rules become effective December 31, 1976.

²⁹ Terms (a) and (e) of the California statute relate to warranty coverage. Disclosure of such information is also required by the terms of section 701.3(a)(2) of the section 102 Warranty Act rules. Terms (b) and (f) of the California statute concern what action the warrantors will take where there is a breach; section 701.3(a)(3) of the Warranty Act rules require disclosure of this information. Term (c) of the California statute deals with duration of the warranty and this is covered by Warranty Act rule section 701.3(a)(4). Finally, terms (b), (c), (d) and (f) provide for the identification of the responsible parties under the written warranty and the procedure to be followed to secure corrective action; disclosure of this information should be required by Warranty Act rule section 701.3(a)(5).

³⁰ Warrantors, of course, would also have to disclose the additional items not mandated by the California statute but nevertheless required to be disclosed by regulations under the Warranty Act (16 CFR Parts 701-702).

AUTO WARRANTY PROVISIONS

(California Health and Safety Code, §§ 39156, 39157; California Vehicle Code, §§ 9975, 34715)

Section 39156 provides that the manufacturer of each motor vehicle and motor vehicle engine shall warrant to purchasers that it is designed, built and equipped to conform at the time of sale with California's emission standards and that each motor vehicle or motor vehicle engine is free from defects in materials and workmanship which could cause such motor vehicle or motor vehicle engine to fail to conform with applicable regulations for its "useful life" as defined in the next section (§ 39157).

Section 9975 requires that, notwithstanding any limitation in any warranty relating to a motor vehicle, a manufacturer who notifies a motor vehicle owner of a safety defect must correct that defect without charge to the customer.

Section 34715 requires an automobile manufacturer to warrant that the automobile is equipped with an appropriate energy-absorption system so that it can be driven directly into a standard test barrier at five miles per hour without sustaining property damage to the front or rear of the vehicle.

These state provisions are not requirements relating to labeling or disclosure with respect to written warranties or performance thereunder; nor are they within the scope of an applicable requirement of sections 102, 103, or 104 since they do not relate to standards concerning written warranty disclosures, designations, or minimum content requirements. Consequently, they are not within the purview of section 111(c), nor are they otherwise affected by the Warranty Act.

NOTICE TO WARRANTOR PROVISION

(California Commercial Code, § 2801)

Section 2801 states that if a manufacturer or seller issues a written warranty requiring the buyer to complete and return a proof of purchase form, such warranty shall not be unenforceable because the buyer fails to complete or return the form. This protection can be waived by the buyer in writing.

Under section 2801, a manufacturer's or seller's warranty is not rendered unenforceable by the consumer's failure to return a "proof of purchase" form. This statutory right to maintenance of a warranty, regardless of any such attempt by a warrantor at limitation, provides for a consumer right or remedy within the meaning of section 111(b)(1).^a This provision is therefore unaffected by the operation of section 111(c) of the Warranty Act, nor is it otherwise affected by that Act.

Issued: July 9, 1976.

By direction of the Commission.

JAMES A. TOBIN,
Acting Secretary.

[FR Doc.76-19865 Filed 7-8-76; 8:45 am]

^a See D. S. *supra* for the text of this provision.

INTERNATIONAL TRADE COMMISSION

[337-TA-20]

CERTAIN BISMUTH MOLYBDATE CATALYSTS

Notice and Order Concerning Procedure or Commission Action

Notice is hereby given that—

(1) The Commission, in its Notice and Order published on June 16, 1976 (41 FR 24460), set July 12, 1976, as the date for oral argument concerning the presiding officer's Recommendation to terminate this investigation.

(2) Pursuant to the stipulation filed by the parties to this investigation (M. 20-8), which supercedes complainant's motion to control oral argument (M. 20-7), the time and date for the oral argument concerning the presiding officer's Recommendation are set for 10 a.m., e.d.t., on July 19, 1976, in the Commission's Hearing Room, U.S. International Trade Commission Building, 701 E Street NW., Washington, D.C. 20436.

By order of the Commission:

Issued: July 2, 1976.

KENNETH R. MASON,
Secretary.

[FR Doc.76-19786 Filed 7-8-76; 8:45 am]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 76-62]

JAPAN ENGINEERING DEVELOPMENT CO.

Intent To Grant Foreign Exclusive Patent License

In accordance with the NASA Foreign Licensing Regulations, 14 CFR 1245.405 (e), the National Aeronautics and Space Administration announces its intention to grant to the Japan Engineering Development Company, Tokyo, Japan, an exclusive patent license in Japan for the four NASA owned inventions covered by the Japanese counterparts of: (1) U.S. Application for Patent Serial No. 652,948 for "Liquid-Cooled Brassier", filed by NASA on January 27, 1976; and (2) U.S. Application for Patent Serial No. 651,007 for "Optical Conversion Method", filed by NASA on January 21, 1976. Copies of the above U.S. Patent Applications can be purchased from the National Technical Information Service, Springfield, Virginia, 22161, at a cost of \$3.75 a copy. Interested parties should submit written inquiries or comments within 60 days to the Assistant General Counsel for Patent Matters, Code GP, National Aeronautics and Space Administration, Washington, D.C., 20546.

Dated: June 28, 1976.

S. NEIL ROSENBALL,
General Counsel.

[FR Doc.76-19471 Filed 7-8-76; 8:45 am]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 76-64]

NASA RESEARCH AND TECHNOLOGY ADVISORY COUNCIL; PANEL ON AVIATION SAFETY AND OPERATING SYSTEMS; SUBCOMMITTEE ON AVIATION SAFETY REPORTING SYSTEM

Meeting

The NASA Research and Technology Advisory Council (RTAC), Subcommittee on Aviation Safety Reporting System will meet on July 28-29, 1976, at the Ames Research Center, Moffett Field, CA 94035. The meeting will be held in the Committee Room, Administration Building. The meeting is being held at this time to review the first quarter's operation of the Aviation Safety Reporting System. Members of the public will be admitted on a first come, first served basis up to the seating capacity of the room which is about 25 persons. All visitors must report to the Ames Research Center receptionist in the Administration Building.

The RTAC Subcommittee on Aviation Safety Reporting System serves in an advisory capacity only. The Chairman is Mr. John H. Winant. There are 11 members. The following list sets forth the approved agenda and schedule for the July 28-29, 1976, meeting of the Aviation Safety Reporting System Subcommittee. For further information please contact Mr. E. Gene Lyman, (202) 755-2380.

JULY 28, 1976

Time	Topic
9 a.m.-----	Report of the chairman. Purpose: To summarize activities relating to the Aviation Safety Reporting System since the last subcommittee meeting.
9:30 a.m.-----	Report on the Aviation Safety Reporting System. Purpose: To describe status of activities pertaining to ASRS operation. Members will comment on these activities and identify items requiring additional attention.
10:30 a.m.-----	Review of ASRS reports. Purpose: To allow members an opportunity to comment on information received and topics required special analysis.
2:30 p.m.-----	Report of Security Group. Purpose: To review security aspects of ASRS and to receive members advice and recommendations concerning ASRS security.
3:30 p.m.-----	Review of aviation safety research. Purpose: To review ongoing aviation safety research studies and to receive member's advice about these studies.