

or on the RAC bananas at 0.025 part per million.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the *Federal Register* file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the *Federal Register* of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: October 24, 1989.

Douglas D. Campt,
Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.352 is amended in paragraph (a) by adding and alphabetically inserting an entry for bananas and by removing paragraph (b) and designating it '[Reserved]' to read as follows:

§180.352 Terbufos; tolerances for residues.

(a) * * *

Commodity	Parts per million
Bananas.....	0.025
* * *	

(b) [Reserved]

[FR Doc. 89-27726 Filed 11-24-89; 8:45 am]

BILLING CODE 6560-50-D

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 575

[Docket No. 88-13; Notice 2]

RIN 2127-AC72

Consumer Information; Vehicle Owner's Manuals

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This final rule amends the Consumer Information Regulations to require vehicle manufacturers to include information in the owner's manual for each vehicle about NHTSA's toll-free Auto Safety Hotline and its defect investigation and remedy and recall authority. This requirement will allow NHTSA to obtain more information, more expeditiously about potential safety-related defects and noncompliances with safety standards.

DATES: *Effective Date:* The amendments made in this rule become effective on September 1, 1990.

Petitions for Reconsideration: Any petitions for reconsideration of this rule must be received by NHTSA not later than December 27, 1989.

ADDRESSES: Petitions for reconsideration should refer to the docket and notice number set forth at the beginning of this notice and be submitted to the following: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (Docket hours: 8:00 a.m. to 4:00 p.m.). It is requested that 10 copies of the petition be submitted.

FOR FURTHER INFORMATION CONTACT: James P. Talentino, Office of Defects Investigation, NHTSA, 400 Seventh Street, SW., Washington, DC 20590 (202-366-5212).

SUPPLEMENTARY INFORMATION: Background

On May 26, 1987, Motor Voters, a consumer organization interested in motor vehicle safety, petitioned the agency to require manufacturers of passenger vehicles to include information about NHTSA in the vehicle owners' manual. Specifically, the petitioner requested that the agency require information advising owners about NHTSA's safety defect authority and urging them to contact the agency about potential safety defects in their vehicles. To facilitate contacting the agency, the petitioner requested that the agency require manufacturers to include the toll-free telephone number of the Auto Safety Hotline and the agency's address. The petitioner suggested that the message explain that while the agency has authority to investigate defects and order recall and remedy campaigns, it does not become directly involved in the dealings of a particular consumer with a manufacturer of a motor vehicle regarding a defect in that vehicle.

Notice of Proposed Rulemaking

In response to the petition, on November 10, 1988, NHTSA published a notice of proposed rulemaking (NPRM) proposing to amend title 49 CFR part 575, *Consumer Information Regulations*, (53 FR 45527). The NPRM explained that the National Traffic and Motor Vehicle Safety Act ("Vehicle Safety Act," 15 U.S.C. 1381 *et seq.*) requires manufacturers of motor vehicles and motor vehicle equipment to recall and remedy vehicles and equipment that are determined by the manufacturer or NHTSA to contain either a safety-related defect or a failure to comply with a Federal motor vehicle safety standard issued under the Vehicle Safety Act. The NPRM further noted that the agency's most important source of data used to identify defects which relate to motor vehicle safety is the consumer complaints made by persons calling the agency's toll-free Auto Safety Hotline. In 1987, the agency received 332,659 calls on the Hotline, of which 75 percent concerned alleged defects or recall information. In addition, over 15,092 of these Hotline callers followed up by completing and returning to NHTSA detailed Vehicle Owner Questionnaires which were mailed by the agency to callers reporting defects and seeking recall information. The NPRM also noted that a longstanding agency goal is to enhance publication of the Auto Safety Hotline and so improve the process of getting information from consumers about potential safety

defects. The NPRM explained the agency's plans to publicize the Hotline through public service announcements in the media, through consumer and corporate safety offices, in telephone books, and through programs with State transportation agencies.

NHTSA's tentatively concluded that the inclusion of the requested information in each owner's manual would be an important addition to NHTSA's public information campaign to increase consumer awareness of the Hotline and the agency's efforts to strengthen its defect investigation activities. The agency stated its tentative belief that including the Hotline number in owner's manuals would put that number in the hands of millions of motor vehicle purchasers at virtually no additional cost. Moreover, the NPRM noted that since owners typically refer to their manuals periodically throughout the ownership of their vehicles, especially when they are experiencing vehicle problems, the Hotline number printed in the manuals would be seen many times. The agency stated that inclusion of the Hotline number in manuals would be particularly important for new car owners, since it would produce a higher volume of calls about potential safety defects earlier in a vehicle's life. The agency believed that this would be particularly important to detect defects in newly introduced models.

The NPRM accordingly proposed to amend § 575.6 of the Consumer Information Regulations to require motor vehicle manufacturers to include information about NHTSA's recall and remedy authority and about the Auto Safety Hotline in the owner's manual. The agency proposed requiring that all new motor vehicles, not just "passenger vehicles," be subject to the proposed amendment. The agency explained that facilitating owner reporting of potential safety defects would be important for all types of motor vehicles. The agency also made minor changes in the information requirements requested in the petition.

The proposed amendment required a manufacturer to state in each owner's manual that consumers may contact NHTSA if they believe that their vehicle contains a safety defect. The proposed amendment also required that the manuals include the toll-free Hotline telephone number and agency address. Finally, the proposed amendment required that manufacturers include in the manuals a statement about the agency's authority to order a safety recall if it finds that a safety defect exists in a group of vehicles.

Comments and the Agency's Response

NHTSA received 24 comments in response to the NPRM. Commenters included 15 automotive manufacturers and automotive affiliates; four academic, medical, and insurance groups; and five consumers and consumer organizations. The agency considered all these comments in developing this final rule.

General Comments

American Honda, American Insurance Association (AIA), Cagiva Motorcycle of North America, Children's Mercy Hospital, the National Consumers League (NCL), the University of Maryland's Center for Business and Public Policy, US Public Interest Research Group ("US Pirg"), and several citizens favored the proposal. US Pirg stated that the proposal would be a cost-effective and efficient way to improve consumer awareness of the Hotline. NCL commented that this measure would further the agency's need to receive information about safety defects so that the agency can protect the consumer.

On the other hand, Chrysler, Ford, General Motors (GM), General Tire, Mercedes, Michelin, the Motor Vehicle Manufacturers Association (MVMA), the National Automobile Dealers Association (NADA), Navistar, Volkswagen and Volvo opposed the proposal. NADA stated that there was no need for the rule and suggested NHTSA reevaluate the proposal. MVMA similarly commented that there was no safety need for this requirement. Ford, Michelin, MVMA, Chrysler, General Tire, GM, and Volkswagen elaborated that the proposal was unnecessary, might adversely affect customer manufacturer relations, delay corrective action, and overburden the agency's resources to respond to calls. Mercedes stated that the proposal would give consumers the false impression that they could receive immediate action related to their problems and that resolution of the problem would be delayed. Volvo commented that the rule would not be in the best interests of the vehicle owners, who would be better served by contacting the manufacturer rather than NHTSA.

Upon considering these comments in light of current trends in consumer awareness, NHTSA concludes that the benefits of increasing the availability of information about consumer remedies support the inclusion of information about the agency in the owner's manuals. Calls to the Hotline decreased from about 332,000 in 1987 to 252,000 in 1988, a reduction of about 24 percent. In

turn, receipt of Vehicle Owner's Questionnaires decreased from about 15,000 in 1987 to about 12,000 in 1988. The agency believes that this new information will increase consumer awareness about the Hotline and the agency's defect investigation activities, especially for newly introduced models, and thus will improve the agency's information about potential safety defects and noncompliances. The agency is accordingly adopting the proposals. The increased dissemination of information about NHTSA will enable the agency to identify, investigate, and resolve potential problems more rapidly, because the agency will have a more extensive and more timely data base for analyzing owners' experiences with a given problem.

Chrysler, MVMA, and Volkswagen disagreed with the statement in the NPRM that the Hotline was the agency's most important source of data used to identify safety-related defects. Although the commenters are correct in noting that many recalls are initiated by manufacturers based on their own tests and field evaluations, the statement referred to NHTSA's own investigations, which continue to influence a high percentage of the total vehicles recalled and which rely heavily on consumer contacts through the Hotline.

Message's Language

The NPRM proposed to require the following message in the owner's manual:

If you believe that a vehicle or item of motor vehicle equipment (such as tires, lamps, etc.) has a potential safety-related defect, you may notify the National Highway Traffic Safety Administration (NHTSA). You may either call toll free at 800-424-9393 (or 366-0123 in Washington, D.C.) or write Administrator, NHTSA, 400 Seventh Street, S.W., Washington D.C. 20590. NHTSA investigates alleged safety-related defects and may order a recall and remedy campaign if it finds that a safety defect exists in a group of vehicles and the manufacturer does not voluntarily conduct a recall and remedy campaign. However, NHTSA does not become directly involved in the dealings between a particular consumer and a vehicle manufacturer regarding a defect in the consumer's vehicle.

Mercedes and other manufacturers commented that this proposed language would hinder their relationship with their customers by delaying the correction of vehicle problems and by providing the unrealistic expectation that NHTSA can remedy the problem. According to these commenters, a consumer should contact the manufacturer before contacting the agency because the manufacturer is in a

better position to actually remedy a safety related defect.

In response to this comment, NHTSA iterates that requiring this message will help to publicize the Auto Safety Hotline and NHTSA's related activities. The agency believes that NHTSA might lose valuable information from owners if the message did not initially focus on the agency's information collection responsibilities. For instance, in order for NHTSA to react quickly to reports of a defect trend, it is necessary for the agency to receive the information as soon as possible. The agency believes that this invitation for early consumer communication to NHTSA will also encourage manufacturers to act quickly to address consumer concerns. The agency further notes that even if NHTSA is contacted first, a manufacturer still will become aware of a problem because the agency will notify them about these complaints.

NHTSA nevertheless agrees with the commenters that the public should be instructed to also contact the manufacturer. Therefore, the agency has revised the message to state that a consumer should also contact the manufacturer or its designate (e.g., its authorized dealer) to resolve safety-related or other problems with the vehicle. In addition, the final rule explains NHTSA's authority and limitations more clearly. NHTSA believes that these modifications will increase the effectiveness of the message.

The agency emphasizes that NHTSA's message is mandatory, and thus a manufacturer cannot modify or otherwise vary it. Nevertheless, the agency notes that a manufacturer may place additional language elsewhere in the owner's manual encouraging a vehicle owner to contact them, provided that this additional information is not included in the message required by NHTSA and does not otherwise dilute the content of the required message.

GM suggested that the message be written in a "plain English" style. After reexamining the proposal's wording, NHTSA agrees with GM that to increase the final rule's effectiveness, the message should be written in an easily understood style. Accordingly, the final rule adopts more simplified wording whenever such wording does not misstate the legalities or realities of NHTSA's defect investigation and recall and remedy program.

Volkswagen commented that listing examples of equipment would result in consumers overreporting those items of equipment. In response to this comment, NHTSA has decided to eliminate these examples in the required message. The

agency agrees with Volkswagen that including examples might bias the reporting and thus provide an inaccurate record of overall complaints about equipment. Accordingly, the final rule deletes reference to "tires, lamps, etc."

Several commenters noted that the proposed message should include more information than the NPRM proposed. The American Insurance Association (AIA) and Gillis and Associates stated that the final rule should contain information about other NHTSA activities such as drunk driving and odometer fraud. The NCL commented that NHTSA should expand the message to inform consumers that they should contact other consumer organizations such as the Better Business Bureau. NADA suggested that the required message should state that consumers should initially refer to the warranty booklet's section concerning dispute resolution and then contact the manufacturer.

After reviewing these comments, NHTSA has decided to include a general statement that a consumer can "get other information about motor vehicle safety from the Hotline." Nevertheless, the agency believes that the final rule should not include detailed information about NHTSA's other consumer protection matters. The agency notes that the principal purpose of this rule is to disseminate information about the Auto Safety Hotline and NHTSA's defect investigation authority which will lead to the increased reporting of potential safety defects and noncompliances with safety standards. The agency further notes that the rule is not intended as an all-encompassing source of consumer information. NHTSA believes that if the message were required to address all the agency's activities and consumer protection, then the most important information about this rulemaking (the Hotline and NHTSA's defect investigation authority) would be obscured.

The agency notes that upon contacting the Auto Safety Hotline, the caller will receive information about NHTSA's other activities. As for consumer protection information (e.g., warranty information), NHTSA notes that this type of activity is beyond the agency's statutory mandate.

Applicability of Requirement

Motor Voter's petition requested that NHTSA require "passenger vehicle manufacturers" to include information about the Hotline and the agency's defect investigation authority. The NPRM expanded the applicability of this requirement to "all new motor vehicles," reasoning that "facilitating owner

reporting of potential safety defects is important for all types of motor vehicles."

US Pirg agreed with NHTSA's decision to expand the requirement's applicability to all motor vehicles. The Truck Trailer Manufacturers Association (TTMA) commented that the rule would create problems for small truck trailer manufacturers, some of which currently do not provide an owner's manual.

After reviewing these comments, NHTSA concludes that the final rule should be applicable to all motor vehicles, because any vehicle type may experience a safety-related defect. However, to accommodate a manufacturer that does not provide an "owner's manual," as defined in § 572.2(c) of the final rule, the rule provides that the manufacturer may provide the information in a separate one-page document to be included with the sales documents. In other words, a manufacturer must include the required information in the owner's manual if it provides one, or in a separate document if it provides no manual.

Placement of Information

The NADA suggested that a manufacturer be given the option of including the required information in the warranty booklet rather than in the owner's manual, claiming that consumers would more likely look in the warranty booklet for assistance with defect matters. GM stated that the manufacturer was in the best position to determine placement of the required information, suggesting that this information be placed in its "Warranty and Owner Assistance Information" booklet. GM stated that a manufacturer should not be required to place this information in the owner's manual.

After reviewing these comments, NHTSA has determined that the manufacturer must include this information in the owner's manual. The agency believes that requiring the information to be placed in the owner's manual will promote uniformity among manufacturers. In addition, NHTSA notes that placing the information in the warranty book would be less effective because the warranty lasts for a finite time (often much less than the life of the vehicle), after which a vehicle owner would have little reason to retain the book. In contrast, many manufacturers state in the owner's manual that this document should stay with the vehicle for its life, even if it sold. Thus, it is more likely that a vehicle's owner or owners will retain the owner's manual for a longer time period than the

warranty booklet. The agency notes that a manufacturer may place this information in any additional document provided that it includes this information in the owner's manual.

The agency is aware that manufacturers refer to such documents by many terms, including "Owner's Guide," "Owner's Handbook," or "Operating Instructions." Accordingly, the final rule expressly defines an "owner's manual" in § 575.2(c) as "the document which contains the manufacturer's comprehensive vehicle operating [and maintenance] instructions, and which is intended to remain with the vehicle for the life of the vehicle."

Several organizations commented about the placement of this information within the owner's manual. Volvo Truck stated that a manufacturer should have discretion about where it places the information. Volkswagen stated that this information be placed near the information on customer assistance. Gillis and the Center for Business and Policy did not suggest a specific location in the manual but noted that the agency should require that a manufacturer refer to it in the table of contents. US Pirg suggested that the agency require the information to be placed in a prominent location such as the front or back cover to prevent a manufacturer from "bury(ing)" it. NCL stated that the agency should specify the location to reduce reporting discrepancies. It suggested in order of preference that the information be placed opposite the first page of the table of contents, on the inside front cover, in the text preceding the maintenance schedule, or on the inside back cover.

After reviewing these comments, NHTSA agrees with Volvo Truck that a manufacturer should be given discretion about where it places the information. The agency believes that requiring the table of contents to include reference to the Hotline will adequately ensure that vehicle owner's will see this information. Accordingly, § 575.6(a)(2)(B) of the final rule also requires that the table of contents in the owner's manual specify the location of the information about NHTSA. In particular, the heading must be entitled "Reporting Safety Defects" and include the corresponding page number to effectively alert consumers and to provide uniformity as to the heading.

Two commenters offered their views on the type size. Volvo GM Heavy Truck requested that the type size be left to the manufacturer's discretion. NCL commented that the rule should specify a minimum point size for the type. It further stated that NHTSA should

specify a minimum amount of space not less than one-half page for this information.

NHTSA has concluded that to be easily readable the required message must be written in letters and numbers not smaller than 10 point type, and has incorporated that requirement in the final rule. The agency notes that the point type size is consistent with the labeling requirements in S5.5.2 of Standard No. 213. The agency concludes that it is superfluous to specify a minimum page length because the final rule specifies the type size and the message itself.

Effective Date

The NPRM proposed that the rule would become effective "180 days after the publication of the final rule." Several manufacturers requested that the effective date coincide with the start of the model year to avoid unnecessary costs that would result in reprinting manuals during the middle of a model year. American Honda suggested that the effective date coincide with the change in model year. Volvo GM Heavy Truck requested that the effective date be changed to "January 1, or at the option of the manufacturer, the time of model year change-over." Cagiva, which changes its motorcycle models every two to four years, requested an effective date that would "allow us adequate lead time to incorporate the regulatory language" at the start of its model run. Chrysler recommended an effective date of the "first day of September occurring 180 days after publication of the final rule." Navistar requested an effective date of 270 days after the final rule's publication. US Pirg noted that the agency should "act promptly."

After reviewing these comments, NHTSA determines that the effective date will be September 1, 1990, which typically is the beginning of a model year for most vehicles. The agency believes that this effective date will allow the timely inclusion of this information at little or no cost to the manufacturers.

Cagiva requested that the final rule allow it to exhaust its supply of already printed manuals, explaining that its model runs may extend up to four years. A manufacturer whose models run for more than one year may comply with the final rule by placing an add-on-sticker on its existing manuals, until this supply is exhausted. The agency believes that this will ensure that consumers receive the information while minimizing the costs related to this rule for manufacturers like Cagiva.

Costs

The NPRM tentatively concluded that the proposal would result in minimal costs related to printing an additional half-page of material.

Several commenters addressed the final rule's cost impacts. NADA stated that the costs of this measure would not be a significant burden on manufacturers provided that it was phased in for new manuals. US Pirg commented that this rule would be a cost-effective way to improve consumer awareness of the Hotline. On the other hand, the MVMA stated that NHTSA underestimated the final rule's indirect costs to both NHTSA and manufacturers, especially costs resulting from the delay in handling consumer complaints. Volkswagen recommended that the agency further study the proposal, stating that the agency underestimated the number of consumer complaints, which would result in a large volume of additional contacts.

After reexamining the proposal in light of these comments, NHTSA concludes that the final rule will impose only minimal costs on motor vehicle manufacturers and the agency. The agency anticipates that a manufacturer will have to devote only one-half page in the manual at a cost of a few cents per manual for printing. The agency disagrees with MVMA and Volkswagen that there will be significant costs beyond the direct printing costs. The agency believes that MVMA's concern that consumer complaints will be handled inefficiently is adequately addressed by language in the final rule emphasizing that a consumer should contact the vehicle manufacturer first.

NHTSA does not anticipate that additional calls to the Hotline will result in unreasonable costs to the agency. First, the Hotline is well equipped to handle additional calls without increased costs. Second, it is in NHTSA's (and the general public's) interests to receive additional calls potentially related to safety defects. The agency believes that these additional calls will lead to defect investigations and the earlier remedy of safety problems.

Miscellaneous

NHTSA has examined the impacts of this regulation and determined that this final rule does not qualify as a major regulation within the meaning of Executive Order 12291 or as a significant regulation under Department of Transportation regulatory policies or procedures. The agency also has determined that the economic and other

impacts of this rule are minimal so that a regulatory evaluation is not required. The information required to be placed in the vehicle's owner's manual will result in only minimal costs for vehicle manufacturers and will not likely result in any cost increase for consumers.

The agency also considered the impacts of this rule under the provisions of the Regulatory Flexibility Act. I hereby certify that the regulation will not have a significant economic impact on a substantial number of small entities. As discussed above, the cost of including the information in the owner's manual will be only a few cents per manual. Accordingly, there will be little economic effect on any small organizations or governmental units which purchase motor vehicles. Few if any vehicle manufacturers qualify as small entities under the Act.

Further, this rulemaking action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that it has no Federalism implication that warrants preparation of a Federalism report.

NHTSA has analyzed this rule for purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

List of Subjects in 49 CFR Part 575

Consumer protection, Labeling, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, 49 CFR part 575 is amended as follows:

PART 575—CONSUMER INFORMATION REGULATIONS

1. The authority citation for part 575 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1407, 1421, and 1423; delegation of authority at 49 CFR 1.50.

2. Section 575.2(c) is amended by adding alphabetically the following definition of "Owner's manual" to read as follows:

§ 575.2 Definitions.

(c) Definitions used in this part.

"Owner's manual" means the document which contains the manufacturer's comprehensive vehicle operating and maintenance instructions, and which is intended to remain with the vehicle for the life of the vehicle.

3. Section 575.6 is amended by redesignating the existing text in

paragraph (a) as paragraph (a)(1), and adding a new paragraph (a)(2), to read as follows:

§ 575.6 Requirements.

(a)(1) * * *

(2)(i) At the time a motor vehicle manufactured on or after September 1, 1990 is delivered to the first purchaser for purposes other than resale, the manufacturer shall provide to the purchaser, in writing in the English language and not less than 10 point type, the following statement in the owner's manual, or, if there is no owner's manual, on a one-page document:

If you believe that your vehicle has a defect which could cause a crash or could cause injury or death, you should immediately inform the National Highway Traffic Safety Administration (NHTSA) in addition to notifying [INSERT NAME OF MANUFACTURER].

If NHTSA receives similar complaints, it may open an investigation, and if it finds that a safety defect exists in a group of vehicles, it may order a recall and remedy campaign. However, NHTSA cannot become involved in individual problems between you, your dealer, or [INSERT NAME OF MANUFACTURER].

To contact NHTSA, you may either call the Auto Safety Hotline toll-free at 1-800-424-9393 (or 366-0123 in Washington, D.C. area) or write to: NHTSA, U.S. Department of Transportation, Washington, D.C. 20590. You can also obtain other information about motor vehicle safety from the Hotline.

(2)(ii) The manufacturer shall specify in the table of contents of the owner's manual the location of the statement in 575.6(a)(2)(i). The heading in the table of contents shall state "Reporting Safety Defects."

Issued on November 21, 1989.

Jeffrey R. Miller,

Acting Administrator.

[FR Doc. 89-27731 Filed 11-24-89; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB23

Endangered and Threatened Wildlife and Plants; Delisting of *Echinocereus engelmannii* var. *purpureus* (Purple-Spined Hedgehog Cactus)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service removes *Echinocereus engelmannii* var.

purpureus (purple-spined hedgehog cactus) from the List of Endangered and Threatened Plants. This action is based on a review of all available data, which indicate that this plant is not a discrete taxonomic entity and does not meet the definition of a "species" as defined by the Endangered Species Act of 1973, as amended, and therefore, was listed in error. *Echinocereus engelmannii* var. *purpureus* is a sporadically occurring dark-colored and short-spined phase of the *Echinocereus engelmannii* var. *chrysocentrus* population localized in the Virgin River Basin of southwestern Utah. *Echinocereus engelmannii* var. *chrysocentrus* is common and has a broad distribution in the Mojave Desert of Arizona, California, Nevada, and Utah.

EFFECTIVE DATE: December 27, 1989.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Utah State Office, Fish and Wildlife Enhancement, U.S. Fish and Wildlife Service, 2078 Administration Building, 1745 West 1700 South, Salt Lake City, Utah 84104.

FOR FURTHER INFORMATION CONTACT: Larry England, botanist, at the above address (801/524-4430 or FTS 588-4430).

SUPPLEMENTARY INFORMATION:

Background

Echinocereus engelmannii var. *purpureus* was described in the scientific literature in 1969 from specimens collected near St. George, Utah, in 1949 (Benson 1969). *E. e. purpureus* differs from *E. e. chrysocentrus* (see Benson 1982) largely by the characteristics of the lower descending central spine which is darker (all the central spines of *E. e. purpureus* are dark purple), shorter, and more slender in *E. e. purpureus*. *E. e. purpureus* was listed as endangered on October 11, 1979 (44 FR 58866). Since the Federal listing of *E. e. purpureus* as endangered in 1979, no populations of the taxon have been located. Individual plants exhibiting characteristics described for *E. e. purpureus* occur sporadically within the population of *E. e. chrysocentrus* in southwestern Utah (Woodbury and England 1988).

Woodbury and England (1988) demonstrated that many morphological variations occur within the population of *E. e. chrysocentrus* in southwestern Utah and that none of these variations exhibit any population integrity independent of *E. e. chrysocentrus* as described by Benson (1982) and Taylor (1985). Miller (1988) considers *E. e. purpureus* to be a betalain color phase

within the southwestern Utah population of *E. engelmannii* that may be of no more than horticultural interest. In the newly published "A Utah Flora," Welsh et al. (1987) reduces *E. e. purpureus* to synonymy with *E. e. chrysocentrus*. Field observations by Bureau of Land Management and Fish and Wildlife Service (Service) biologists and botanists have confirmed the findings described above. Based on the information discussed above, the Service proposed the delisting of the purple-spined hedgehog cactus on January 19, 1989 (54 FR 2173).

Summary of Comments and Recommendations

In the January 19, 1989, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices were published in The Daily Spectrum on February 19, 1989, and in the Deseret News and the Salt Lake Tribune on February 20, 1989. Four comments were received: one from the Governor of Utah, two from local governmental groups, and one from a professional botanist. All comments agreed with the Service's proposal to remove the purple-spined hedgehog cactus from the List of Endangered and Threatened Plants.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Echinocereus engelmannii* var. *purpureus* should be removed from the List of Endangered and Threatened Plants found at 50 CFR 17.12. Procedures found at Section 4(a)(1) of the Endangered Species Act (Act) (16 U.S.C. 1531 et seq.) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. 50 CFR 424.11 requires that certain factors be considered before a species can be listed, reclassified, or delisted. These factors and their application to *Echinocereus engelmannii* (Parry) Lemaire var. *purpureus* L. Benson (purple-spined hedgehog cactus) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The purple-spined hedgehog cactus (*E. e. purpureus*) has been determined to be no more than a sporadically occurring vegetative

phase, based primarily on spine characteristics, of *E. e. chrysocentrus*. *E. e. chrysocentrus* is a common species in the vegetative composition of the Mojave Desert in southwestern Utah (see Benson 1982, Welsh et al. 1987). *E. e. chrysocentrus*, which includes *E. e. purpureus*, is not significantly threatened with destruction, modification, or curtailment of its habitat throughout a significant portion of its range. The final rule (44 FR 58866) designating *E. e. purpureus* as an endangered species identified the urban sprawl of St. George, Utah, and human disturbance as threats contributing to the endangerment of that species. If *E. e. purpureus* were a valid taxon and met the definition of a "species" as described by the Endangered Species Act of 1973, as amended, then these factors would be relevant. However, since the entity shows no population integrity independent of *E. e. chrysocentrus*, it cannot be scientifically defended as a species, subspecies, or taxonomic variety.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Cylindrical cacti, in general, are of horticultural interest. However, *E. e. chrysocentrus*, which includes *E. e. purpureus*, is abundant enough throughout its range so as not to be jeopardized at present, or in the foreseeable future, by horticultural exploitation of its wild population. Here again, as stated above in Section A, if *E. e. purpureus* were a valid taxon, then this factor would be relevant.

C. *Disease or predation.* Disease or predation is not a threat to *E. e. chrysocentrus*, which includes *E. e. purpureus*.

D. *The inadequacy of existing regulatory mechanisms.* All native cacti are on Appendices I or II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (Convention). *E. e. purpureus* is included on Appendix II of the Convention. The Convention regulates and, in some cases, prohibits the export and international trade in species on its appendices. A recent law in Utah authorizes the Department of State Lands and Forestry to provide for protection of plant species designated as either threatened or endangered by the Federal Government under authority of the Act. The Bureau of Land Management, in its land use planning documents, has recognized the species and has provided guidelines for its conservation. This rule will necessitate the reevaluation of *E. e. purpureus* in State and Federal land use planning documents.

E. *Other natural and manmade factors affecting its continued existence.* None known.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by *E. e. purpureus* in determining to make this rule final. Based on this evaluation, the preferred action is to remove *Echinocereus engelmannii* var. *purpureus* from the List of Endangered and Threatened Plants in 50 CFR 17.12, thereby removing it from the protection of the Endangered Species Act of 1973, as amended.

The regulations at 50 CFR 424.11(d) state that a species may be delisted if: (1) It becomes extinct, (2) it recovers, or (3) the original classification data were in error. The Service believes current scientific information exists that demonstrates that *E. e. purpureus* does not represent a valid taxonomic entity and, therefore, does not meet the definition of "species" as defined in Section 3(16) of the Act. Therefore, *Echinocereus engelmannii* var. *purpureus* was listed in error.

Effects of Rule

This action will result in the removal of *Echinocereus engelmannii* var. *purpureus* from the List of Endangered and Threatened Plants. Federal agencies will no longer be required to consult with the Secretary of the Interior to insure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of *E. e. purpureus*. There is no designated critical habitat for this entity. Federal restrictions on taking will no longer apply. There are no specific preservation or management programs for this cactus that will be terminated. Last, since *E. e. purpureus* is being delisted because it does not qualify as a "species," and not because it has recovered, there is no reason to monitor it for five years following delisting.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

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- Benson, L. 1969. The cacti of the United States and Canada—new names and nomenclatural combinations. *Cactus & Succulent Journal* 41:126-127.
- Benson, L. 1982. The cacti of the United States and Canada. Stanford University Press, Stanford, California. 1044 pp.
- Miller, J.M. 1988. Floral pigments and phylogeny in *Echinocereus* (Cactaceae). *Systematic Botany* 13(2):173-183.
- Taylor, N.P. 1985. The genus *Echinocereus*. Timber Press, Portland, Oregon. 160 pp.
- Walsh, S.L., N.D. Atwood, S. Goodrich, and L.C. Higgins. 1987. A Utah flora. Great Basin Naturalist Memoirs No. 8, Brigham Young University Press, Provo, Utah. 694 pp.
- Woodbury, L.A., and J.L. England. 1988. Morphological variation in *Echinocereus engelmannii* in Washington County, Utah.

Unpublished report, U.S. Fish and Wildlife Service, Salt Lake City, Utah. 4 pp.

Author

The author of this final rule is John L. England, botanist, U.S. Fish and Wildlife Service (see **ADDRESSES** section above).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal

Regulations, is amended as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1543; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500, unless otherwise noted.

§ 17.12 [Amended]

2. Amend § 17.12(h) by removing the entry "*Echinocereus engelmannii* var. *purpureus* Purple-spined hedgehog cactus" under "Cactaceae" from the List of Endangered and Threatened Plants.

Dated: October 23, 1989.

Sam Marler,

Acting Director, Fish and Wildlife Service.

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