

## The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by establishing Class E airspace extending upward from 700 feet above the surface within a 7-mile radius of Park River Airport—WC Skjerven Field, Park River, ND, to accommodate new standard instrument approach procedures. Controlled airspace is needed for the safety and management of IFR operations at the airport.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9Z, dated August 6, 2015, and effective September 15, 2015, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

## Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

## Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, “Environmental Impacts: Policies and Procedures” prior to any FAA final regulatory action.

## List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

## The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

### § 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015, is amended as follows:

*Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.*

\* \* \* \* \*

### AGL ND E5 Park River, ND [New]

Park River Airport—WC Skjerven Field  
(Lat. 48°23'39" N., long. 097°46'51" W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Park River Airport—WC Skjerven Field.

Issued in Fort Worth, Texas, on May 10, 2016.

**Robert W. Beck,**

*Manager, Operations Support Group, ATO Central Service Center.*

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**BILLING CODE 4910–13-P**

## FEDERAL TRADE COMMISSION

### 16 CFR Parts 701 and 702

### RIN 3084–AB24 and AB25

### Rule Governing Disclosure of Written Consumer Product Warranty Terms and Conditions; Rule Governing Pre-Sale Availability of Written Warranty Terms

**ACTION:** Notice of proposed rulemaking; request for public comment.

**SUMMARY:** The Federal Trade Commission (FTC or Commission) proposes to amend the rules on Disclosure of Written Consumer Product Warranty Terms and Conditions (Disclosure Rule) and Pre-Sale Availability of Written Warranty Terms (Pre-Sale Availability Rule) to give effect to the E-Warranty Act, which allows for the use of Internet Web sites to disseminate warranty terms to consumers in some circumstances.

**DATES:** Comments must be received on or before June 17, 2016.

**ADDRESSES:** Interested parties may file a comment online or on paper, by

following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write “Amending Warranty Rules Pursuant to the E-Warranty Act, Matter No. P044403” on your comment, and file your comment online at <https://ftcpublish.commentworks.com/ftc//E-WarrantyAmendments>, by following the instructions on the web-based form. If you prefer to file your comment on paper, write “Amending Warranty Rules Pursuant to the E-Warranty Act, Matter No. P044403” on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex E), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex E), Washington, DC 20024.

**FOR FURTHER INFORMATION CONTACT:** Gary Ivens, (202) 326–2330, Attorney, Division of Marketing Practices, Federal Trade Commission, 600 Pennsylvania Ave. NW., Washington, DC 20580.

## SUPPLEMENTARY INFORMATION:

### I. Summary of the Proposed Rules

#### A. The Disclosure Rule

The Disclosure Rule<sup>1</sup> establishes disclosure requirements for written warranties on consumer products that cost more than \$15.00.<sup>2</sup> In 1975, the Commission issued the Disclosure Rule as authorized by Congress in the Magnuson-Moss Warranty Act<sup>3</sup> (MMWA).

The Disclosure Rule also specifies the aspects of warranty coverage that must be disclosed in written warranties, as well as the exact language that must be used for certain disclosures with respect to state law regarding the duration of implied warranties and the availability of consequential or incidental damages. Under the Disclosure Rule, warranty information must be disclosed in simple, easily understandable, and concise language in a single document. Similarly, the warrantor must disclose any limitations on the duration of implied warranties on the face of the warranty, as mandated by MMWA.<sup>4</sup> In promulgating the Disclosure Rule, the Commission determined that certain material facts about product warranties

<sup>1</sup> 16 CFR part 701.

<sup>2</sup> 40 FR 60171–60172 (Dec. 31, 1975).

<sup>3</sup> 15 U.S.C. 2302.

<sup>4</sup> See 15 U.S.C. 2308(b).

must be disclosed because the failure to do so would be deceptive or misleading.

Briefly, the Commission proposes to revise the Disclosure Rule to specify that disclosures mandated to appear “on the face” of a warranty posted on an Internet Web site or displayed electronically must be placed in close proximity to the location where the text of the warranty terms begins.

### B. The Pre-Sale Availability Rule

The Pre-Sale Availability Rule<sup>5</sup> details the methods by which warrantors and sellers must provide warranty terms to consumers prior to sale of the warranted item. The Commission issued the Pre-Sale Availability Rule in response to a mandate from Congress as set forth in the MMWA.

Briefly, the Commission proposes to revise the Pre-Sale Availability Rule to allow warrantors to post warranty terms on Internet Web sites if they also provide a non-Internet based method for consumers to obtain the warranty terms and satisfy certain other conditions.

As discussed more fully below, these rule revisions are required to comply with Congress’s passage of the E-Warranty Act<sup>6</sup> (E-Warranty or the Act). The Commission invites comment on the proposed rule revisions generally and on the specific issues outlined in Section III of this Notice. The Commission seeks comment on the proposal through June 17, 2016.

## II. Background

The MMWA authorizes the Commission to prescribe rules requiring disclosure of warranty terms and requiring that the terms of any written warranty on a consumer product be made available to the prospective purchaser prior to the sale of the product.<sup>7</sup> In 1975, the Commission issued both the Disclosure Rule, which establishes disclosure requirements for written warranties, and the Pre-Sale Availability Rule, which includes requirements for sellers and warrantors to make the text of any warranty on a consumer product available to the consumer prior to sale. Among other things, the Pre-Sale Availability Rule requires most sellers to make warranties readily available either by: (1) Displaying the warranty document in close proximity to the product or (2) furnishing the warranty document on request and posting signs in prominent locations advising consumers that

warranties are available. The Pre-Sale Availability Rule requires warrantors to provide materials to enable sellers to comply with the Rule’s requirements. The Rule also sets out how sellers should make warranty information available pre-sale if selling the product at retail locations, through catalogs, mail order, or door-to-door sales.

E-Warranty amends the MMWA to allow, under certain circumstances, the posting of warranties on warrantors’ Internet Web sites as an alternative method of complying with the Pre-Sale Availability Rule, and to permit sellers to make warranty terms available to consumers pre-sale via electronic means where the warrantor has chosen the online option.<sup>8</sup> E-Warranty charges the Commission with promulgating consistent changes to the Disclosure Rule and the Pre-Sale Availability Rule within one year of the Act’s passage.<sup>9</sup>

## III. The Commission’s Proposed Rule Changes

The Commission proposes to modify the Disclosure Rule and the Pre-Sale Availability Rule to implement the E-Warranty Act and effectuate its purposes. Currently, sellers are obliged to provide warranty terms pre-sale to consumers through a variety of methods such as displaying them in close proximity to the warranted products, or by furnishing them upon request prior to sale and posting prominent signs to let customers know that warranties can be examined upon request, posting them in a catalog in close conjunction to the warranted product, or having them available for consumers’ review in a door-to-door sales presentation. The proposed amendments will allow sellers the additional option of using an electronic method to make warranty terms available to consumers at the point of sale for warranted products

<sup>8</sup> In a recent review of the warranty interpretations, rules, and guides (16 CFR parts 700–703 and 239), which was completed before enactment of the E-Warranty Act, the Commission declined certain commenters’ requests to allow brick-and-mortar sellers to refer consumers to online warranty terms as a method of complying with the Pre-Sale Availability Rule. The Commission noted that the intent of the Rule is to make warranty information available at the point of sale, so for the seller simply to refer the consumer to a Web site where the warranty could be found would be insufficient. See 80 FR 42710, 42717 (July 20, 2015).

<sup>9</sup> Under the E-Warranty Act, the Commission must issue the final amended rules by September 24, 2016. The Commission determines that taking of oral presentations from interested parties would interfere with its ability to amend the Disclosure Rule and the Pre-Sale Availability Rule in a timely fashion. Accordingly, as provided by the E-Warranty Act, the Commission waives the requirement to give interested persons an opportunity for oral presentation. See Public Law 114–51, sec. 3(b)(2).

where the warrantor has chosen the online method of disseminating the warranty terms.

Warrantors currently must provide retailers the warranty materials sellers need to meet their requirements under the Pre-Sale Availability Rule, such as providing copies of the warranty, providing warranty stickers, tags, signs, or posters, or printing the warranty on the product’s packaging. The amendment does not alter the duties of warrantors who do not choose to employ an online method to supply warranty terms. The E-Warranty Act provides that warrantors who choose the online method of disseminating warranty terms must provide consumers the address of the Internet Web site where the specific product’s warranty terms can be reviewed and also supply a non-Internet method, such as a phone number or mailing address, for consumers and sellers to request the warranty terms. If a consumer or seller<sup>10</sup> makes such a request, the warrantor must provide the warranty terms promptly and free and of charge.

The first proposed revisions alter § 701.1 to add a definition of the term “manufacturer” at § 701.1(g) (defining manufacturer as “any person engaged in the business of making a consumer product”), add that term in the definition of “warrantor,” and re-letter the paragraphs in § 701.1 to account for the additional definition. The Commission proposes these revisions in light of E-Warranty’s use of the term “manufacturer.”

The next proposed revision adds a new § 701.1(j)(3) to specify that, in conjunction with warranty terms posted on an Internet Web site or displayed electronically, the phrase “on the face” means in close proximity to the location where the warranty terms begin. Although the Disclosure Rule does not explicitly mention online commerce, it applies to the sale of warranted consumer products online. Commission staff recently updated the .Com Disclosures to provide additional guidance on disclosure obligations in

<sup>10</sup> Sellers are given the option of requesting the warranty terms free of charge from the warrantor because not all sellers will be equipped to employ an electronic option in cases where the warrantor has chosen the online method to supply warranty terms. For example, a small seller may not have Internet access or electronic devices to download and display warranty terms for consumers’ review at the point of sale. Those sellers’ duties to have warranty terms available pre-sale, however, have not changed under E-Warranty. The Commission believes that requiring warrantors to supply sellers with warranty terms upon request so that sellers can make them available for consumers’ review at the point of sale effectuates Congress’s desire to ensure the continued availability of pre-sale warranty terms.

<sup>5</sup> 16 CFR part 702.

<sup>6</sup> E-Warranty Act, Public Law 114–51 (Sept. 24, 2015).

<sup>7</sup> 15 U.S.C. 2302.

the online context. As stated in the updated .Com Disclosures, warranties communicated through visual text online are no different from paper versions and the same rules apply.<sup>11</sup> The Commission therefore proposes to clarify this requirement for online disclosures.

The next proposed revision is to § 702.1(d) to include the manufacturer in the definition of “warrantor.” The Commission proposes this revision to comport with E-Warranty’s use of the term “manufacturer.” The next revision adds a new § 702.1(g) to define a “manufacturer” (in the same manner as the proposed revision of § 701.1(g)) as “any person engaged in the business of making a consumer product.”

The next proposed revisions are to § 702.3(a) to provide that sellers can provide warranty terms pre-sale through electronic means if the warrantor of the product has chosen the online option. If a seller uses an electronic means, that seller must still make the warranty text readily available for consumers’ examination prior to sale.

The proposed changes to § 702.3(b)(1)(i) would remove superfluous instances of the term “and/or” and “and” in that paragraph, as the prefatory language already notes that the warrantor must use one *or more* of the methods described in that paragraph to provide sellers with the prescribed warranty materials.

The next proposed revision adds a new § 702.3(b)(2) to reflect that, as an alternative method of compliance with the Pre-Sale Availability Rule, a warrantor may refer consumers to an accessible digital copy of the warranty by providing to the consumer the Internet address where the specific product’s warranty has been posted in a clear and conspicuous manner. To employ this option, the warrantor, among other duties, must supply in the product manual, or on the product or product packaging, the Internet address where the consumer can review and obtain the specific product’s warranty terms, as well as the phone number, postal mailing address, or other reasonable non-Internet based means for the consumer to request a free copy of the warranty terms.

Proposed § 702.3(b)(2)(iv) requires the warrantor utilizing the online option to provide sufficient information with the consumer product or on the Internet Web site so that the consumer can readily locate the specific product’s

warranty terms. The Commission believes that this requirement comports with Congress’s directive that online warranties be available to consumers “in a clear and conspicuous manner.”<sup>12</sup> Similarly, if a consumer or seller requests via phone, mail, or other reasonable non-Internet-based means, that the warrantor provide a hard copy of the warranty, proposed § 702.3(b)(2)(ii) requires the warrantor to provide it promptly and free of charge, which comports with existing pre-sale requirements for catalog and mail order sales.

The next proposed revision alters § 702.3(c)(2)(i)(B) to reflect that the mail-order or catalog seller must provide the address of the Internet Web site of the warrantor where the warranty terms can be reviewed (if such Internet Web site exists), as well as either a phone number or address that the consumer can use to request a free copy of the warranty, and notes that the copy may be provided electronically if the product’s warrantor has used the online option.

Finally, the next proposed revision alters § 702.3(d)(2) to reflect that the door-to-door seller may supply the warranty through an electronic option if the product’s warrantor has employed the online method.

#### IV. Regulatory Flexibility Act

The Regulatory Flexibility Act<sup>13</sup> (RFA) requires each agency either to provide an Initial Regulatory Flexibility Analysis (IRFA) with a proposed rule, or certify that the proposed rule will not have a significant economic impact on a substantial number of small entities.<sup>14</sup> The FTC does not expect that the rule revisions necessitated by E-Warranty will have a significant economic impact on small sellers and warrantors. As discussed above, the proposed revisions will relieve those warrantors who choose the online method from providing warranty materials to certain sellers. Affected sellers, however, should be able easily to obtain the warranties and provide them to consumers for review at the point of sale, either by obtaining the warranties from the warrantor’s Web site or by requesting a hard copy from the warrantor. Also, the proposed amendment allows sellers of goods whose warrantors have employed the online method the ability to provide pre-sale warranty terms electronically. Thus, if the proposal is adopted, a small seller that is in compliance with current

law would need to take only minimal additional action to remain compliant.

The small warrantor that does not choose the Internet option to supply warranty terms can remain compliant simply by continuing with its existing practices. The small warrantor that has been including the entire warranty with the warranted product and supplying warranty materials so that sellers can meet Pre-Sale Availability Rule obligations will have a smaller compliance burden under the proposal by being able to provide the warranty terms solely on an Internet Web site. That small warrantor, however, will likely incur costs to establish a phone number, address, or other non-Internet based method that consumers and sellers can use to request a free hard copy of warranty terms.

With respect to the amendments to the Disclosure Rule, a small entity that is in compliance with current law need not take any different or additional action if the proposal is adopted, as the proposed revisions merely explain how the “on the face of the warranty” requirement applies to online warranty terms.

Accordingly, this document serves as notice to the Small Business Administration of the FTC’s certification of “no effect.” To ensure the accuracy of this certification, however, the Commission requests comment on whether the proposed rule will have a significant impact on a substantial number of small entities, including specific information on the number of entities that would be covered by the proposed rule, the number of these companies that are small entities, and the average annual burden for each entity. Although the Commission certifies under the RFA that the rule proposed in this notice would not, if promulgated, have a significant impact on a substantial number of small entities, the Commission has determined, nonetheless, that it is appropriate to publish an IRFA in order to inquire into the impact of the proposed rule on small entities. Therefore, the Commission has prepared the following analysis:

##### A. Reasons for the Proposed Rule Revisions

As outlined in Section II, above, the Commission is proposing to amend the Disclosure Rule and Pre-Sale Availability Rule in connection with Congress’s passage of E-Warranty. E-Warranty allows, under certain circumstances, the posting of warranties on manufacturers’ Web sites as an alternative method of complying with the Pre-Sale Availability Rule, and

<sup>11</sup> See FTC, .Com Disclosures: How to Make Effective Disclosures in Digital Advertising (2013), at 3, fn.7, available at <https://ftc.gov/os/2013/03/130312dotcomdisclosures.pdf>.

<sup>12</sup> See 15 U.S.C. 2302(b)(4)(A)(i).

<sup>13</sup> 5 U.S.C. 603.

<sup>14</sup> 5 U.S.C. 605.

certain sellers' use of an electronic method to supply pre-sale warranty terms.

#### *B. Statement of Objectives and Legal Basis*

The objective of the proposed amendments is to provide warrantors an online method of complying with the Disclosure Rule and the Pre-Sale Availability Rule, allow certain sellers to use an electronic method to provide pre-sale warranty terms to consumers, and to define what "on the face" of an online warranty means in the Disclosure Rule. The legal authority for this NPRM is the E-Warranty Act and the MMWA.

#### *C. Description of Small Entities to Which the Rules Will Apply*

The small entities to which the Disclosure Rule applies are warrantors. The small entities to which the Pre-Sale Availability Rule applies are warrantors and sellers of warranted consumer products costing more than fifteen dollars. The Disclosure Rule and the Pre-Sale Availability Rule currently define a "warrantor" as "any supplier or other person who gives or offers to give a written warranty." The Pre-Sale Availability Rule defines a "seller" as "any person who sells or offers for sale for purposes other than resale or use in the ordinary course of the buyer's business any consumer product." The proposed changes add "manufacturers" to both Rules' definitions of "warrantor." Sellers include retailers, catalog and mail order sellers, and door-to-door sellers.

In 2014, the Commission estimated that there were 13,395 small manufacturers (warrantors) and 452,553 small retailers (sellers) impacted by the Rules.<sup>15</sup>

#### *D. Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements*

The proposed amendments to the Disclosure Rule do not impose any new reporting, recordkeeping, or other compliance requirements, because the proposed amendments merely explain how the existing "on the face of the warranty" requirement applies to online and electronic warranty terms.

The Pre-Sale Availability Rule imposes disclosure obligations on sellers and warrantors of warranted consumer goods actually costing more than fifteen dollars. Specifically, sellers must make warranty terms available prior to sale. Under the proposed

revision, if the warrantor has chosen the online option, sellers may incur minimal additional costs if they need to request the warranty terms from the warrantor to provide them to consumers, but sellers will also have additional flexibility to make pre-sale warranty terms available to consumers electronically. Warrantors must provide sellers with warranty materials for sellers' use at the point of sale, or, under the proposed revision, provide the address of the warrantor's Internet Web site where consumers can review and obtain warranty terms in the product manual or on the product or product packaging, and the warrantor's contact information for the consumer to obtain the warranty terms via a non-Internet method.

Neither the existing Pre-Sale Availability Rule nor the proposed amendments require sellers or warrantors to retain more records than may be necessary to provide consumers the warranty terms. The small entities potentially covered by these proposed amendments will include all such entities subject to the Rules, including suppliers, manufacturers and others who warrant consumer goods costing more than fifteen dollars and retailers, catalog and mail-order sellers, and door-to-door sellers who offer the warranted products. The professional skills necessary for compliance with the Rules as modified by the proposed amendments would include (1) warrantors' office and administrative support staff to receive consumers' and sellers' requests for warranty terms using a non-Internet based method and (2) sellers' office and administrative support staff to request warranty terms for pre-sale availability to consumers for warranted goods where the warrantor has elected only the Internet option.

The Commission invites comment on the proposed amendments' impact on small sellers who might cease to receive point-of-sale warranty materials from those warrantors who choose to employ the online method to supply warranty terms.

#### *E. Duplication, Overlap, or Conflict With Other Federal Rules*

The Commission has not identified any other federal statutes, rules, or policies that would duplicate, overlap, or conflict with the proposed amendments. The Commission invites comment and information on this issue.

#### *F. Significant Alternatives to the Proposed Amendments*

As noted above at footnote 8, in a recent rule review of the Pre-Sale Availability Rule, the Commission

declined commenters' requests to allow offline sellers to comply with the Rule by advising buyers of the availability of the warranty at a particular Web site. The Commission noted that, because the intent of the Rule is to make warranty information available at the point of sale, a seller could not comply with its Pre-Sale Availability Rule obligations simply by referring the consumer to a Web site where the warranty could be found. The proposed revisions allow sellers to provide warranty terms electronically, but only in cases where the warrantor has chosen the online option.<sup>16</sup> The proposed revisions comport with Congress's desire to allow warrantors the option of providing warranty terms online, as long as warrantors offer a non-Internet based method for consumers to obtain the warranty terms, as well as with Congress's mandate that the online method not supplant the seller's duty to provide warranty terms at the point of sale.

The Commission has not proposed any specific small entity exemption, differing timetables, or other significant alternatives, as the proposed amendments are narrowly tailored to permit E-Warranty's stated objectives of allowing warrantors to post warranty terms on Internet Web sites, certain sellers to use an electronic method to provide warranty terms pre-sale to consumers, and the ancillary purpose of clarifying that "on the face of the warranty" in the Web site or electronic context means "in close proximity" to the location where the warranty text begins. The Commission does not believe a special exemption for small entities or significant compliance alternatives are necessary or appropriate to minimize the compliance burden on small entities while achieving the intended purposes of E-Warranty.

The Commission believes its proposed revisions will be minimally burdensome for small businesses and that they comply with Congress's mandate to allow warrantors to post warranty terms on an Internet Web site and certain sellers to employ a pre-sale electronic option, while ensuring pre-sale availability of warranty terms at the point of sale. The Commission, however, invites comment on regulatory alternatives that the Commission has not expressly considered for complying

<sup>16</sup> FTC staff noted in an opinion letter in 2009, however, that neither the MMWA nor its related rules prescribe making the warranty terms available only on paper. Letter from Allyson Himelfarb to Thomas Hughes (February 17, 2009), available at [https://www.ftc.gov/sites/default/files/documents/advisory\\_opinions/opinion-09-1/opinion0901\\_0.pdf](https://www.ftc.gov/sites/default/files/documents/advisory_opinions/opinion-09-1/opinion0901_0.pdf).

<sup>15</sup> See 79 FR 8185 (Feb. 11, 2014), which relates to the Pre-Sale Availability Rule, but should also apply to the Disclosure Rule.

with the proposed rule that might reduce compliance burdens on small entities while still achieving E-Warranty's objectives.

#### V. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA),<sup>17</sup> Federal agencies are generally required to seek Office of Management and Budget (OMB) approval for information collection requirements prior to implementation. Under the PRA, the Commission may not conduct or sponsor, and, notwithstanding any other provision of law, a person is not required to respond to an information collection, unless the information displays a valid control number assigned by OMB.

This proposal would amend 16 CFR parts 701 and 702. The collection of information related to the Disclosure Rule has been previously reviewed and approved by OMB in accordance with the PRA and assigned OMB Control Number 3084-0111.<sup>18</sup> The collection of information related to the Pre-Sale Availability Rule has been previously reviewed and approved by OMB in accordance with the PRA and assigned OMB Control Number 3084-0112.<sup>19</sup>

As explained below, the proposed amendments only slightly modify or add to information collection requirements that were previously approved by OMB. Under this proposal, a warrantor will be permitted, but not required, to use an online method for supplying warranty terms. The Commission does not believe that this proposed rule would impose any new or substantively revised collections of information as defined by the PRA.

Under the most recent proposed clearance for the Pre-Sale Availability Rule,<sup>20</sup> the Commission estimated the total annual hours burden to be 2,446,610. This figure represented a 20% reduction from the 2010 estimate based in large part on the growth of online sales and the online posting of warranty terms related to those sales. The Commission estimated the hours burden at 2,315,608 for retailers and 131,002 for manufacturers. The Commission estimated the total annual labor cost in 2014 to be \$51,379,000 (rounded to the nearest thousand).

The Commission estimated the total annual capital or other non-labor costs to be *de minimis*, because the vast majority of retailers and warrantors already have developed systems to provide the information required by the

Pre-Sale Availability Rule. Compliance by retailers typically entails keeping warranties on file, in binders or otherwise, and posting an inexpensive sign indicating warranty availability. Warrantor compliance under the proposed revisions entails providing retailers with a copy of the warranties included with their product or providing with the warranted good the address of the warrantor's Internet Web site where the consumer can review and obtain such terms, along with the contact information where the consumer may use a non-Internet based method to obtain a free copy of the warranty terms. Sellers of warranted goods for which the warrantor has chosen the online option may, unless the warrantor provides the seller a hard copy of the warranty terms to make such terms, incur a slightly increased burden because the seller will have to ensure it provides consumers a method of reviewing the warranty terms at the point of sale, prior to sale. That burden, however, should be minimal, given that the warrantor will have to make the warranty terms available on an Internet Web site, and given the proposed provision requiring the warrantor to supply a hard copy of the warranty terms, promptly and free of charge, in response to a seller's request. The Commission believes that, in light of the proposed amendment, the annual capital or other non-labor costs will continue to be *de minimis*.

#### Invitation To Comment

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before June 17, 2016. Write "Amending Warranty Rules Pursuant to the E-Warranty Act, Matter No. P044403" on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the Commission Web site, at <http://www.ftc.gov/os/publiccomments.shtm>. As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, such as Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does

not include any sensitive health information, including medical records or other individually identifiable health information. In addition, do not include any "[t]rade secret or any commercial or financial information which . . . is privileged or confidential," as discussed in section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).<sup>21</sup> Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublic.commentworks.com/ftc/E-WarrantyAmendments> by following the instructions on the web-based form. If this Notice appears at <http://www.regulations.gov/#/home>, you also may file a comment through that Web site.

If you file your comment on paper, write "Amending Warranty Rules Pursuant to the E-Warranty Act, Matter No. P044403" on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC-5610 (Annex E), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex E), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at <https://www.ftc.gov> to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the

<sup>21</sup> In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. See FTC Rule 4.9(c), 16 CFR 4.9(c).

<sup>17</sup> 44 U.S.C. 3501-3520.

<sup>18</sup> See 78 FR 70046 (Nov. 22, 2013).

<sup>19</sup> See 79 FR 8185 (Feb. 11, 2014).

<sup>20</sup> See 78 FR 68446 (Nov. 14, 2013).

collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before June 17, 2016. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see <http://www.ftc.gov/ftc/privacy.shtm>.

#### List of Subjects in 16 CFR Parts 701 and 702

Trade practices, Warranties.

For the reasons set forth in the preamble, the Commission proposes to amend 16 CFR part 701 as follows:

#### PART 701—DISCLOSURE OF WRITTEN CONSUMER PRODUCT WARRANTY TERMS AND CONDITIONS

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

**Authority:** 15 U.S.C. 2302 and 2309.

■ 2. Amend § 701.1 by redesignating paragraphs (g) through (i) as paragraphs (h) through (j), adding new paragraph (g), and revising redesignated paragraph (j) to read as follows:

##### § 701.1 Definitions.

\* \* \* \* \*

(g) *Manufacturer* means any person engaged in the business of making a consumer product.

\* \* \* \* \*

(j) *On the face of the warranty* means:

(1) Where the warranty is a single sheet with printing on both sides of the sheet or where the warranty is comprised of more than one sheet, the page on which the warranty text begins;

(2) Where the warranty is included as part of a larger document, such as a use and care manual, the page in such document on which the warranty text begins;

(3) Where the warranty is on an Internet Web site or displayed electronically, in close proximity to the location where the warranty text begins.

#### PART 702—PRE-SALE AVAILABILITY OF WRITTEN WARRANTY TERMS

■ 3. The authority citation for part 702 continues to read as follows:

**Authority:** 15 U.S.C. 2302 and 2309.

■ 4. Amend § 702.1 by revising paragraph (d) and adding paragraph (g) to read as follows:

##### § 702.1 Definitions.

\* \* \* \* \*

(d) *Warrantor* means any supplier, manufacturer, or other person who gives or offers to give a written warranty.

\* \* \* \* \*

(g) *Manufacturer* means any person engaged in the business of making a consumer product.

■ 5. Revise § 702.3 to read as follows:

##### § 702.3 Pre-sale availability of written warranty terms.

The following requirements apply to consumer products actually costing the consumer more than \$15.00:

(a) *Duties of seller.* Except as provided in paragraphs (c) and (d) of this section, the seller of a consumer product with a written warranty shall make a text of the warranty readily available for examination by the prospective buyer by:

(1) Displaying it in close proximity to the warranted product (including through electronic or other means, if the warrantor has elected the option described in paragraph (b)(2) of this section), or

(2) Furnishing it upon request prior to sale (including through electronic or other means, if the warrantor has elected the option described in paragraph (b)(2) of this section) and placing signs reasonably calculated to elicit the prospective buyer's attention in prominent locations in the store or department advising such prospective buyers of the availability of warranties upon request.

(b) *Duties of the warrantor.* (1) A warrantor who gives a written warranty warranting to a consumer a consumer product actually costing the consumer more than \$15.00 shall:

(i) Provide sellers with warranty materials necessary for such sellers to comply with the requirements set forth in paragraph (a) of this section, by the use of one or more by the following means:

(A) Providing a copy of the written warranty with every warranted consumer product;

(B) Providing a tag, sign, sticker, label, decal or other attachment to the product, which contains the full text of the written warranty;

(C) Printing on or otherwise attaching the text of the written warranty to the package, carton, or other container if that package, carton or other container is normally used for display purposes. If the warrantor elects this option a copy of the written warranty must also accompany the warranted product; or

(D) Providing a notice, sign, or poster disclosing the text of a consumer product warranty. If the warrantor elects this option, a copy of the written warranty must also accompany each warranted product.

(ii) Provide catalog, mail order, and door-to-door sellers with copies of written warranties necessary for such

sellers to comply with the requirements set forth in paragraphs (c) and (d) of this section.

(2) As an alternative method of compliance with paragraph (b)(1) of this section, a warrantor may provide the warranty terms in an accessible digital format on the warrantor's Internet Web site. If the warrantor elects this option, the warrantor must:

(i) Provide information to the consumer that will inform the consumer how to obtain warranty terms by indicating, in a clear and conspicuous manner, in the product manual or on the product or product packaging:

(A) The Internet Web site of the warrantor where such warranty terms can be reviewed; and

(B) The phone number, the postal mailing address of the warrantor, or other reasonable non-Internet based means for the consumer to request a copy of the warranty terms;

(ii) Provide a hard copy of the warranty terms promptly and free of charge upon request by a consumer or seller made pursuant to paragraph (b)(2)(i)(B) of this section;

(iii) Ensure that warranty terms are posted in a clear and conspicuous manner and remain accessible to the consumer on the Internet Web site of the warrantor; and

(iv) Provide information with the consumer product or on the Internet Web site of the warrantor sufficient to allow the consumer to readily identify on such Internet Web sites the warranty terms that apply to the specific product purchased by the consumer.

(3) Paragraph (a)(1) of this section shall not be applicable with respect to statements of general policy on emblems, seals or insignias issued by third parties promising replacement or refund if a consumer product is defective, which statements contain no representation or assurance of the quality or performance characteristics of the product; provided that

(i) The disclosures required by § 701.3(a)(1) through (9) of this part are published by such third parties in each issue of a publication with a general circulation, and

(ii) Such disclosures are provided free of charge to any consumer upon written request.

(c) *Catalog and mail order sales.* (1) For purposes of this paragraph:

(i) Catalog or mail order sales means any offer for sale, or any solicitation for an order for a consumer product with a written warranty, which includes instructions for ordering the product which do not require a personal visit to the seller's establishment.

(ii) Close conjunction means on the page containing the description of the warranted product, or on the page facing that page.

(2) Any seller who offers for sale to consumers consumer products with written warranties by means of a catalog or mail order solicitation shall:

(i) Clearly and conspicuously disclose in such catalog or solicitation in close conjunction to the description of warranted product, or in an information section of the catalog or solicitation clearly referenced, including a page number, in close conjunction to the description of the warranted product, either:

(A) The full text of the written warranty; or

(B) The address of the Internet Web site of the warrantor where such warranty terms can be reviewed (if such Internet Web site exists), as well as that the written warranty can be obtained free upon specific request, and the address or phone number where such warranty can be requested. If this option is elected, such seller shall promptly provide a copy of any written warranty requested by the consumer (and may provide such copy through electronic or other means, if the warrantor has elected the option described in paragraph (b)(2) of this section).

(ii) [Reserved].

(d) *Door-to-door sales.* (1) For purposes of this paragraph:

(i) *Door-to-door sale* means a sale of consumer products in which the seller or his representative personally solicits the sale, including those in response to or following an invitation by a buyer, and the buyer's agreement to offer to purchase is made at a place other than the place of business of the seller.

(ii) *Prospective buyer* means an individual solicited by a door-to-door seller to buy a consumer product who indicates sufficient interest in that consumer product or maintains sufficient contact with the seller for the seller reasonably to conclude that the person solicited is considering purchasing the product.

(2) Any seller who offers for sale to consumers consumer products with written warranties by means of door-to-door sales shall, prior to the consummation of the sale, disclose the fact that the sales representative has copies of the warranties for the warranted products being offered for sale, which may be inspected by the prospective buyer at any time during the sales presentation. Such disclosure shall be made orally and shall be included in any written materials shown to prospective buyers. If the warrantor has elected the option described in

paragraph (b)(2) of this section, the sales representative may provide a copy of the warranty through electronic or other means.

By direction of the Commission.

**Donald S. Clark,**  
*Secretary.*

[FR Doc. 2016-12030 Filed 5-23-16; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Part 275

[Release No. IA-4388; File No. S7-08-16]

#### Performance-Based Investment Advisory Fees

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Notice of intent to issue order.

**SUMMARY:** The Securities and Exchange Commission ("Commission") intends to issue an order that would adjust for inflation, as appropriate, dollar amount thresholds in the rule under the Investment Advisers Act of 1940 that permits investment advisers to charge performance-based fees to "qualified clients." Under that rule, an investment adviser may charge performance-based fees if a "qualified client" has a certain minimum net worth or minimum dollar amount of assets under the management of the adviser. The Commission's order would increase, to reflect inflation, the minimum net worth that a "qualified client" must have under the rule. The order would not increase the minimum dollar amount of assets under management.

**DATES:** Hearing or Notification of Hearing: An order adjusting the dollar amount tests specified in the definition of "qualified client" will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary. Hearing requests should be received by the Commission's Office of the Secretary by 5:30 p.m. on June 13, 2016. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

**FOR FURTHER INFORMATION CONTACT:** Amanda Hollander Wagner, Senior Counsel, Investment Company Rulemaking Office, at (202) 551-6792,

Division of Investment Management, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-8549.

**SUPPLEMENTARY INFORMATION:** The Commission intends to issue an order under the Investment Advisers Act of 1940 ("Advisers Act" or "Act").<sup>1</sup>

### I. Background

Section 205(a)(1) of the Advisers Act generally prohibits an investment adviser from entering into, extending, renewing, or performing any investment advisory contract that provides for compensation to the adviser based on a share of capital gains on, or capital appreciation of, the funds of a client.<sup>2</sup> Congress prohibited these compensation arrangements (also known as performance compensation or performance fees) in 1940 to protect advisory clients from arrangements that Congress believed might encourage advisers to take undue risks with client funds to increase advisory fees.<sup>3</sup> In 1970, Congress provided an exception from the prohibition for advisory contracts relating to the investment of assets in excess of \$1,000,000,<sup>4</sup> if an appropriate "fulcrum fee" is used.<sup>5</sup> Congress subsequently authorized the Commission to exempt, by rule or order, any advisory contract from the performance fee prohibition if the contract is with persons who the

<sup>1</sup> 15 U.S.C. 80b. Unless otherwise noted, all references to statutory sections are to the Investment Advisers Act, and all references to rules under the Investment Advisers Act, including rule 205-3, are to Title 17, Part 275 of the Code of Federal Regulations [17 CFR 275].

<sup>2</sup> 15 U.S.C. 80b-5(a)(1).

<sup>3</sup> H.R. Rep. No. 2639, 76th Cong., 3d Sess. 29 (1940). Performance fees were characterized as "heads I win, tails you lose" arrangements in which the adviser had everything to gain if successful and little, if anything, to lose if not. S. Rep. No. 1775, 76th Cong., 3d Sess. 22 (1940).

<sup>4</sup> 15 U.S.C. 80b-5(b)(2). Trusts, governmental plans, collective trust funds, and separate accounts referred to in section 3(c)(11) of the Investment Company Act of 1940 ("Investment Company Act") [15 U.S.C. 80a-3(c)(11)] are not eligible for this exception from the performance fee prohibition under section 205(b)(2)(B) of the Advisers Act.

<sup>5</sup> 15 U.S.C. 80b-5(b). A fulcrum fee generally involves averaging the adviser's fee over a specified period and increasing or decreasing the fee proportionately with the investment performance of the company or fund in relation to the investment record of an appropriate index of securities prices. See rule 205-2 under the Advisers Act; Adoption of Rule 205-2 under the Investment Advisers Act of 1940, As Amended, Definition of "Specified Period" Over Which Asset Value of Company or Fund Under Management is Averaged, Investment Advisers Act Release No. 347 (Nov. 10, 1972) [37 FR 24895 (Nov. 23, 1972)].

In 1980, Congress added another exception to the prohibition against charging performance fees, for contracts involving business development companies under certain conditions. See section 205(b)(3) of the Advisers Act.