# UPDATE: FTC'S PROPOSED AMENDMENTS TO THE MAGNUSON-MOSS DISCLOSURE AND PRE-SALE AVAILABILITY REQUIREMENTS

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**Commercial Disputes Alert**

In October of 2015, President Obama signed into law the E-Warranty Act of 2015, an amendment to the Magnuson-Moss Warranty Federal Trade Commission Improvement Act (the "Magnuson-Moss Warranty Act" or the "Act"), which updated the Magnuson-Moss Warranty Act to better fit the current digital age and triggered the Federal Trade Commission's (FTC) responsibility to update its rules implementing the Act. Enacted in 1975, the Magnuson-Moss Warranty Act was developed to ensure that warranties accompanying consumer products, which were increasingly being used as marketing tools, were accurate and enforceable.

On May 24, 2016, the FTC published its proposed amendments to the rules. The proposed amendments modify the rules on Disclosure of Written Consumer Product Warranty Terms (the "Disclosure Rule") and Pre-Sale Availability of Written Warranty Terms (the "Pre-Sale Availability Rule") and will allow warrantors subject to federal warranty regulations to provide required information to consumers via the Internet under certain circumstances. Comments were received on the proposed changes through June 17, 2016, and the final rules are expected to go into effect by the end of September.

The proposed amendments to the rules give warrantors an additional avenue to satisfy pre-existing requirements — they do not impose any additional requirements on warrantors. The rules continue to permit warrantors to provide a physical copy of the warranty to consumers, so manufacturers who do not wish to take advantage of the option to provide warranties via the Internet will not be forced to change their current practices.

No amendments were proposed to the rules regarding the interpretation and scope of the Magnuson-Moss Warranty Act or the rules implementing the Informal Dispute Settlement Procedures.

## CHANGES TO THE DISCLOSURE RULE

One of the driving forces behind the Magnuson-Moss Warranty Act in 1975 was the desire to expand consumer access to warranty information. To serve these purposes, the Disclosure Rule established disclosure requirements for written warranties on consumer products costing more than $15 and provided specific details of coverage that must be disclosed and the exact language to be used for certain required disclosures.

The FTC proposes to amend the Disclosure Rule to provide clarification as to the phrase "on the face of the warranty" when the warranty is disclosed through the Internet. The current rules define the phrase in terms of physical pages — when printed individually, regardless of whether the warranty is printed on both sides or comprises multiple sheets, the face is the page on which the warranty text begins; when the warranty is included within a larger document, the face is the page in such document on which the warranty text begins.[1] The

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proposed amendment further defines “on the face of warranty” in the Internet context to mean “in close proximity to the location where the warranty text begins.”[2]

The proposed amendments would also define “manufacturer” within the rules. The addition of a definition for “manufacturer” within the rules was prompted by the use of the word in the E-Warranty Act — the rules did not previously define manufacturer. The proposed amendment defines a manufacturer as “any person engaged in the business of making a consumer product.”[3]

## CHANGES TO THE PRE-SALE AVAILABILITY RULE

The FTC proposes to amend the definitions to the Pre-Sale Availability Rule to allow for satisfaction of the pre-sale availability requirements through online posting of warranty terms. The Pre-Sale Availability Rule establishes sellers' and warrantors' requirements for making warranty terms available to potential consumers prior to sale.

Warrantors previously had several options to satisfy their pre-sale availability requirements by providing sellers with copies of the written warranty for each individual product, but all of the options required that the consumer receive the physical warranty terms in some form, whether on a handout, a sticker or label, or on the packaging of the product itself. The proposed amendment adds an additional avenue to allow warrantors to satisfy their pre-sale availability requirements by providing the warranty terms in an accessible digital format on the warrantor's website.

Warrantors choosing to provide their warranty information through the Internet will be required to:

- Provide the website where the warranty terms are available.
- Provide the contact information of a reasonable non-Internet-based means for the consumer to request a copy of the warranty terms, i.e., a phone number or postal address.
- Provide a hard copy of the warranty terms promptly and freely to any consumer or seller making a request by phone or mail for a copy of the warranty terms.
- Ensure that warranty terms are posted in a clear and conspicuous manner and remain accessible to the consumer on the warrantor's website.
- Provide sufficient information on the warrantor's website to allow the consumer to determine what warranty terms apply to the specific product purchased by the consumer.

Similar changes in the rules provide that the warranty terms may also be made available electronically to satisfy the pre-sale availability requirements in both the catalog and mail-order and door-to-door sales contexts.[4]

## CONCLUSION

With the exception of the new online presentation option discussed above, the remainder of the requirements of the Magnuson-Moss Warranty Act remains the same. These proposed amendments have not been finalized, and warrantors cannot take advantage of the digital distribution option until the amendments go into effect, likely in the fall of 2016. Once in effect, however, the amended rules will give sellers and warrantors increased flexibility in

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how they meet the requirements under the Magnuson-Moss Warranty Act and may provide opportunities to reduce the costs associated with making warranty disclosures.

**Notes:**

[1] 16 C.F.R. § 701.1.

[2] Rule Governing Disclosure of Written Consumer Product Warranty Terms and Conditions; Rule Governing Pre-Sale Availability of Written Warranty Terms, 81 Fed. Reg. 32,680, 32,685 (proposed May 24, 2016) (to be codified at 16 C.F.R. pts. 701, 702).

[3] Rule Governing Disclosure of Written Consumer Product Warranty Terms and Conditions; Rule Governing Pre-Sale Availability of Written Warranty Terms, 81 Fed. Reg. 32,680, 32,685 (proposed May 24, 2016) (to be codified at 16 C.F.R. pts. 701, 702).

[4] Rule Governing Disclosure of Written Consumer Product Warranty Terms and Conditions; Rule Governing Pre-Sale Availability of Written Warranty Terms, 81 Fed. Reg. 32,680, 32,685 (proposed May 24, 2016) (to be codified at 16 C.F.R. pts. 701, 702).

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