Proposed Rules

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1124

Milk in the Oregon-Washington Marketing Area; Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rules.

SUMMARY: This notice invites written comments on a proposal to suspend certain provisions relating to how much milk may be moved directly from farms to nonpool plants and still be priced under the order. The proposed suspension would remove the limits on such movements of milk for the months of May through August 1985. The action was requested by a federation of three cooperative associations that represent a substantial number of the producers who supply the market. The cooperatives contend that the suspension is necessary to assure that the milk of dairy farmers long associated with the market will continue to be priced and pooled under the order.

DATE: Comments are due not later than May 8, 1985.

ADDRESS: Comments (two copies) should be sent to: Dairy Division, AMS, Room 2968, South Building; U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Robert F. Groene, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447–2089.

SUPPLEMENTARY INFORMATION: William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to insure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), the suspension of the following provisions of the order regulating the handling of milk in the Oregon-Washington marketing area is being considered for the months of May through August 1985.

In § 1124.11(a), the words "The aggregate quantity diverted may not exceed 60 percent of the producer milk which the association or its agent causes to be delivered to pool plants, or diverted therefrom. Two or more cooperative associations may have their allowable diversions computed on the basis of the combined deliveries of milk by their member producers if each association has filed such a request in writing with the market administrator on or before the first day of the month such agreement is effective. This request shall specify the basis for assigning any over-diverted milk to the producer members of each cooperative association according to a method approved by the market administrator."

In § 1124.11(b), the words "The aggregate quantity diverted may not exceed 60 percent of the producer milk received at or diverted from such handler's pool plant(s) and for which the operator of such plant(s) is the handler during the month."

All persons who want to send written data, views, or arguments about the proposed suspension should send two copies of them to the Dairy Division, AMS, Room 2968, South Building, U.S. Department of Agriculture, Washington, D.C. 20250, not later than 7 days from the date of publication of this notice in the **Federal Register**. The period for filing comments is limited because a longer period would not provide the time needed to complete the required procedures to make the suspension effective for May 1985.

The comments that are received will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed suspension would remove the limit on the amount of milk that may be diverted from pool plants to nonpool plants during the months of May through August 1985. The order now provides that the aggregate quantity of milk diverted to nonpool plants may not exceed 60 percent of the producer milk handled by a cooperative association or proprietary handler.

The suspension was requested by a federation of three cooperative associations that represent a substantial number of the producers who supply the market. The cooperatives indicate that the suspension is necessary to continue to include in the marketwide pool the milk of producers who have long been associated with the market. The cooperative associations requesting the suspension expect that seasonal increases in milk production, combined with the end of the paid diversion program, will result in a surge of milk production in the market that will displace some of their milk from their usual fluid accounts. In addition, the end of the school year is expected to reduce fluid use in the market. The cooperative associations expect the suspension of the diversion limits for the months of May through August 1985 will make it unnecessary to move milk in a costly and inefficient manner solely for the prupose of assuring that dairy farmers supplying the fluid needs of the market will have their milk priced and pooled under the order.

List of Subjects in 7 CFR Part 1124

Milk marketing order, Milk, Dairy products.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Signed at Washington, D.C., on: April 25, 1985.

William T. Manley,
Deputy Administrator, Marketing Programs.

[FR Doc. 85–10529 Filed 4–30–85; 8:45 am]

BILLING CODE 3410–02–M

FEDERAL TRADE COMMISSION

16 CFR Part 702

Pre-Sale Availability of Written Warranty Terms

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: This Notice announces a rulemaking proceeding to consider an amendment to the Rule regarding the

Pre-Sale Availability of Written Warranty Terms and seeks comments on the proposed changes to the rule. The Magnuson-Moss Warranty Act requires the Federal Trade Commission to promulgate a Rule to ensure that consumer product warranties are made available to consumers prior to purchase. The current Rule, which was promulgated on December 31, 1975, with an effective date of December 31, 1976, requires retailers of consumer products costing more than $15.00 to make warranty texts available to customers prior to purchase by placing the warranty text in one or a combination of four specified locations: (1) On or "in close conjunction to" the warranted product, (2) in a binder (if this option is used, the retailer must also display the binder or post a sign advising consumers of the availability of warranties), (3) on the package containing the warranted product, or (4) on a sign. The proposed amendment would reduce the costs of complying with the Rule by providing retailers with a choice of displaying the warranty text near the product or making the warranty text readily available to any customer upon request. The Commission seeks comment on the merits of this approach and the possible need to publicize the availability of warranties prior to sale and to define more precisely standards for retailer compliance with an upon request approach.

This proposed amendment is based on an investigation conducted by the Commission staff into the operation and impact of the Pre-Sale Availability Rule. The investigation indicated that the goals of the Pre-Sale Availability Rule could be attained with equal effectiveness at lower compliance costs by modifying retailers' obligations under the current Rule.

The FTC additionally seeks comment on whether to include explicit directives in the Rule to require sellers who make television solicitations of mail or telephone order sales to disclose clearly and prominently the pre-sale availability of the warranty and how it can be obtained. Certain other revisions to the Rule are proposed to clarify the Rule's language and improve its organization.

The Commission is requesting public comment on the proposed amendments to the Pre-Sale Availability Rule. The public will be afforded an opportunity to make oral presentations regarding the proposed amendments.

DATES: Written comments should be received on or before June 17, 1985. Written rebuttals should be received on or before July 1, 1985. A hearing will be held upon request. Requests to make oral presentations should be made no later than June 17, 1985. A hearing date, if any, and instructions for those who desire to make oral presentations will be announced in the **Federal Register** following the comment period.

ADDRESSES: Comments and requests for an opportunity to make oral presentations should be sent to Henry B. Cabell, Presiding Officer, Federal Trade Commission, Washington, D.C. 20580.

Additional Material Available for Review: The Final Report on the Warranty Evaluation Study conducted under contract with the FTC staff in 1982 has been placed on the rulemaking record. The study is available for public examination in the Public Reference Room, Federal Trade Commission, 6th Street and Pennsylvania Avenue NW., Room 130, Washington, D.C. 20580, 202–523–3598. A limited number of copies are also available.

FOR FURTHER INFORMATION CONTACT: Joseph Kattan, 202–523–3860, or Rebecca Johnson 202–523–3357, attorneys, Division of Marketing Practices, Federal Trade Commission, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION:

A. Background

The Magnuson-Moss Warranty Act, 215 U.S.C. 2301 *et seq.*, directs the FTC to establish rules requiring that the terms of written warranties for consumer products be made available to consumers prior to purchase. 15 U.S.C. 2302(b)(1)(A). In 1975, the FTC promulgated the Pre-Sale Availability Rule, 16 CFR Part 702, which provides retailers with four permissible methods of making warranties available prior to sale: (1) Displaying the text of the warranty on or "in close conjunction to" the product (on a tag, for example); (2) maintaining a copy of the warranty in a binder and either displaying the binder in a readily accessible areas or posting a sign advising consumers of the availability of warranties for examination prior to sale; (3) displaying the warranty text on the package of the warranted product; or (4) posting a notice disclosing the warranty text near the product. Manufacturers may make warranty texts available to retailers through one of four methods: (1) Providing a copy of the warranty with every product; (2) attaching to the product a tag or a label containing the warranty text; (3) affixing the warranty text to the product package; or (4) providing a sign disclosing the warranty text.

In July 1980, the Commission received a petition from the National Mass Retailing Institute ("NMRI"), a trade association representing discount mass merchandise retailers, requesting modification of the Pre-Sale Availability Rule. The NMRI petition described problems encountered by NMRI's members in complying with the Rule and requested that the Commission amend the rule by requiring manufacturers to affix the warranty text to the packaging of all products covered by the Rule. In February, 1981, the Commission considered the issues raised by the NMRI Petition and concluded that additional information was needed before it could determine whether a modification of the Rule was necessary. The Commission therefore instructed staff to undertake an investigation into the operation of the Pre-Sale Availability Rule and its impact on manufacturers, retailers, and consumers.

To obtain information concerning the impact of the Pre-Sale Availability Rule on regulated industries, in 1981 Commission staff interviewed interested parties and surveyed compliance in retail stores subject to the Rule. The staff conducted informal interviews with manufacturers, retailers, and consumer organizations concerning their experience with the Rule and solicited their opinions concerning possible modifications of the Rule. In late 1982 and 1983, staff conducted additional interviews with retailers. Although these discussions do not provide a statistically valid measure of affected parties' experience with the Rule, they do provide useful information about the impact of the Rule on diverse elements of the manufacturing and retail industries and on consumers.

In general, the 1981 interviews indicated that most industry members had not encountered significant difficulties in complying with the requirements of the current Rule, but that most questioned the Rule's effectiveness in conveying warranty information to consumers. The costs associated with compliance were generally reported to be low. The interviews also revealed that many retailers are unaware of the Rule and are not in strict compliance with its requirements. However, most retailers said that they generally would provide a warranty for consumers prior to sale if so requested.

Commission staff also investigated the level of compliance with the Pre-Sale Availability Rule through an informal survey of retail stores. The staff visited 194 retail stores throughout the country and recorded whether warranties were available to consumers

prior to purchase and the method used by stores to make them available to consumers. The stores surveyed did not represent a random sample but included national and regional chains, discount, department, and variety stores. In general, the survey showed a low level of compliance with the terms of the Pre-Sale Availability Rule. However, when the staff investigators specifically requested copies of written warranties, they usually were produced by store employees.

To measure the impact of the Rule on consumers, Commission staff procured the services of an independent contractor who conducted a survey of consumer knowledge of and attitudes toward warranties. The Warranty Evaluation Study, which was conducted in 1982, obtained information from 6,418 households on a variety of topics related to warranties. A copy of the Warranty Evaluation Study has been placed on the public record of this proceeding.

The Warranty Evaluation Study contains information concerning consumer attitudes toward warranties and the impact of Rule 702 on consumers. The study demonstrated that consumers consider warranty information an important factor in making purchase decisions and that warranties are usually available to consumers prior to purchase, in spite of the widespread technical noncompliance with the provisions of the Pre-Sale Availability Rule revealed in staff's industry survey.

The Warranty Evaluation Study showed that a majority of consumers consider warranty information in making purchase decisions and that a sizable minority, 18.3 percent, consider the warranty to be one of the three most important factors in the purchase decision. The study also disclosed that an overwhelming majority of the respondents did not experience any problems in obtaining warranty information from retailers, although many did not attempt to obtain such information. Only 3.6 percent of respondents indicated that a written warranty was not available for examination prior to sale, while 71.2 percent indicated that the warranty was available, and 25.3 percent did not look for a warranty prior to making a purchase.

The survey also attempted to determine the proportion of consumers who actually read warranties prior to purchase. While the evidence is inconclusive, it shows that between 7.4 percent and 27 percent of all consumers read or examined the warranty prior to the purchase of a consumer product. The Warranty Evaluation Study also examined the relationship between product price and the importance of warranties to consumers. The study found that no correlation existed between those two factors.

On the basis of the interviews and surveys, Commission staff has proposed an amendment to the Pre-Sale Availability Rule to provide that retailers must make warranties readily available to consumers prior to purchase by displaying the warranty text near the product or by making the warranty text available to any customer upon request. The complete text of the proposed Rule amendments is located at the end of this Notice.

B. Analysis

Under the current version of Rule 702.3(a), retailers may make applicable product warranties available to consumers prior to sale through one of four methods. Three of those methods involve the open display of the warranty text on or near the product. The fourth method relies on binders containing warranty texts, accompanied by notices or signs informing consumers of the availability of the binders. The proposed Rule would continue the requirement that retailers make warranties available to consumers prior to the sale of any consumer product. Rather than specify the form in which the warranty is to be made available, however, the proposed Rule would create a general requirement that retailers make warranties "readily available" to consumers, either by displaying their text or by making them available for examination by consumers upon request. Any of the methods of disclosure specified in the current Rule would satisfy the requriements of the proposed Rule. In addition, however, retailers could discharge their obligations under the proposed Rule by making warranties readily available to consumers upon request.

Of the various modifications discussed with manufacturers and retailers, the "upon request" modification received the greatest support. The results of the store surveys indicate that the proposed Rule amendments will offer retailers a method for making warranties available prior to sale that is consistent with present practices. The survey results suggest that warranties are made available to consumers who ask for them. This is confirmed by the Warranty Evaluation Study, which showed that a very small number of consumers who responded to the survey (less than one percent) were denied copies of warranty texts by merchants from whom they requested warranty information. In addition, the proposed Rule would authorize other methods of disclosure that would benefit consumers but may be prohibited or discouraged by the strict language of the present Rule. For example, the present Rule may discourage merchants from displaying warranty information together with other information by requiring that any binder containing warranties be entitled "Warranties." Under the proposed amendment, merchants would be permitted to display warranties together with other product information, in binders or otherwise.

The Commission anticipates that the proposed Rule will lead to disclosure methods that will benefit the consumer. The staff's research shows the binder method of disclosure is the option most commonly used by retailers to comply with the Pre-Sale Availability Rule but that consumers rarely use the warranty binders. Affording retailers greater latitude in choosing the manner of disclosure would allow them to select the optimal form of warranty disclosure to meet the demands of consumers and the dictates of the Rule. The Commission anticipates that methods of disclosure will vary among different products and among different types of stores. Thus, warranties for major appliances might be displayed inside floor samples of the appliances while warranties for smaller products, such as watches, might be retained by the merchant and shown upon request. Stores that compete on the basis of price only might display warranties in close proximity to the warranted products while stores that compete on the basis of shopping environment might show warranties only upon request. In any event, warranties will be readily available prior to purchase to any consumer who wishes to examine them. Retailers will be required to make warranty information readily available to consumers by maintaining warranties in reasonable proximity to the warranted products and by producing warranties to consumers who request them without unreasonable delays.

Although the Commission is proposing the "upon request" standard as an acceptable way to provide consumers with ready access to warranties prior to sale, the Commission is concerned that this approach may subject consumers to unreasonable delays and difficulties in obtaining warranties prior to sale. Because the ease with which consumers may obtain warranties upon request is crucial to the proposed approach to warranty availability, the Commission welcomes any data or comments describing the circumstances under which retailers would make warranties

available when requested to do so. In addition, the Commission seeks comments on whether a more specific performance standard for retailers should be set out in the Rule to ensure that warranties are made available to consumers who request them without unreasonable delays and whether there should be other requiremetns to assist consumers in exercising their rights (*e.g.*, signs to publicize the pre-sale availabilty of warranties).

The Commission also seeks comment on whether Rule 702 should impose on all advertisers an obligation to disclose the pre-sale availability of warranties in those advertisements that mention warranties. A similar requirement appears in the Commission's revised Guides Against Deceptive Advertising of Guarantees, 16 CFR Part 239, which are being published in the **Federal Register** contemporaneously with this Notice.[1] Disclosures of pre-sale availability in warranty advertisements could be required of manufacturers, retailers, or other sellers in order to enhance consumer awareness of warranty availability. Comments on this proposal should address, in particular, whether a warranty advertising disclosure requirement would advance the purpose of the Pre-Sale Availability Rule by increasing consumer awareness of and access to warranties. Comments should also consider what effect such advertising disclosures would have, what they would cost, and what form of disclosure would have the greatest effect at the lowest expense.

The FTC additionally seeks comment on whether to include explicit directives in the Rule to require sellers to make television solicitations of mail or telephone order sales to disclose clearly and prominently in such solicitations that warranties are available for examination prior to sale upon request and how they may be obtained. The current Rule does not impose any explicit obligations on sellers with respect to television solicitations of mail or telephone order sales. Section 702.3(c) governs catalogue and mail order sales, but the disclosures required by this section are limited to disclosures in print solicitations. Given the proliferation of product solicitations on television in the last decade, the Commission questions whether it may be necessary to provide explicit directions for television advertisers to use in informing consumers how to obtain copies of their product warranties prior to sale.

Certain revisions are proposed to clarify the Rule's language and organization. First, the FTC proposes to delete the definition of "binder" in § 702.1(g) because under the amendments proposed in this Notice retailers will no longer be required to use binders. Second, the FTC proposes to correct a typographical error by reformulating the definition of "written warranty" in § 7.02.1(c) to clarify that the final clause in that definition modifies both subparts of the definition.

The Commission does not propose any substantive changes in the options available to manufacturers to ensure that warranties are available to retailers because it appears from the staff's investigation that manufacturers have not experienced significant burdens in complying with the present Rule. The Commission is not seeking comments on NMRI's proposal to require manufacturers to affix the warranty to every product package because we believe the upon request proposal to be a more efficient and less burdensome means to achieve pre-sale disclosure of warranty information. If this approach proves unworkable, however, the Commission may consider other alternatives, including NMRI's suggestion that manufacturers shoulder some additional burden.

The Commission has not proposed changes to the Rule provisions concerning mail order, catalogue, and door-to-door sales. The FTC does, however, seek comment on whether Rule 702 should specify how television advertisers of mail or telephone order merchandise should make warranties available to consumers prior to sale. The information gathered during the staff's investigation indicated that these industries have not experienced significant burdens as a result of the Pre-Sale Availability Rule.

C. Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act provides for analysis of the potential impact on small businesses of Rules proposed by federal agencies. *See* 5 U.S.C. 603, 605(b). Staff has researched the composition of the industries affected by the Pre-Sale Availability Rule and has found that a very high percentage of businesses subject to the Rule are "small" based upon Small Business Administration size standards. Unfortunately, the data obtained during the staff investigation do not provide a precise measurement of the economic impact the proposed Rule amendments would have on small businesses. The information gathered does indicate, however, that the proposed changes will have an impact on a large number of small manufacturers and retailers to some degree, by reducing their compliance costs. This section of the Notice of Proposed Rulemaking describes the small businesses which are covered by the Pre-Sale Availability Rule, discusses the compliance measures called for by the proposed amendments to the Rule, and considers whether any alternatives to the proposal could minimize the impact on small businesses.

Commission staff has developed an estimate of the number of small businesses potentially affected by the proposed amendment to the Pre-Sale Availability Rule. Based upon staff's research, nearly all retailers (952,916 companies or 99.3 percent) and manufacturers (11,365 companies or 97 percent) that will be affected by the proposed Rule are considered "small" using the size standards promulgated by the Small Business Administration. If the companies are compared according to annual receipts, small retailers represent approximately 47 percent and small manufacturers represent approximately 23 percent of gross annual receipts in their respective industries.

Staff believes that the proposed amendments to the Rule will reduce retailers' compliance costs by increasing their flexibility to select the disclosure approach that best suits their individual operations. Although the current Pre-Sale Availability Rule gives retailers four options for compliance, staff's investigation showed that most retailers elect the binder options because it is the only one of the four which easily makes use of the copies of warranties submitted by manufacturers. Many retailers complained that the binder option requires allocation of personnel and resources to update and monitor warranty binders, which consumers rarely use. Our store surveys have shown that binders are often difficult for consumers to locate and use because they are incomplete or poorly organized. Thus, although the current Rule attempted to provide flexibility, many retailers have found themselves restricted, in practice, to one approach that is cumbersome and of questionable efficacy.

The industry discussions with FTC staff indicated that larger retail organizations with numerous branch stores compile the binders at a main office and distribute them to their branches. This centralized compliance

[1] The Guides impose this disclosure obligation on sellers whose advertisements mention warranties in order to prevent an inaccurate or deceptive representation of warranty coverage. This Notice seeks comment on whether a pre-sale availability disclosure requirement is needed in Rule 702 to further the Rule's goal of widespread consumer access to warranty information.

approach appears to afford lower costs for large retailers, per store, than for a smaller retailer with fewer stores and a decentralized system. The proposed amendment should reduce or eliminate this disparity between large and small enterprises by permitting retailers to replace the binder system with a more flexible approach that conforms to their particular method of doing business.

Staff's discussions with retailers during the investigation indicated that retailers' costs and inconvenience would be reduced if they were not required to maintain warranty binders but could, instead, respond individually to specific consumer requests for warranties. The methods for ensuring that warranties are available when requested would vary according to product and store operation.

We do not anticipate that this proposed amendment to retailers' compliance options will have any impact on large or small manufacturers.

As part of the Commission's evaluation of the Pre-Sale Availability Rule and in response to the Regulatory Flexibility Act, staff has considered alternatives to the proposed amendments that could accomplish the goals of the Magnuson-Moss Warranty Act but minimize the economic impact of small entities. Staff considered a number of alternatives suggested by the Regulatory Flexibility Act including: (1) Different compliance requirements for small businesses, (2) simplification of compliance requirements for small businesses, (3) use of performance rather than design standards in the Rule, and (4) exemption for small businesses.

One of the principal goals of the proposed amendments to the Pre-Sale Availability Rule is to comply with the Congressional mandate in section 102 of the Warranty Act while minimizing the economic impact on all affected businesses. Section 102(b)(1)(A) of the Warranty Act directs the Commission to prescribe a rule requiring that written warranties be made available to consumers prior to sale. All of the alternatives suggested by the Regulatory Flexibility Act have been considered. The third option—use of a performance standard—is at the heart of the proposed Rule. The staff rejected erecting an exemption for small businesses because the congressional requirement for presale availability of warranties applies equally to all transactions, regardless of whether they involve a small manufacturer or a small retailer. In addition, staff research into the composition of the affected industries indicates that more than 95 percent of the companies are small. Consequently, it would not be possible to exempt small businesses from the scope of the Rule and at the same time comply with the congressional mandate. Different standards for small businesses were infeasible given the flexible nature of the standards proposed.

Although the proposed amendments are intended to simplify and clarify the measures necessary to comply for all affected companies, small and large, comments received during the Rulemaking may indicate that additional modifications to the Rule are necessary. The Final Regulatory Flexibility Analysis, to be published with the final form of the Rule to be promulgated, will reflect consideration of any additional alternatives proposed during the Rulemaking.

D. Issues for Comment

The public is invited to submit written comments and data on issues of fact or law relevant to the current Pre-Sale Availability Rule, the proposed amendments, other issues related to making warranties available to consumers prior to purchase, and the issues noted below. Please accompany all submissions of data with a complete report describing the procedures used to gather and analyze the data.

1. Will the proposed amendments to § 702.3(a) create significant disincentives or obstacles to consumers who wish to obtain warranty information prior to purchase?

a. What systems and procedures would retailers use to provide warranties to consumers if retailers were required to make warranties "readily available" upon request?

b. What information is now available to indicate the practical obstacles this option would present for consumers (*i.e.*, how long they must wait for production of the warranty, how often they must request it, how many offices or store personnel they must visit to receive it)?

2. a. Are the standards for compliance in the proposed amendments to § 702.3(a) clear? If not, what are the ambiguities and how can they be clarified?

b. Is there a need for the Commission to consider more specific performance standards to define compliance with an avaibability upon request requirement (*i.e.*, requiring that warranties be provided without undue delay or without substantial effort on the part of consumers who request warranties)? What form could such standards take? What are the benefits, costs and drawbacks of imposing such standards?

3. How will the proposed revision of § 703.3(a) of the Pre-Sale Availability Rule affect compliance costs for retailers and manufacturers?

4. What other modifications to the Rule specifying methods for the disclosure of warranty information by retailers would reduce overall compliance costs and still ensure consumers access to warranties prior to purchase?

5. Should the Commission include, as part of an on-request warranty availability requirement, provisions requiring retailers and/or advertisers to publicize the pre-sale availability of warranties and to inform consumers how to take advantage of this right (*i.e.*, through signs in retail outlets, or disclosures in advertisements that mention warranties)? What effect would these forms of publicity have, how would they benefit consumers, and what would they cost?

6. Should the Commission include explicit directives in § 702.3(c) of the Rule to require sellers who make television solicitations of mail or telephone order sales to disclose clearly and prominently in such solicitations that warranties are available for examination upon request and to disclose how they may be obtained?

List of Subjects in 16 CFR Part 702

Trade practices, Warranties.

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

PART 702—[AMENDED]

It is proposed that 16 CFR Part 702 be amended as set forth below:

§ 702.1 [Amended]

1. It is proposed that 16 CFR 702.1(c) be amended to read as follows:

(c) "Written warranty" means—(1) any written affirmation of fact or written promise made in connection with the sale of a consumer product by a supplier to a buyer which relates to the nature of the material or workmanship and affirms or promises that such material or workmanship is defect free or will meet a specified level of proformance over a specified period of time, or

(2) any undertaking in writing in connection with the sale by a supplier of a consumer product to refund, repair, replace or take other remedial action with respect to such product in the event that such product fails to meet the specifications set forth in the undertaking.

which written affirmation, promise, or undertaking becomes part of the basis of the bargain between a supplier and a buyer for purposes other than resale of such product.

2. It is proposed that 16 CFR 702.1(g) be removed.

§ 702.3 [Amended]

b. It is proposed that 16 CFR 702.3(a) be revised to read as follows:

(a) *Duties of Seller:* Except as provided in paragraphs (c) through (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 displaying it in close proximity to the warranted product or furnishing it upon request prior to sale.

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 85-10450 Filed 4-30-85; 8:45 am]

BILLING CODE 6750-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 275

[Release No. IA-967; File No. S7-19-85]

Uniform Investment Adviser Registration Application Form

AGENCY: Securities and Exchange Commission.

ACTION: Proposed form amendment and related rule amendments.

SUMMARY: The Commission is proposing for public comment revisions to Form ADV, the investment adviser registration application form to make the form a uniform Form for registration with the Commission and the states. Uniform Form ADV was developed by the Commission and the North American Securities Administration Association, Inc. to remove unnecessary administrative burdens on investment advisers registering as advisers with more than one governmental entity. If adopted, the uniform Form ADV should result in cost-saving for advisers required to register as such with the Commission and the states.

DATE: Comments must be received on or before June 14, 1985.

ADDRESS: Comments should be submitted in triplicate to John Wheeler, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Comment letters should refer to File No. S7-19-85. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Mary Podesta, Chief, (202) 272-2107 or Jay Gould, Staff Attorney, (202) 272-2107, Office of Disclosure and Adviser Regulation, Division of Investment Management, Securities and Exchange Commission, Stop 5-2, 450 Fifth Street, NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("Commission") today is proposing for comment revisions to Form ADV, the application form for registering with the Commission as an investment adviser. The revisions to Form ADV being proposed for comment would make the form identical to the form adopted by the membership of the North American Securities Administrators Association, Inc. (NASAA) on April 5, 1985. The new form, titled Uniform Application for Investment Adviser Registration, was developed by NASSA for use by all jurisdictions which require advisers to register as such. The uniform Form ADV is based on the Commission's Form ADV.

I. Background

Under the Investment Advisers Act of 1940 (the "Advisers Act") persons engaged in business as investment advisers generally are required to register as advisers with the Commission. Under the Commission's rules, advisers register with the Commission by filing Form ADV and paying a one-time registration fee of $150. Registrants are required to keep their registration current by filing amendments and to file a short annual report on Form ADV-S. In addition, most registrants are required to provide clients and prospective clients with pertinent information about the adviser and its business under rule 204-3, the "brochure rule." The information required to be given to clients is contained in Part II of Form ADV. An adviser can give clients Part II of the Form or a separate disclosure document. Thirty-eight states, Puerto Rico and Guam (the jurisdictions) require advisers to register as such. The registration requirements of the jurisdictions are not uniform. Advisers registering in the jurisdictions are required to file the form or forms used by the jurisdiction and to comply with any disclosure requirements of the jurisdiction. Although some jurisdictions permit advisers to file Form ADV, in lieu of a separate state form, even these jurisdictions often require the filing of supplementary forms and schedules containing additional information. Also, the jurisdictions' requirements on disclosure to clients are not uniform.

The Commission and NASAA have undertaken to promote a more uniform system for registration of advisers with the Commission and the jurisdictions. The first step is development of a uniform registration application form based on Form ADV. Uniform requirements for the filing of amendments and annual reports for advisers also will be developed. The Commission and NASAA also intend to develop a central registration system for advisers such as the Central Registration Depository (CRD) maintained by the National Association of Securities Dealers for NASAA to register agents of brokers-dealers, or another system. Under a central registration system an adviser would file one form and information on the form would be transmitted electronically to the Commission and all jurisdictions in which the adviser was registering for review and granting of registration.[1]

The uniform Form being proposed today for comment by the Commission was drafted by the NASAA Adviser Committee with the assistance of members of the Commission staff. It was adopted by the NASAA membership on April 5, 1985.[2] The uniform ADV is based on the Commission's Form ADV with certain modifications designed to address the requirements of the jurisdictions for additional information and to improve the form as a registration and disclosure document.

The discussion below about uniform Form ADV is divided into two parts. The first part describes the principal differences between uniform Form ADV and existing Form ADV. The second part is an item by item description of uniform Form ADV.

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[1] The Commission anticipates that depending upon the kind of central registration system developed it may be necessary to modify the format of the uniform Form to make it compatible with that system. For example, if adviser registrations are processed in the CRD system it may be necessary to obtain substantially all registration information in objective format. Part II of the form now is designed to serve also as the adviser's brochure, and, as a result, some registration information now appears in narrative format. Because the details of the central registration system have not been determined, it is not possible to know what, if any, modifications may be necessary to the form, or to estimate when the central registration system will be implemented. It is the Commission's view that the uniform Form ADV being proposed today will improve the form as a registration and disclosure document and reduce administrative burdens on advisers until such time as a central registration system is implemented.

[2] The NASAA resolution adopting the form recommends that the form be implemented beginning in January, 1986. The Commission anticipates that it will take final action on the form prior to that time so that, if the form is adopted, it would be effective in January, 1986 for new registrants filing with the Commission. Also, the Commission would expect to develop with NASAA a timetable for gradually converting existing registrants to the new form.