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## UPDATE: REGULATIONS IMPLEMENTING E-WARRANTY LAW NOW IN EFFECT

By Cynthia G. Fischer, Christian Moretti, and Daniel M. Pereira

New regulations governing warranties on consumer products will make it easier and more cost-effective for consumer product manufacturers and suppliers to satisfy the federally-mandated warranty notification requirements. On September 6, 2016, the FTC announced its approval of new regulations implementing the provisions of the E-Warranty Act of 2015. The E-Warranty Act, signed into law by President Obama last September, modernized the Magnuson-Moss Warranty Act of 1975 (the “MMWA”) by allowing manufacturers and suppliers of retail products to publish the terms and conditions of consumer product warranties online rather than including them with the products themselves. The new rules became effective on October 17, 2016.

### The E-Warranty Act

Although the E-Warranty Act augments the available methods of delivery of consumer product warranties, the substantive requirements of such warranties will remain the same. The E-Warranty Act addresses Congress’s findings that (i) both manufacturers and consumers often prefer the option of providing and receiving warranty information electronically or online, (ii) modernization of the warranty rules will allow the United States to better compete internationally, and (iii) the use of online warranties will allow for greater consumer access to information in an “environmentally friendly way” while providing

manufacturers with more flexibility. *See* 15 U.S.C. §2302(b).

The warranty notification requirements of the MMWA are aimed at both protecting consumers from deceptive warranty practices and fostering retail competition. Consumer product manufacturers and suppliers are not obligated to offer written warranties with retail products. However, if they choose to do so, the MMWA requires that the terms and conditions of those warranties be provided “fully and conspicuously” and “in simple and readily understood language.” 15 U.S.C. § 2302(a). Prior to passage of the E-Warranty Act, warranty terms and conditions were required to be provided conspicuously on a single document either on the products or within the product packaging. Now, manufacturers will be permitted to provide this information online.

### The New Regulations

The FTC’s new rules are relatively narrow in scope, making minor adjustments to the FTC’s warranty regulations in order to effectuate the provisions of the E-Warranty Act. The FTC has amended the rules on Disclosure of Written Consumer Product Warranty Terms and Conditions (the “Disclosure Rule”) and Pre-Sale Availability of Written Warranty Terms (the “Pre-Sale Availability Rule”), found at 16 C.F.R. §§ 701 and 702, respectively. The Disclosure Rule establishes disclosure requirements for written warranties covered by

the MMWA by specifying the terms of warranty coverage that must be disclosed as well as the manner and language of such disclosures. The Pre-Sale Availability Rule prescribes the methods by which suppliers and sellers must disclose written warranty terms prior to the sale of consumer goods. Under the new rules, warrantors and sellers are not *required* to provide written warranties online or electronically, and the rule changes do not affect the obligations of those warrantors and sellers who decline to do so.

The Disclosure Rule requires that any limitations on the duration of implied warranties must be disclosed “on the face of the warranty.” Under the pre-existing rules, this has meant that where printed documents contain warranties, such as single sheet warranties or warranties included in product manuals, such disclosures are required to appear on the page where the warranty begins. The new rule extends the definition of “on the face of the warranty” such that “[w]here the warranty is on an Internet Web site or displayed electronically” the phrase means “in close proximity to the location where the warranty text begins.”

The remainder of the rule changes relate to the Pre-Sale Availability Rule under which sellers are required to make the text of any offered warranties available to consumers at the point of sale. The new rules allow warrantors to provide the written warranty terms “in an accessible digital format on the warrantor’s Internet Web site.” However, if a warrantor opts to go this route, the new rules impose several additional obligations.

First, the warrantor is required to inform consumers how to obtain warranty terms online as well as by phone, mail, or another non-Internet method. Second, the warrantor is required to provide a hard copy, free of charge, to any consumers or sellers who request such a copy. Third, the warrantor needs to ensure that the online warranty terms are clear and conspicuous and remain accessible at the provided Web address. Fourth, the warrantor must provide sufficient information to allow consumers to

readily identify the online terms that apply to the specific warranted product. As for sellers, where warrantors opt to provide online warranties, sellers are permitted to satisfy their existing obligation to provide pre-sale warranty terms by making them available “through electronic or other means.” This entails providing pre-sale access to the warranty terms via computers or other electronic devices. Sellers’ right to request hard copies of the warranty terms addresses the FTC’s expectation that not all sellers have access to the Internet or electronic devices so as to be able to display the terms by electronic means. In such cases, warrantors are still obligated to provide sellers with hard copies of the online warranty terms which can then be passed on to consumers prior to sale.

In sum, the FTC has enacted modest rule changes to the consumer warranty regulations to give effect to the E-Warranty Act by allowing manufacturers and suppliers to provide the written terms of offered warranties online rather than with the products themselves. Under the new rules, however, warrantors are still required to provide some information with the products themselves, namely Web addresses where consumers can find the full terms of the written warranties online. Additionally, the new rules require warrantors to provide non-Internet means through which consumers and sellers can request hard copies of the warranty terms. Sellers are still required to provide the full terms of such warranties prior to sale. However, where suppliers or manufacturers opt to provide the warranties online, sellers are entitled to provide the pre-sale warranties by electronic means.

The E-Warranty Act is good for consumers as well as manufacturers, suppliers, and sellers. It makes warranty information easily accessible to the consumer and provides more flexibility and a competitive advantage to manufacturers, suppliers, and sellers. ♦

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*For more information about Schnader's Corporate Practice Group or to speak with a member of the firm, please contact:*

*Sarah Hewitt*  
*Chair, Corporate Practice Group*  
*212-973-8123*  
[shewitt@schnader.com](mailto:shewitt@schnader.com)

*Cynthia G. Fischer*  
*Chair, Nonprofit Practice Group*  
*212-973-8175*  
[cfischer@schnader.com](mailto:cfischer@schnader.com)

*Christian Moretti*  
*Co-chair, International Practice Group*  
*212-973-8111*  
[cmoretti@schnader.com](mailto:cmoretti@schnader.com)

*Daniel M. Pereira*  
*215-751-2186*  
[dpereira@schnader.com](mailto:dpereira@schnader.com)

www.schnader.com

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