

document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. 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, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA’s authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency’s authority.

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart 1, section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it proposes to create Class E airspace sufficient in size to contain aircraft executing instrument procedures at the Valdez Airport and represents the FAA’s continuing effort to safely and efficiently use the navigable airspace.

#### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

#### The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

**Authority:** 49 U.S.C. 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 Federal Aviation Administration Order 7400.9P, *Airspace Designations and Reporting Points*, dated September 1, 2006, and effective September 15, 2006, is to be amended as follows:

\* \* \* \* \*

*Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.*

\* \* \* \* \*

#### **AAL AK E5 Valdez, AK**

Valdez Pioneer Field, AK  
(Lat. 61°08’02” N, long. 146°14’54” W.)

Valdez Localizer  
(Lat. 61°07’58” N, long. 146° 15’47” W.)

Johnstone Point VORTAC  
(Lat. 60°28’51” N, long. 146°35’58” W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of the Valdez Airport, AK, and within 3.1 miles each side of the Valdez Localizer front course extending from the 6.6-mile radius to 12.8 miles southwest of the Valdez Localizer; and that airspace extending upward from 1,200 feet above the surface within 50 miles of the Johnstone Point VORTAC, AK, extending clockwise from the Johnstone Point VORTAC, AK, 177°(M)/200°(T) radial to the 053°(M)/076°(T) radial.

\* \* \* \* \*

Issued in Anchorage, AK, on January 10, 2007.

#### **Anthony M. Wylie,**

*Manager, Alaska Flight Service Information Area Group.*

[FR Doc. E7–601 Filed 1–17–07; 8:45 am]

**BILLING CODE 4910–13–P**

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## **FEDERAL TRADE COMMISSION**

### **16 CFR Part 255**

#### **Guides Concerning the Use to Endorsements and Testimonials in Advertising**

**AGENCY:** Federal Trade Commission.

**ACTION:** Request for public comments.

**SUMMARY:** The Federal Trade Commission (“FTC” or “Commission”) requests public comment on the overall costs, benefits, and regulatory and economic impact of its Guides Concerning the Use of Endorsements and Testimonials in Advertising (“the Guides”), as part of the Commission’s systematic review of all current regulations and guides. The Commission is also releasing consumer research it commissioned regarding the messages conveyed by consumer endorsements. The Commission is seeking comment on this research and

upon several other specific endorsement-related issues.

**DATES:** Written comments must be received by March 19, 2007.

**ADDRESSES:** Interested parties are invited to submit written comments. Comments should refer to “Endorsement Guides Review, Project No. P034520” to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H–135 (Annex S), 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material, however, must be filed in paper form, must be clearly labeled “Confidential,” and must comply with Commission Rule 4.9(c).<sup>1</sup> The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

Comments filed in electronic form should be submitted by using the following Web link: <http://secure.commentworks.com/ftc-endorsements> (and following the instructions on the Web-based form). To ensure that the Commission considers an electronic comment, you must file it on the Web-based form at the Web link <http://secure.commentworks.com/ftc-endorsements>. If this notice appears at <http://www.regulations.gov>, you may also file an electronic comment through that Web site. The Commission will consider all comments that regulations.gov forwards to it.

The FTC Act and other laws the Commission administers permit the 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 received, whether filed in paper or electronic form. Comments received will be available to the public on the FTC Web site, to the extent practicable, at <http://www.ftc.gov>. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it

<sup>1</sup> The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission’s General Counsel, consistent with applicable law and the public interest. See Commission Rule 4.9(c), 16 CFR 4.9(c).

receives before placing those comments on the FTC Web sites. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy at <http://www.ftc.gov/ftc/privacy.htm>.

**FOR FURTHER INFORMATION CONTACT:** Shira Modell, Attorney, Division of Advertising Practices, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580; (202) 326-3116.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

In December 1972, the Commission published for public comment proposed Guides Concerning the Use of Endorsements and Testimonials in Advertising, 37 FR 25548 (1972). Extensive comment was received from interested parties. On May 21, 1975, the Commission promulgated, under the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 41-58, three sections of the 1972 proposal as final guidelines (16 CFR 255.0, 255.3 and 255.4) and republished three others, in modified form, for additional public comment 40 FR 22127 (1975). Public comment was received on the three re-proposed guidelines, as well as on one of the final guidelines. On January 18, 1980, the Commission promulgated three new sections as final guidelines (16 CFR 255.1, 255.2 and 255.5) and modified one example to one of the final guidelines adopted in May 1975 (16 CFR 255.0 Example 4). 45 FR 3870 (1980).

The Guides are designed to assist businesses and others in conforming their endorsement and testimonial advertising practices to the requirements of Section 5 of the FTC Act. Although the Guides are interpretive of laws administered by the Commission, and thus are advisory in nature, proceedings to enforce the requirements of law as explained in the Guides can be brought under the FTC Act.

The Guides define both endorsements and testimonials broadly to mean any advertising message that consumers are likely to believe reflects the opinions, beliefs, findings, or experience of a party other than the sponsoring advertiser. 16 CFR 255.0(a) and (b). The Guides state that endorsements must reflect the honest opinions, findings, beliefs, or experience of the endorser. 16 CFR 255.1(a). Furthermore, endorsements may not contain any representations that would be deceptive, or could not be substantiated, if made directly by the advertiser. *Id.*

The Guides advise that an advertisement employing a consumer

endorsement on a central or key attribute of a product will be interpreted as representing that the endorser's experience is representative of what consumers will generally achieve. 16 CFR 255.2(a). If an advertiser does not have adequate substantiation that the endorser's experience is representative, the advertisement should contain a clear and conspicuous disclosure. *Id.*

The Guides define an expert endorser as someone who, as a result of experience, study or training, possesses knowledge of a particular subject that is superior to that generally acquired by ordinary individuals. 16 CFR 255.0(d). An expert endorser's qualifications must, in fact, give him or her the expertise that he or she is represented as possessing with respect to the endorsement. 16 CFR 255.3(a). Moreover, an expert endorsement must be supported by an actual exercise of expertise and the expert's evaluation of the product must have been at least as extensive as someone with the same degree of expertise would normally need to conduct in order to support the conclusions presented. 16 CFR 255.3(b).

Among other things, the Guides also state that:

(1) Advertisements presenting endorsements by what are represented to be "actual consumers" should utilize actual consumers, or clearly and conspicuously disclose that the persons are not actual consumers. 16 CFR 255.2(b).

(2) An organization's endorsement must be reached by a process sufficient to ensure that the endorsement fairly reflects the collective judgment of the organization. 16 CFR 255.4.

(3) When there is a connection between the endorser and the seller of the advertised product that might materially affect the weight or credibility of the endorsement (*i.e.*, the connection is not reasonably expected by the audience), such connection must be fully disclosed. 16 CFR 255.5.

**II. Regulatory Review Program**

The Commission has determined to review all of its rules and guides periodically. These reviews seek information about the costs and benefits of the Commission's existing rules and guides, and their regulatory and economic impact. The information thus obtained assists the Commission in identifying rules and guides that warrant modification or rescission. Therefore, the Commission solicits comment on, among other things, the economic impact of its Guides Concerning the Use of Endorsements and Testimonials in Advertising; possible conflict between the Guides

and state, local, or other federal laws; and the effect on the Guides of any technological, economic, or other industry changes.

Specifically, the Commission solicits written public comment on the following questions with respect to the guides appearing in 16 CFR 255.

(1) Is there a continuing need for the Guides?  
(a) What benefits have the Guides provided to consumers?

(b) Have the Guides imposed costs on consumers?  
(2) What changes, if any, should be made to the Guides to increase their benefits to consumers?

(a) How would these changes affect the cost the Guides impose on businesses and others following their suggestions?

(b) How would these changes affect the benefits to consumers?

(3) What significant burdens or costs, including costs of compliance, have the Guides imposed on businesses and others following their suggestions?

(a) Have the Guides provided benefits to those following their suggestions? If so, what benefits?

(4) What changes, if any, should be made to the Guides to reduce the burdens or costs imposed on those following their suggestions? How would these changes affect the benefits provided by the Guides?

(5) Do the Guides overlap or conflict with other federal, state, or local laws or regulations?

(6) Since the Guides were issued, what effects, if any, have changes in relevant technology, such as email and the Internet, or economic conditions had on the Guides?

**III. Consumer Endorsements and Extrinsic Evidence**

In conjunction with its regulatory review of the Guides, the Commission is releasing reports on two studies it commissioned regarding the messages conveyed by consumer endorsements. Both studies are available on the Commission's Web site, <http://www.ftc.gov>, or from the Commission's Public Reference Office, Room 130, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

The first report, "The Effect of Consumer Testimonials and Disclosures of Ad Communication for a Dietary Supplement" ("the Endorsement Booklet Study"), can be found at <http://www.ftc.gov/reports/endorsements/study1/report.pdf>.<sup>2</sup> It reports the results

<sup>2</sup> Questionnaires and advertisements used in the study and resulting data from the study are

of a consumer survey, conducted in the course of a law enforcement investigation, that examined the communication effects of a promotional booklet for a dietary supplement. The booklet consisted solely of three pages of consumer endorsements, primarily from senior citizens, touting the product's efficacy for treating various diseases and conditions. The survey was designed to examine whether consumer endorsements by themselves communicate product efficacy (*i.e.*, that the product works for the user discussed in the testimonials) and typicality (*i.e.*, that endorsers' experiences are representative of what consumers will generally achieve with the advertised product), and whether any of several prominent disclosures qualify the claims conveyed by the advertisements.

According to the authors, the study suggest "that multiple testimonials about a product effectively communicate efficacy claims, *i.e.*, that the product works for the uses discussed in the testimonials. Testimonials also appear to communicate that the product will work for all, most, or about half of the people who use it. Finally, the study suggests that prominent disclosures in ads containing multiple testimonials may be ineffective in limiting the communication of efficacy and typicality claims. This study used disclosures that were more prominent and stronger than the disclosures typically used in ads containing testimonials."

The second report, "Effects of Consumer Testimonials in Weight Loss, Dietary Supplement and Business Opportunity Advertisements" ("the Second Endorsement Study"), can be found at <http://www.ftc.gov/reports/endorsements/study2/report.pdf>.<sup>3</sup> It reports the results of a consumer survey examining the messages conveyed to consumers by one-page print advertisements containing consumer endorsements for a weight loss program, a cholesterol-lowering dietary supplement, or a business opportunity. Advertisements contained testimonials by either one or five individuals who claimed to have achieved specific (that is, numerically quantified) results with the advertised product or system (*e.g.*, "I am earning an extra \$2,300 a month."). Some of the advertisements also included one of several disclosures regarding the typicality of the consumer

endorsers' experiences. The study was designed to explore these advertisements' communication of product efficacy and typicality.

According to the authors, the testimonials tested in this study communicated to a substantial percentage of consumers that the advertised products:

- Would enable new users to achieve results similar to those portrayed by the testimonials (*i.e.*, the testimonialists communicated product efficacy); and
- Would enable a substantial proportion (half or more) of new users to achieve results similar to those portrayed by the testimonialists (*i.e.*, the testimonials communicated typicality).

The study authors also concluded that two of the disclosures tested ("results not typical" and "experiences of a few") in most cases failed to significantly reduce the communication of efficacy and typicality. The authors concluded that a third disclosure (which stated how much weight the average user loses in three months), tested on the advertisement for the weight loss program, did significantly reduce such communication in most cases.

The Commission solicits written public comment on the following questions.

(1) What are the implications and limitations of the Endorsement Booklet Study with respect to the question of whether consumer testimonials about a product's efficacy or performance convey that the product is effective for the purpose(s) discussed in the testimonials? What are the implications and limitations of the study with respect to the question of whether consumer testimonials convey that the endorser's experience is representative of what consumers will generally achieve with the advertised product? Is there any other research or evidence that would be relevant in answering these questions?

(2) What are the implications and limitations of the Endorsement Booklet Study with respect to the effectiveness of disclaimers in limiting any communication of product efficacy from consumer testimonials? What are the implications and limitations of the study with respect to the effectiveness of disclaimers in limiting any communication of typicality from consumer testimonials? Is there any other research or evidence that would be relevant in answering these questions?

(3) What are the implications and limitations of the Second Endorsement Study with respect to the question of whether consumer testimonials about a product's efficacy or performance

convey that the product is effective for the purpose(s) discussed in the testimonials? What are the implications and limitations of the Second Endorsement Study with respect to the question of whether consumer testimonials convey that the endorser's experience is representative of what consumers will generally achieve with the advertised product? Is there any other research or evidence that would be relevant in answering these questions?

(4) What are the implications and limitations of the Second Endorsement Study with respect to the effectiveness of disclaimers in limiting any communication of product efficacy from consumer testimonials? What are the implications and limitations of the Second Endorsement Study with respect to the effectiveness of disclaimers in limiting any communication of typicality from consumer testimonials? Is there any other research or evidence that would be relevant in answering these questions?

(5) Is there any other research that would be relevant in assessing the messages communicated by consumer testimonials?

(6) Is there any other research that would be relevant in assessing the effectiveness of disclaimers in limiting any communication from consumer testimonials of product efficacy or typicality?

(7) In 2002, Commission Staff analyzed the use of consumer testimonials and disclaimers in the context of weight-loss advertising, *see* Weight-Loss Advertising: An Analysis of Current Trends, a Federal Trade Commission Staff Report, Sept. 2002. (<http://www.ftc.gov/bcp/reports/weightloss.pdf>).

(a) What other evidence is there regarding the prevalence or effect of consumer testimonials, either generally or for specific product categories, especially with respect to the typicality of the testimonials?

(b) What other evidence is there regarding the prevalence or effect of disclaimers of typicality?

(8) What other research is there on the role of consumer endorsements in marketing?

(9) The current Guides allow advertisers to use testimonials that are not generally representative of what consumer can expect from the advertised product so long as the advertisers clearly and conspicuously disclose either (1) what the generally expected performance would be in the depicted circumstances, or (2) the limited applicability of the depicted results to what consumers can generally

available at <http://www.ftc.gov/reports/endorsements/study1/materials/>.

<sup>3</sup> Questionnaires and advertisements used in the study and resulting data from the study are available at <http://www.ftc.gov/reports/endorsements/study2/materials/>.

expect to receive, *i.e.*, that the depicted results are not representative.

(a) What would be the effects on advertisers and consumers of requiring clear and conspicuous disclosure of the generally expected performance whenever the testimonial is not generally expected performance whenever the testimonial is not generally representative of what consumers can expect from the advertised product?

(b) What information, other than what is required to substantiate an efficacy or performance claim, would be required for an advertiser to determine generally expected results? How difficult would it be for the advertiser to make this determination? Do the answers to these questions vary by product type and, if so, how?

#### IV. Material Connections

Section 255.5 of the Guides states that advertisers must disclose connections between themselves and their endorsers that might materially affect the weight or credibility of the endorsement (*i.e.*, the connection is not reasonably expected by the audience).

Section 255.5 also indicates that consumers will ordinarily expect that endorsers who are well known personalities (*i.e.*, celebrities) or experts will be compensated for their endorsements; therefore, an advertiser need not disclose the payment of compensation to such endorsers. A September 2003 petition submitted to the Commission by Commercial Alert suggests an exception to the principle that consumers will ordinarily expect that endorsers who are well known personalities are compensated for their endorsements. According to an August 11, 2002 New York Times article cited by the petitioners, "dozens of celebrities \* \* \* have been paid hefty fees to appear on television talk shows and morning news programs and to disclose intimate details of ailments that afflict them or people close to them. Often, they mention brand-name drugs without disclosing their financial ties to the medicine's maker." The Commission is interested in any extrinsic evidence regarding consumer expectations about celebrity endorsements made during an interview. Specifically, the Commission solicits written public comment on the following questions.

(1) Is there any research showing whether consumers have any expectations regarding compensation paid to celebrities who speak favorably about particular products while being interviewed outside the context of an advertisement (*e.g.*, during television

talk shows) and, if so, what does that research show?

(2) Would knowledge that a celebrity endorsing a product during such an interview is being paid for doing so affect the weight or credibility consumers give to the celebrity's endorsement?

#### V. Invitation to Comment

All persons are hereby given notice of the opportunity to submit written data, views, facts, and arguments addressing the issues raised by this Notice. Written comments must be received on or before March 19, 2007. All comments should be filed as prescribed in the **ADDRESSES** section above.

#### List of Subjects in 16 CFR Part 255

Advertising, Trade practices.

**Authority:** 15 U.S.C. 41–58.

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 07–197 Filed 1–17–07; 8:45 am]

**BILLING CODE 6750–01–M**

### CONSUMER PRODUCT SAFETY COMMISSION

#### 16 CFR Part 1211

#### Safety Standard for Automatic Residential Garage Door Operators

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Consumer Product Safety Commission is proposing to amend 16 CFR part 1211, Safety Standard for Automatic Residential Garage Door Operators, to reflect changes made by Underwriters Laboratories, Inc. in its standard UL 325.

**DATES:** Written comments in response to this document must be received by the Commission no later than February 20, 2007.

**ADDRESSES:** Comments should be filed by e-mail to [cpsc-os@cpsc.gov](mailto:cpsc-os@cpsc.gov). Comments also may be filed by telefacsimile to (301) 504–0127 or they may be mailed or delivered, preferably in five copies, to the Office of the Secretary, U.S. Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, Maryland 20814–4408; telephone (301) 504–7923. Comments should be captioned "Garage door operators."

**FOR FURTHER INFORMATION CONTACT:** John Murphy, Directorate for Engineering Sciences, Consumer Product Safety Commission, 4330 East-West Highway,

Bethesda, Maryland, 20814–4408, telephone 301–504–7664 or e-mail: [jmurphy@cpsc.gov](mailto:jmurphy@cpsc.gov).

**SUPPLEMENTARY INFORMATION:** The Commission issued part 1211 on December 21, 1992 to minimize the risk of entrapment by residential garage door openers. As mandated by section 203 of Public Law 101–608, subpart A of part 1211 codifies garage door operator entrapment provisions of Underwriter Laboratories, Inc. ("UL") standard UL 325, third edition, "Door, Drapery, Louver and Window Operators and Systems." Subparagraph (c) of section 203 of Public Law 101–608 also required the Commission to incorporate into part 1211 any revisions that UL proposed to the entrapment protection requirements of UL 325, unless the Commission notified UL that the revision does not carry out the purposes of Public Law 101–608.

Recently, UL revised some provisions of UL 325 in response to a request from Commission staff. The staff identified several incidents in which children became entrapped beneath a garage door that had been left partially open. In most of these incidents, a child tried to crawl under the partially open door and became stuck under the door. A bystander pressed the wall control button thinking the door would go up and release the child. Instead, the garage door moved down compressing and further entrapping the child. The Commission determined that the entrapment related revisions incorporated into the UL standard do carry out the purposes of Public Law 101–608. The proposed rule would revise part 1211 to reflect the changes UL made to UL 325. UL set an effective date of February 21, 2008 for these provisions in the UL standard. The Commission proposes the same effective date for these provisions in the CPSC standard.

To address the same entrapment hazard, UL also added to its standard a requirement that the statement "Never go under a stopped partially open door" be added to garage door operator instruction manuals. The Commission is proposing to make this change in the CPSC standard as well. UL set an effective date of September 14, 2004 for this provision in UL 325. The Commission proposes that the instruction manual provision in the CPSC standard would become effective when it is published as a final rule.

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Commission certifies that this rule will not have a significant impact on a substantial number of small