

Supporting Statement
Rule Governing Pre-Sale Availability of
Written Warranty Terms
16 C.F.R. 702
(OMB Control Number 3084-0112)

1. Necessity for Collecting the Information

Section 102(b)(1)(A) of the Magnuson-Moss Warranty Act (15 U.S.C. § 2301, *et seq.*) directed the Commission to prescribe rules requiring that the terms of any written consumer product warranty be made available to consumers prior to sale. On December 31, 1975, the Commission issued its Rule on Pre-Sale Availability of Written Warranty Terms and Conditions, 16 C.F.R. 702 (“the Rule” or “Rule 702”). The Rule requires that sellers make warranty texts available to consumers for those consumer products that cost more than \$15. Manufacturers must provide materials sufficient for retailers to meet their obligations. The Rule also contains requirements for disclosing the availability of warranty information in catalogs and door-to-door sales situations. The Rule imposes no recordkeeping or reporting requirements.

The purpose of the Rule is to provide consumers with the opportunity to compare the warranty terms and conditions of competing products so that they can make informed purchasing decisions. In the absence of the opportunity to review the warranty terms and conditions, consumers might be deceived into purchasing one product (instead of a competing item) based on what is ostensibly a better, more extensive warranty. In fact, the warranty on the product chosen may provide less coverage, a fact that becomes apparent only upon reading the warranty. The Rule allows consumers to compare warranty information on different products prior to purchase and can learn what type of assistance they will receive if the product turns out to be defective. Thus, the Rule enhances both informed purchasing decisions on the part of consumers and competition among warrantors.

2. Use of the Information

Congress mandated that warranty information be made available to consumers before they purchase a product. The terms of the warranty are part of the consumer’s contract with the seller. Rule 702 does not require that a manufacturer give a written warranty nor does it mandate any warranty terms. However, if the manufacturer chooses to give a written warranty, the terms of that warranty must be made available to consumers before they buy the product. Thus, Rule 702 enables consumers to understand the warranty rights offered with a product and to compare warranties offered on similar products before making a purchase decision.

3. Consideration of the Use of Improved Information Technology to Reduce Burden

Although there have been technological changes since the Rule’s promulgation in the ways in which information can be made available, in-store purchases, catalog sales, and door-to-door sales still are particularly adapted to the use of written materials. Some retailers may place the warranties on computer terminals or on CD-ROMs that are available for consumers to use to review particular warranties. These methods not only save space, but also free up store personnel to handle sales and

other customer service functions. Retailers are free to decide how to disclose the required information in the most efficient manner. To assist sellers, the Commission has published a manual for businesses entitled “A Businessperson’s Guide to Federal Warranty Law” to provide explanations of the Rule’s requirements and suggestions on how to comply.

Given the rise of the online marketplace, FTC staff conducted an informal survey and found that some online retailers are posting warranty information on their websites so that prospective purchasers can view the warranty information before purchasing a given product. As a result of the growth of this emerging marketplace, the Commission has issued guidance to those warrantors and sellers who market products over the Internet. Thus, in May 2000, the Commission published a manual, “Dot Com Disclosures: Information About Online Advertising,” which provides guidance to businesses on making warranty terms available when selling products online. Moreover, on January 30, 2001, the Commission held a workshop (“E-Tail Details”) for online retailers to provide guidance on complying with the requirements of various FTC rules, including Rule 702, when selling over the Internet.

More recently, a review of 20 top online retailers’ websites for availability of warranty information suggests that a significant percentage of retailers (40% of the 20 sampled) have begun to incorporate online methods of complying with the Rule – either by posting warranty information online or sending that information to consumers electronically.

Finally, consistent with the Government Paperwork Elimination Act, Pub. L. No. 105-277, Title XVII, 112 Stat. 2681-749, nothing in the Rule prescribes that disclosures be made, records filed or kept, or signatures executed, on paper or in any particular format that would preclude the use of electronic methods to comply with the Rule’s requirements.

4. Efforts to Identify Duplication/Availability of Similar Information

As far as staff is aware, there is no other statute or regulation of nationwide applicability that requires the pre-sale disclosure of warranty terms for all consumer products. To the extent that industry would make warranties available absent government regulation, most of the methods they would use are included as options in the Rule. The information required to be disclosed by the Rule is already available – namely, the terms of any warranty that is offered. No other information is required by the Rule. Since the information required by Rule 702 is not available elsewhere, there are no alternative sources of complete warranty information prior to sale.

5. Efforts to Minimize the Burden on Small Businesses

The Congressional mandate requiring this Rule does not allow for a distinction between small or large businesses. Consumers have the right to see the warranty prior to purchase regardless of the size of the store. The costs and inconvenience caused by the Rule appear to be small for both large and small retailers, as well as for manufacturers. Nevertheless, the Commission’s 1987 amendment to the Rule reduced the burden of compliance by providing retailers with greater flexibility in displaying warranties.

6. Consequences of Conducting the Collection Less Frequently

The Congressional intent and the objective of the Rule would be defeated if less disclosure were required. If the terms of a warranty are not available to each consumer who purchases a product before they buy, consumers would not have access to important information about their warranty rights and how to exercise those rights before making purchase decisions.

7. Special Circumstances Requiring Collection Inconsistent With Guidelines

Not applicable. There are no recordkeeping or submission requirements contained in the Rule. Therefore, there are no special circumstances involving collection of information to be made more frequently, for longer periods of time, or in greater quantities than guidelines permit. Similarly, there are no issues involving statistical surveys or the use of statistical data classifications. The disclosure information required by the Rule is consistent with all applicable guidelines contained in 5 C.F.R. § 1320.5(d)(2).

8. Public Comments/Consultation Outside the Agency

(a) Public comments

As a prelude to this request, the Commission sought public comment. See 72 Fed. Reg. 44,140 (Aug. 7, 2007). No comments were received. Pursuant to the OMB regulations that implement the PRA (5 C.F.R. Part 1320), the Commission provided a second opportunity for public comment. See 72 Fed. Reg. 61,648 (Oct. 31, 2007). No comments were received.

(b) Consultation Outside the Agency

As part of its program of periodic rule review, the Commission in 1996 solicited written public comments on the costs and benefits of Rule 702, as well as its regulatory and economic impact (61 Fed. Reg. 14,688). Seven organizations submitted comments, including industry, trade associations, and consumer groups. The two commenters from the retail industry (National Retail Federation (“NRF”) and North American Retail Dealers Association (“NARDA”)) generally criticized the Rule’s requirements and recommended that the Rule be rescinded or modified to further reduce the seller’s compliance burden. The NRF was the only organization to submit any information on the cost of compliance. NRF provided anecdotal information regarding one retailer. According to NRF, the division of one retailer spent almost \$46,000 starting up its program and spends an additional \$43,000 per year implementing the program; this division purportedly made an initial investment of \$12,500 to post signs and spends an additional \$6,500 per year maintaining the signage.

On the other hand, the comments received from other parties generally reflected strong support for the view that the Rule is achieving the objective it was fashioned to achieve – i.e., to facilitate the consumer’s ability to obtain clear, accurate warranty information. The American Automobile Manufacturer’s Association stated that the current system is working well and is not unreasonably costly to warrantors. The North American Insulation Manufacturers Association

(“NAIMA”) noted that the costs of the warranty regulations are not imposed upon businesses by government, but rather are voluntarily assumed by companies that choose to offer written warranties. As such, NAIMA stated that any cost incurred by a firm would be calculated into the firm’s business decision whether to offer a warranty or guarantee and should not be weighed as a factor to eliminate or diminish the requirement.

On April 22, 1999, the Commission announced that it would retain Rule 702 unchanged (64 Fed. Reg. 19,700).

9. Payments or Gifts to Respondents

Not applicable. There have been no payments or gifts to respondents in connection with Rule 702.

10. & 11. Assurances of Confidentiality/Matters of a Sensitive Nature

No issues concerning confidentiality or questions of a sensitive nature are presented by the Rule. From time to time, the Commission may require a warrantor to submit information as part of a law enforcement investigation to determine whether the seller or warrantor has engaged in any practices which might have violated Rule 702. Any information provided to the Commission in connection with such law enforcement investigations is treated as confidential under Sections 6(f) and 21(f) of the Federal Trade Commission Act, 15 U.S.C. § 46(f) and 61(f).

12. Hours and Labor Cost Burden

Total annual hours burden: Staff estimates that the burden of including the disclosures required by the Pre-Sale Availability Rule in consumer product warranties is 2,328,000 hours, rounded to the nearest thousand.

In 2004, FTC staff estimated that the information collection burden of including the disclosures required by the Pre-Sale Availability Rule in consumer product warranties was approximately 2,760,000 hours per year. Although there has been no change in the Rule’s information collection requirements since 2004, staff has adjusted its previous estimate of the number of manufacturers subject to the Rule based on recent Census data. Staff now estimates that there are approximately 134 large manufacturers and 13,235 small manufacturers subject to the Rule. Census data suggests that the number of retailers subject to the Rule has remained largely unchanged since 2004. Therefore, staff continues to estimate that there are 6,552 large retailers and 422,100 small retailers impacted by the Rule.

Since 2001, some online retailers have been posting warranty information on their web sites, reducing their burden of providing the required information. While some online retailers make warranty information directly available on their web sites, the majority of them instead provide consumers with instructions on how to obtain that information. Moreover, some online retailers provide warranty information electronically in response to a consumer’s request for such information. A review of 20 top online retailers’ websites for availability of warranty information

suggests that a significant percentage of retailers (40% of the 20 sampled) have begun to incorporate online methods of complying with the Rule – either by posting warranty information online or sending that information to consumers electronically. Based on this information, staff estimates that retailers’ annual hourly burden has decreased by twenty percent.

Applying a 20% reduction to the FTC’s previous estimates, staff assumes that large retailers spend an average of 20.8 hours per year and small retailers spend an average 4.8 hours per year to comply with the Rule. Accordingly, the total annual burden for retailers is approximately 2,162,362 hours ((6,552 large retailers x 20.8 burden hours) + (422,100 small retailers x 4.8 burden hours)).

Staff retains its previous estimate that large manufacturers spend an average of 52 hours per year and small manufacturers spend an average of 12 hours per year to comply with the Rule. Accordingly, the total annual burden incurred by manufacturers is approximately 165,788 hours ((134 large manufacturers x 52 hours) + (13,235 small manufacturers x 12 hours)).

Thus, the total annual burden for all covered entities is approximately 2,328,150 hours (2,162,362 hours for retailers + 165,788 hours for manufacturers).

Total annual labor cost burden. Staff estimates that the total annual labor cost burden is \$32,594,000, rounded to the nearest thousand. The work required to comply with the Pre-Sale Availability Rule is predominantly clerical, e.g., providing copies of manufacturer warranties to retailers and retailer maintenance of them. Applying a clerical wage rate of \$14/hour, the total annual labor cost burden is approximately \$32,594,100 (2,328,150 hours x \$14 per hour).

13. Estimated Capital/Other Non-Labor Costs Burden

(a) Total capital and start-up costs. De minimis. The vast majority of retailers and warrantors already have developed systems to provide the information the Rule requires. Compliance by retailers typically entails keeping warranties on file, in binders or otherwise, posting an inexpensive sign indicating warranty availability, and providing the warranty upon request.¹ Manufacturer compliance entails providing retailers with a copy of the warranties included with their products.

(b) Total operation/maintenance/purchase of services costs. De minimis. The only ongoing costs retailers incur with compliance are those costs associated with keeping warranty information current. If a binder system is used, maintenance simply involves filing new warranties in the binders; in such a case, little cost would be involved.

Where warranties are printed on the product’s package, the retailer incurs no maintenance costs since the only maintenance involves restocking the inventory of products on the shelf. Those

¹ Although some retailers may choose to display a more elaborate or expensive sign, that is not required by the Rule.

retailers who choose to post signs would have no maintenance or ongoing costs other than replacement of worn signs.

The warrantor likely incurs no extra cost to comply with Rule 702 because the warranty information is already included with the products that are shipped and thus are already built into the packaging and distribution of the product itself.

14. Estimated Cost to the Federal Government

The estimated yearly cost to the Federal Government resulting from administration of the Rule's warranty disclosure requirements is \$9,375, which is the cost of one-tenth of a professional work year.

15. Program Changes or Adjustments

There are no program changes. The estimated total annual hours burden has decreased to 2,328,000 hours from the 2,760,000 hours estimated in 2004. This decrease is due to the 20% decrease in burden hours attributable to warrantors' increased use of making warranty information available to consumers through online mechanisms. Accordingly, because the total annual hours burden has decreased since 2004, the associated labor burden figure has also decreased from \$38,594,000 in 2004 to \$32,594,000.

16. Plans for Tabulation and Publication

There are no plans to publish any information.