

Supporting Statement
Rule on Disclosure of Written Consumer Product
Warranty Terms And Conditions
16 C.F.R. 701
(OMB Control Number 3084-0111)

1. Necessity for Collecting the Information

Section 102(a) of the Magnuson-Moss Warranty Act (15 U.S.C. Section 2301, et seq.) requires warrantors of consumer products to disclose fully and conspicuously, in simple and readily understood language, the terms and conditions of any written warranty they offer. Congress directed the Commission to promulgate a rule setting out the items that must be disclosed in such written warranties.

On December 31, 1975, the Commission issued its Rule Concerning Disclosure of Written Consumer Product Warranty Terms and Conditions, 16 C.F.R. 701 (“the Rule” or “Rule 701”) (40 FR 60168). The Rule applies to written warranties on products costing more than \$15 that were manufactured after December 31, 1976 (the date the rule became effective). The Rule does not require companies to give a written warranty on their products. Nor does the Rule mandate any particular warranty terms apart from certain general statements concerning consumers’ rights under state law. Warrantors may set whatever warranty terms and conditions they wish. However, once the warrantor chooses to give a warranty, the Rule requires that those warranties disclose certain material facts regarding the terms and conditions of that warranty. There are no recordkeeping or submission requirements contained in the Rule.

The purpose of the Rule is to prevent deception by providing material facts to consumers about a given warranty. Absent disclosures about the terms and conditions of the warranty, 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 product chosen may provide more limited coverage but the warrantor fails to disclose fully all its conditions and limitations. The Rule also prevents consumers from being surprised when they seek warranty service by requiring that warrantors disclose what the warrantor will do in the event service is needed and what consumers must do in order to obtain warranty service. Another purpose of the Rule is to require minimum uniformity in the type of information disclosed in warranties so consumers will be able to make valid and informed comparisons of warranties for similar products.

2. Use of the Information

The Rule requires that written consumer product warranties disclose certain material information to enable consumers to understand the warranty rights offered with a product and to compare warranties offered on similar products. Consumers use the information disclosed by the Rule in making decisions on what goods they purchase. Because of the information required to be disclosed by the Rule, consumers can compare warranty information on different products and can learn what type of assistance they will receive if the product turns out to be defective.

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

The Rule requires clear and conspicuous disclosures of material facts in written warranties on consumer products. Warrantors are free to decide how to disclose the required information in the most efficient manner. To assist warrantors, the Commission has published a manual for businesses entitled “Writing Readable Warranties,” which is designed to provide practical suggestions for writing a simple and easy-to-understand warranty.¹ The Commission also has issued “A Businessperson’s Guide to Federal Warranty Law” to provide further assistance.² As the online marketplace has gained in importance, 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 providing warranty disclosures when selling products online.³ 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 701, when selling over the Internet.

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. Indeed, on February 17, 2009, the staff of the Commission issued an advisory opinion stating that, in the staff’s opinion, providing consumer product warranties via electronic media rather than in paper form would comply with the Act and the Rule, noting that the Rule only requires that warranties appear “in a single document in simple and readily understood language,” but that neither the Act nor the Rule specifies any particular media, form or format for the presentation of warranties.⁴

4. Efforts to Identify Duplication/Availability of Similar Information

Although a few states have enacted warranty disclosure laws that parallel the requirements of the Magnuson-Moss Warranty Act and Rule 701, there is no other statute or regulation of nationwide applicability that requires the disclosure of warranty terms for all consumer products. Therefore, the information required to be disclosed by Rule 701 is unavailable elsewhere, as there are no alternative sources of complete warranty information.

¹ This publication is available at <http://www.ftc.gov/bcp/edu/pubs/business/adv/bus20.shtm>.

² This publication is available at <http://www.ftc.gov/bcp/edu/pubs/business/adv/bus01.shtm>.

³ This publication is available at <http://www.ftc.gov/bcp/edu/pubs/business/ecommerce/bus41.pdf>.

⁴ This staff advisory opinion is available at <http://www.ftc.gov/bcp/warranties/opinion0901.pdf>.

5. Efforts to Minimize the Burden on Small Businesses

The warranty disclosure requirements set forth in the Rule and the Act apply to warrantors of any size, but only for products costing more than \$15. The decision whether to offer a written warranty and the terms of the warranty remain the province of the individual warrantor. Of course, there is no burden imposed if an entity does not offer a written warranty.

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 disclosed to each consumer who purchases a product, consumers will purchase products without knowing important information about their warranty rights and how to exercise those rights.

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 75 FR 38097 (July 1, 2010). No comments were received. Pursuant to the OMB regulations that implement the PRA (5 C.F.R. Part 1320), the FTC is providing a second opportunity for public comment while seeking OMB approval to extend the existing paperwork clearance for the Rule.

(b) Consultation Outside the Agency. During the course of the rulemaking proceeding in 1975, the Commission held public hearings in five cities. In addition, the public, including industry, submitted extensive written comments on the proposed Rule.

On April 3, 1996, as part of its program for periodic rule review, the Commission again solicited written public comments on the costs and benefits of Rule 701, as well as its regulatory and economic impact (61 FR 14688). Seven organizations submitted comments, including industry, trade associations, and consumer groups. The comments generally reflected strong support for the view that the Rule is achieving the objective it was fashioned to achieve – i.e., to facilitate consumers’ 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. None of the commenters submitted data on the cost and hour burden of complying with Rule 701. On April 22, 1999, the Commission announced that it would retain Rule 701 unchanged (64 FR 19700).

Finally, in 2010, to determine the continued accuracy of its previous estimates, the Commission staff contacted representatives of the Association of Home Appliance Manufacturers and the National Association of Manufacturers.

9. Payments or Gifts to Respondents

Not applicable. There have been no payments or gifts to respondents in connection with Rule 701.

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 warrantor has engaged in any practices that might have violated Rule 701. 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

In 2007, the FTC estimated that the information collection burden of including the disclosures required by Rule 701 in consumer product warranties was approximately 107,000 hours per year. Although the Rule's paperwork requirements have not changed since then, staff has increased its estimate of the number of manufacturers subject to the Rule based on recent Census data.

Total annual hours burden. Staff estimates that the burden of including the disclosures required by Rule 701 in consumer product warranties is approximately 127,000 hours, rounded to the nearest thousand).

Rule 701 requires that certain material information be disclosed in a written consumer product warranty. Based on conversations with various warrantors' representatives, staff has concluded that eight hours per year is a reasonable estimate of a warrantor's burden in order to comply with Rule 701. This estimate includes the task of ensuring that new warranties and changes to existing warranties comply with the Rule.

In 2007, Commission staff estimated that there were 13,369 manufacturers selling warrantied products in this country. Staff now estimates that there are 15,922 manufacturers subject to the Rule. This results in an annual burden estimate of approximately 127,376 hours

(15,922 manufacturers x 8 hours of burden per year). However, this estimate likely substantially overstates the actual burden because most warrantors would disclose the terms and conditions of their warranties even in the absence of the Rule.

Total annual labor cost burden. Staff estimates that the annual labor cost is approximately \$16,941,000, rounded to the nearest thousand.

Labor costs are derived by applying appropriate hourly cost figures to the burden hours described above. The work required to comply with the Warranty Rule – ensuring that new warranties and changes to existing warranties comply with the Rule – requires a mix of legal analysis and clerical support. Staff estimates that half of the total burden hours (63,688 hours) requires legal analysis at an average hourly wage of \$250 for legal professionals,⁵ resulting in a labor cost of \$15,922,000. Assuming that the remaining half of the total burden hours requires clerical work at an average hourly wage of \$16, the resulting labor cost is approximately \$1,019,008. Thus, the total annual labor cost is approximately \$16,941,008 (\$15,922,000 for legal professionals + \$1,019,008 for clerical workers).

13. Estimated Capital/Other Non-Labor Costs Burden

(a) Total capital and start-up costs. The Rule imposes no appreciable current capital or start-up costs that businesses do not already spend in the normal course of business. To comply with Rule 701, warrantors need only the ordinary office equipment to draft new warranties and to change the wording of existing warranties to include the required disclosures. Thus, compliance requires no capital equipment or special technology apart from what the manufacturer or seller would already be using as part of the normal course of business, such as typewriters, word processing equipment, and photocopying equipment. Similarly, distribution of the warranty does not impose any special capital costs apart from the packaging and printing equipment already in use by the business. It is not possible to state with any precision what fraction of the cost of that equipment could be attributed to distributing the warranty.

(b) Total operation/maintenance/purchase of services costs. The only ongoing costs involved with compliance are those costs associated with maintenance and repair of typewriters and word processing and photocopying equipment used to generate the warranty document that contains the required disclosures. These are costs that the seller or manufacturer already bears in the normal cost of business; it is unlikely that Rule 701 compliance would impose significant incremental costs. Likewise, the cost of distributing warranty information involves such things as the purchase of supplies (such as paper), the maintenance of equipment, or the purchase of services to print, package, and distribute the warranty. These are costs that would be already built into the packaging and distribution of the product itself and which are already assumed as part of the normal course of business.

⁵ Staff has derived an hourly wage rate for legal professionals based upon industry knowledge. The clerical wage rate used in this Notice is based on recent data from the Bureau of Labor Statistics National Compensation Survey.

14. Estimated Cost to the Federal Government

Staff estimates that the yearly cost to the Federal Government resulting from administration of the Rule's warranty disclosure requirements is \$10,000, 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 been adjusted upward from 107,000 hours in 2007 to 127,000 hours in 2010 due to an increase in the number of manufacturers estimated to be subject to the Rule based on recent Census data (13,369 total in 2007 and 15,922 total in 2010).

The estimated total annual labor costs have been adjusted upward from \$14,118,000 in 2007 to \$16,941,000 in 2010. This was due to increasing wage rates for clerks.

16. Plans for Tabulation and Publication

There are no plans to publish any information.