

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, CD-ROMs, or other electronic media, which 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 warrantors and sellers, 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.”²

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 e-commerce, the Commission 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.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 702, 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 could comply with the Act and the Rule. In that opinion, staff noted that if warrantors wished to provide only electronic warranties to retailers instead of paper copies, the retailers would need either to print out the warranties in paper form, or to have the capability to display the electronic warranty as well as personnel available to assist consumers in viewing the warranty information. By doing so, the retailers would be complying with the Rule by “mak[ing] a text of the warranty *readily available for examination by the prospective buyer* by: (1) displaying it in close proximity to the warranted product, or (2) furnishing it upon request prior to sale . . .” 16 C.F.R. § 702.3(a) (emphasis added). This opinion is consistent with prior opinions issued by the Commission stating that a retailer may make a warranty available to consumers using certain non-paper formats – such as on microfiche and ultrafiche readers – as a

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>.

means of complying with the Rule.⁴

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. In addition, the staff's 2009 advisory opinion (see answer to specification #3 above) regarding the provision of warranties in electronic formats should give all warrantors, including small businesses, more flexibility and cost-savings with respect to 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

⁴ See 42 Fed. Reg. 39381 (August 4, 1977) (microfiche); 42 Fed. Reg. 15679 (March 23, 1977) (ultrafiche); 41 Fed. Reg. 53472 (December 7, 1976) (microfiche).

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 Fed. Reg. 56,536 (September 16, 2010). No comments were received. Pursuant to the OMB regulations that implement the PRA (5 C.F.R. Part 1320), the Commission 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

As part of its program of periodic review of all Commission rules and guides, the Commission plans to solicit public comments during 2011 on the costs and benefits of Rule 702, as well as its regulatory and economic impact. At the conclusion of the prior periodic rule review in the late 1990s, the Commission announced that it would retain Rule 702 unchanged (64 Fed. Reg. 19,700; April 22, 1999). During that earlier review, seven organizations submitted comments, including industry, trade associations, and consumer groups.

Finally, in 2010, to determine the continued accuracy of its previous estimates, the Commission staff contacted representatives of the National Retail Federation, the North American Retail Dealers Association, and the Association of International Automobile Manufacturers.

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 2,490,000 hours, rounded to the nearest thousand.

In 2007, 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 2,328,000 hours per year. Although there has been no change in the Rule's information collection requirements since 2007, staff has adjusted its previous estimate of the number of manufacturers subject to the Rule based on recent Census data. Based on that, staff now estimates that there are approximately 478 large manufacturers and 15,444 small manufacturers subject to the Rule. In addition, recent Census data suggests that there are an estimated 6,892 large retailers and 452,553 small retailers impacted by the Rule.

In its 2007 submission to OMB, staff took note that some online retailers had begun to make warranty information directly available on their websites, thereby reducing their paperwork burden under the Rule. As e-commerce continues to grow, it is likely that even more retailers are posting warranty information online than they were in 2007. Nevertheless, because the staff assumes that only a small percentage of retailers would be significantly less burdened by posting warranty information online – namely, retailers with a large Internet presence or whose inventory is mainly composed of warranted products – the staff has retained its previous estimates of the hour burden for retailers. Therefore, staff continues to estimate 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 2,315,608 hours ((6,892 large retailers x 20.8 burden hours) + (452,553 small retailers x 4.8 burden hours)).

Staff also estimates that more manufacturers are beginning to provide retailers with warranty information in electronic form in fulfilling their obligations under the Rule. Therefore, staff finds it necessary at this time to adjust the hour burden for manufacturers as it did with retailers in its previous submission to OMB. Applying a 20% reduction to its previous estimates, the staff now assumes that large manufacturers spend an average of 42 hours per year and that small manufacturers spend an average of 10 hours per year to comply with the Rule.

Accordingly, the total annual burden incurred by manufacturers is approximately 174,516 hours ((478 large manufacturers x 42 hours) + (15,444 small manufacturers x 10 hours)).

Thus, the total annual burden for all covered entities is approximately 2,490,124 hours (2,315,608 hours for retailers + 174,516 hours for manufacturers).

Total annual labor cost burden. \$47,000,000 rounded to the nearest thousand. The work required to comply with the Pre-Sale Availability Rule entails a mix of clerical work and work performed by sales associates. Staff estimates that half of the total burden hours would likely be performed by sales associates. At the manufacturing level, this work would entail ensuring that the written warranty accompanies every consumer product or that the

required warranty information otherwise gets to the retailer. At the retail level, this work would entail ensuring that the written warranty is made available to the consumer prior to sale. The remaining half of the work required to comply with the Pre-Sale Availability Rule is clerical in nature, e.g., shipping or otherwise providing copies of manufacturer warranties to retailers and retailer maintenance of them. Applying a sales associate wage rate of \$22/hour to half of the burden hours and a clerical wage rate of \$16/hour to half of the burden hours, the total annual labor cost burden is approximately \$47,312,356 (1,245,062 hours x \$22 per hour) + (1,245,062 hours x \$16 per hour).⁵

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.⁶ 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 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 \$10,000, which is the cost of one-tenth of a

⁵ The wage rate reflects recent data from the Bureau of Labor Statistics National Compensation Survey (<http://www.bls.gov/ncs/ocs/sp/nctb1346.pdf>).

⁶ Although some retailers may choose to display a more elaborate or expensive sign, that is not required by the Rule.

professional work year.

15. Program Changes or Adjustments

There are no program changes. The estimated total annual hours burden has slightly increased from 2,328,000 hours in 2007 to 2,490,000 hours estimated in 2010. This slight increase is attributable to our estimate that there are now more manufacturers and retailers that are subject to the Rule's requirements. This also affected the associated labor burden figure, which increased from \$32,594,000 in 2007 to \$47,312,356 in 2010. In 2007, it was \$32,594,000. Part of this labor cost increase is also attributable to breaking the 2010 estimate into two parts the work performed by sales associates and the work performed by clerical help. The 2007 figure did not break this into two and left it all under clerical. Also, there has been a slight increase in the hourly rates since 2007.

16. Plans for Tabulation and Publication

There are no plans to publish any information.