

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 for catalog and door-to-door sales. The Rule imposes no recordkeeping or reporting requirements.

The Commission issued the Rule to provide consumers with the opportunity to compare the warranty terms and conditions of competing products prior to purchase in order to allow consumers to make informed purchasing decisions. In the absence of the opportunity to review the warranty terms and conditions prior to purchase, consumers might purchase a product based on the assumption that the product includes a comprehensive warranty when, in fact, the warranty may provide less coverage than the warranties provided with other, similar products. The Rule allows consumers to compare warranty information for different products prior to purchase. Thus, the Rule enhances both informed purchasing decisions and competition among warrantors.

2. Use of the Information

Congress mandated that retailers make warranty information available to consumers before they purchase a product. The warranty terms are part of the consumer’s contract with the seller. Rule 702 does not require that a manufacturer provide a written warranty nor does it mandate any warranty terms. However, if the manufacturer chooses to provide 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 coverage provided by the warranty and to compare warranties for similar products before making a purchase decision.

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

Since the Rule’s promulgation, technological changes have transformed the ways businesses make information available to consumers. While some retailers continue to provide consumers with hard copies of written materials, others make warranties available prior to purchase via electronic media. Electronic distribution of warranty materials saves paper and frees up store personnel to handle 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 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 issued “A Businessperson’s Guide to Federal Warranty Law.”²

As a result of the growth of e-commerce, the Commission issued guidance in 2000 to those warrantors and sellers who market products over the Internet.³ More recently, in 2013, the Commission revised this manual and its title, “.com Disclosures: How to Make Effective Disclosures in Digital Advertising”.⁴ Internet sellers can easily comply with their warranty disclosure obligations online by, for example, using a clearly-labeled hyperlink, in close proximity to the description of the warranted product, such as ‘get warranty information here’ to lead to the full text of the warranty.

Indeed, on February 17, 2009, Commission staff issued an advisory opinion stating that, in staff’s opinion, providing consumer product warranties via electronic media, rather than in paper form, complies 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 have the capability to display the electronic warranty while also making available personnel 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 microfiche and ultrafiche, as a means of complying with the Rule.⁵

¹ This publication is available at <http://business.ftc.gov/documents/bus20-writing-readable-warranties>.

² This publication is available at <http://business.ftc.gov/documents/bus01-businesspersons-guide-federal-warranty-law>.

³ The original title for the 2000 publication was “Dot Com Disclosures: Information About Online Advertising.”

⁴ This publication is available at <http://business.ftc.gov/documents/bus41-dot-com-disclosures-information-about-online-advertising>.

⁵ See 42 Fed. Reg. 39,381 (August 4, 1977) (microfiche); 42 Fed. Reg. 15,679 (March 23, 1977) (ultrafiche); 41 Fed. Reg. 53472 (December 7, 1976) (microfiche).

4. Efforts to Identify Duplication/Availability of Similar Information

Staff is not aware of any other statute or regulation of nationwide applicability that requires the pre-sale disclosure of warranty terms for all consumer products. 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 and 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, Commission staff's 2009 advisory opinion (see answer to specification #3 above) regarding the provision of warranties in electronic formats endorsed an interpretation of the Act and the Rule that gives all warrantors, including small businesses, more flexibility and cost-savings with respect to warranties.

6. Consequences of Conducting the Collection Less Frequently

Less disclosure would defeat the Congressional intent and objective of the Rule. If retailers do not provide to consumers the terms of a warranty before they purchase a product, consumers lack important information about their warranty 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 that can 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* 78 Fed. Reg.

68,446 (November 14, 2013). The Commission did not receive any comments. Pursuant to the OMB regulations that implement the PRA (5 C.F.R. §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 of the Agency

As part of its periodic review of all Commission rules and guides, the Commission solicited public comments on August 23, 2011, about the costs and benefits of all Rules promulgated under the Magnuson-Moss Act, including Rule 702, as well as the regulatory and economic impacts. 76 Fed. Reg. 52,596. During the review, 29 organizations submitted comments, including industry, trade associations, and consumer groups. The Commission's review is ongoing.

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

Rule 702 does not present any issues concerning confidentiality or questions of a sensitive nature. 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 2,446,610 hours.

In its 2010 submission to OMB, FTC staff estimated that the information collection burden of making the disclosures required by the Pre-Sale Availability Rule was approximately 2,490,000 hours per year. Although there has been no change in the Rule's information collection requirements since 2010, staff has adjusted its previous estimate of the number of manufacturers subject to the Rule based on recent Census data. From that, staff now estimates that there are approximately 581 large manufacturers and 13,935 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 2010 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 more retailers are posting warranty information online now than they were in 2010. Nevertheless, because 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 – staff retains 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 providing retailers with warranty information in electronic form in order to fulfill their obligations under the Rule. Therefore, staff has adjusted the hour burden for manufacturers, as it did in its previous submission to OMB. Applying a 20% reduction to its previous estimates, staff now assume that large manufacturers spend an average of 33.6 hours per year and that small manufacturers spend an average of 8 hours per year to comply with the Rule. Accordingly, the total annual burden incurred by manufacturers is approximately 131,002 hours ((581 large manufacturers x 33.6 hours) + (13,935 small manufacturers x 8 hours)). Thus, the total annual burden for all covered entities is approximately 2,446,610 hours (2,315,608 hours for retailers + 131,002 hours for manufacturers).

Total annual labor cost burden: \$51,379,000 (rounded to 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 retailers otherwise receive the required warranty information. At the retail level, this work would entail ensuring that retailers make the written warranty 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 \$24/hour to half of the burden hours and a clerical wage rate of \$18/hour to half of the burden hours, the total annual labor cost burden is approximately \$51,378,810 (1,223,305 hours x \$24 per hour) + (1,223,305 hours x \$18 per hour).⁶

⁶ The wage rates used in this Notice reflects recent data from the Bureau of Labor Statistics, Occupational Employment and Wages (May 2012).

13. Estimated Capital/Other Non-Labor Costs Burden

(a) Total capital and start-up costs. De minimis. The vast majority of retailers and warrantors have already 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.⁷ 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 retailers utilize a binder system, maintenance simply involves filing new warranties in the binders, resulting in minimal costs.

Where manufacturers print warranties on the product's package, the retailer incurs no maintenance costs because 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 manufacturers include the warranty information with the products they ship.

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 professional work year.

15. Program Changes or Adjustments

There are no program changes. The estimated total annual hours burden has slightly decreased from 2,490,000 estimated hours in 2010 down to 2,446,610 estimated hours in 2013. This slight decrease is largely attributable to our estimate that more manufacturers make warranty information available in electronic form than in paper format to fulfill their obligations under the Rule. This results in less compliance time for each manufacturer. The associated labor burden figure increased from \$47,312,356 in 2010 to \$51,378,810 in 2013. This labor cost increase is attributable to a slight increase in the hourly rates since 2010.

⁷ Although some retailers may choose to display a more elaborate or expensive sign, that is not required by the Rule.

16. Plans for Tabulation and Publication

There are no plans to publish any information.