

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. § 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 Fed. Reg. 60,168). 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.

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. The information required to be disclosed by the Rule allows consumers to compare warranty information on different products and 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 issued “A Businessperson’s Guide to Federal Warranty Law.”¹ As the online marketplace has gained in importance, the Commission convened a workshop (“In Short: Advertising & Privacy Disclosures in a Digital World”) to explore compliance with various FTC rules, including Rule 701, on the Internet and other forms of digital media. In March 2013, the Commission published a manual, “.Com Disclosures: How to Make Effective Disclosures in Digital Advertising,” which provides guidance to businesses on providing warranty disclosures when selling products online.² Thereafter, in compliance with the mandates of the E-Warranty Act, Pub. L. No. 114-51, 129 Stat. 494-95, the Commission slightly modified Rule 701 in connection with allowing manufacturers to post warranty terms online and certain sellers to provide warranty terms pre-sale in an electronic format, 81 Fed. Reg. 63,664 (September 15, 2016).

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.³

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.

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 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

¹ This publication is available at <https://www.ftc.gov/tips-advice/business-center/guidance/businesspersons-guide-federal-warranty-law>.

² This publication is available at <https://www.ftc.gov/tips-advice/business-center/guidance/com-disclosures-how-make-effective-disclosures-digital>.

³ This staff advisory opinion is available at https://www.ftc.gov/sites/default/files/documents/advisory_opinions/opinion-09-1/opinion0901_0.pdf.

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

As a prelude to this request, the Commission sought public comment. See 84 Fed. Reg. 53,149 (October 4, 2019). No relevant 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.

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 57b-2(f).

12. Hours and Labor Cost Burden

Total annual hours burden: 242,296 hours.

In its 2016 submission to OMB, the FTC estimated that the information collection burden of including the disclosures required by the Warranty Rule was 140,280 hours per year. Although the Rule's information collection requirements have not changed, the current estimate increases the number of manufacturers subject to the Rule based on recent Census data.⁴ Further, because most warrantors likely would continue to disclose the information required by the Rule, even if there were no statute or rule requiring them to do so, staff's estimates likely overstate the PRA-related burden attributable to the Rule. Moreover, the Warranty Rule has been in effect since 1976, and warrantors have long since modified their warranties to include the information the Rule requires.

⁴ Number of Firms, Number of Establishments, Employment, and Annual Payroll by Enterprise Employment Size for the United States, All Industries: 2016 release date: 12/18/2018, available at <http://www.census.gov/programs-surveys/susb/technical-documentation/methodology.html>.

Based on conversations with various warrantors' representatives over the years, staff has concluded that eight hours per year is a reasonable estimate of warrantors' PRA-related burden attributable to the Warranty Rule.⁵ This estimate includes the number of hours warrantors may need to ensure new warranties and any changes to existing warranties comply with the Rule. Based on recent Census data, staff now estimates that there are 30,287 manufacturers covered by the Rule.⁶ This results in an annual burden estimate of approximately 242,296 hours (30,287 manufacturers x 8 hours of burden per year).

Total annual labor costs: \$32,981,332.

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 (50%), legal support (paralegals) (25%) and clerical help (25%). Staff estimates that half of the total burden hours (121,148 hours) requires legal analysis at an average hourly wage of \$250 for legal professionals,⁷ resulting in a labor cost of \$30,287,000. Assuming that 25% of the total burden hours requires legal support at the average hourly wage of \$26.20, and that the remaining 25% requires clerical work at an average hourly wage of \$18.28; the resulting labor cost is approximately \$2,694,332 (\$1,587,039+1,107,293). Thus, the total annual labor cost is approximately \$32,981,332 (\$30,287,000 for legal professionals + \$1,587,039 for legal support + \$1,107,293 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 computer or other 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 computer 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

⁵ FTC staff has previously contacted two manufacturing associations – the Association of Home Appliance Manufacturers and the National Association of Manufacturers – and we have not located additional data that further clarifies this figure.

⁶ Because some manufacturers likely make products that are not priced above \$15 or not intended for household use – and thus would not be subject to the Rule – this figure is likely an overstatement.

⁷ Staff has derived an hourly wage rate for legal professionals based upon industry knowledge. The hourly wage rates for legal support workers and for clerical support are based on mean hourly wages available at <https://www.bls.gov/news.release/ocwage.htm> (“Occupational Employment and Wages–May 2018,” U.S. Department of Labor, released March 2019, Table 1 (“National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2018”).

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.

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 \$17,000, 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 of burden has been adjusted upward from 140,280 hours in 2016 to 242,296 hours in 2019 due to an increase in the number of manufacturers estimated to be subject to the Rule based on recent Census data (17,535 in 2016 and 30,287 in 2019).

The increase in annual hours of burden also increases the estimated total annual labor costs, which have been adjusted upward from \$19,011,798 in 2016 to \$32,981,332 in 2019. This also reflects a slight increase in the hourly wage rates for clerks (from \$16.92/hour in 2016 to \$18.28/hour in 2019) and legal support (from \$25.19/hour in 2016 to \$26.20/hour in 2019).

16. Plans for Tabulation and Publication

There are no plans to publish any information.

17. Requested Permission Not to Display the Expiration Date for OMB Approval

Not applicable.

18. Exceptions to the "Certification for Paperwork Reduction Act Submissions"

Not applicable.