

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.

In September 2016, the FTC approved amendments to the Rule 702, which became effective on October 12, 2016. Under the amendments, warrantors may display warranty terms online and provide information to consumers to obtain those terms via non-Internet means. The amendments also allow sellers to provide pre-sale warranty terms electronically or conventionally if the warrantor has chosen to display its warranty terms online. 81 Fed. Reg. 63,664 (Sept. 15, 2016).

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. 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 2016 amendments to the Rule (see answer to specification #3 above) regarding the provision of warranties in electronic formats 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* 84 Fed. Reg. 72,362 (December 31, 2019). No germane comments were received.¹ 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.

As discussed above, in September 2016, the FTC approved amendments to the Pre-sale Availability Rule, which became effective on October 12, 2016. Under the amendments, warrantors may display warranty terms online and provide information to consumers to obtain those terms via non-Internet means. The amendments also allow sellers to provide pre-sale warranty terms electronically or conventionally if the warrantor has chosen to display its warranty terms online. 81 Fed. Reg. 63,664 (Sept. 15, 2016).

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 that 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).

¹ The Commission received nine non-germane comments.

12. Hours and Labor Cost Burden

Total annual hours burden: 3,069,314

In its 2016 submission to OMB, FTC staff estimated that the information collection burden of making the disclosures required by the Pre-sale Availability Rule was approximately 2,823,803 hours per year. Although there has been no change in the Rule's information collection requirements since 2016, staff has adjusted slightly downward 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 742 large manufacturers and 30,287 small manufacturers subject to the Rule.² In addition, staff has adjusted slightly upward its previous estimate of number of retailers subject to the Rule based on recent Census data. There are now an estimated 8,628 large retailers and 566,549 small retailers impacted by the Rule.³ These estimates likely overstate the number of manufacturers and retailers because some of the included manufacturers and retailers may make and sell products that are not covered by the Rule.

In September 2016, the FTC approved amendments to the Pre-sale Availability Rule, which became effective on October 17, 2016. Under the amendments, warrantors may display warranty terms online and provide information to consumers to obtain those terms via non-Internet means. The amendments also allow sellers to provide pre-sale warranty terms electronically or conventionally if the warrantor has chosen to display its warranty terms online. Sellers of warranted goods for which the warrantor has chosen the online method may incur a slightly increased burden because the seller will have to ensure it provides consumers a method of reviewing the warranty terms both prior to and at the point of sale. That burden, however, should be minimal, given that the warrantor will have to make the warranty terms available on an Internet Web site, and given the provision requiring the warrantor to supply a hard copy of the warranty terms, promptly and free of charge, in response to a seller's or a consumer's request. In addition, any burden on sellers could be offset by sellers having additional flexibility to make pre-sale warranty terms available to consumers electronically.

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 2,898,897.6 hours ((8,628 large retailers x 20.8 burden hours) + (566,549 small retailers x 4.8 burden hours)). Staff also estimates that more manufacturers will provide retailers with warranty information in electronic form in fulfilling their obligations under the Rule and thus 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 assumes that large manufacturers spend an average of 21.5 hours

² The 2017 estimate was 1,028 large manufacturers and 30,299 small manufacturers subject to the Rule.

³ The 2017 estimate was 7,745 large retailers and 508,575 small retailers subject to the Rule.

per year and that small manufacturers spend an average of 5.1 hours per year to comply with the Rule. Accordingly, the total annual burden incurred by manufacturers is approximately 170,416.7 hours ((742 large manufacturers x 21.5 hours) + (30,287 small manufacturers x 5.1 hours)).

Thus, the total annual burden for all covered entities is approximately 3,069,314 hours (2,898,897.6 hours for retailers + 170,416.7 hours for manufacturers).

Total annual labor cost: \$70,594,222.

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 is available for every warranted consumer product. 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, along with retailer maintenance of the warranties. Applying a sales associate wage rate of \$24/hour to half of the burden hours and a clerical wage rate of \$22/hour to half of the burden hours, the total annual labor cost burden is approximately \$70,594,222 (1,534,657 hours x \$24 per hour) + (1,534,657 hours x \$22 per hour).⁴

13. Estimated Capital/Other Non-Labor Costs Burden

(a) Total capital and start-up costs. *De minimis.* Manufacturer compliance entails providing retailers with a copy of the warranties included with their products. 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, and posting an inexpensive sign indicating warranty availability. Warrantor compliance under the 2016 amendments entails providing retailers, together with the warranted good, a copy of the warranty or the address of the warrantor's Internet Web site where the consumer can review and obtain the warranty terms, along with the contact information where the consumer may use a non-Internet based method to obtain a free copy of the warranty terms. Commission staff believes that, in light of the amendments, annual capital or other non-labor costs will remain *de minimis*.

(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

⁴ The wage rates are derived from occupational data found in the Bureau of Labor Statistics, Occupational Employment and Wages (May 2018).

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 old 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 approximately the cost of one-tenth of a professional work year.

15. Program Changes or Adjustments

There are no program changes. The estimated annual hours of burden has slightly increased from 2,823,803 estimated hours in 2017 to 3,069,314 estimated hours in 2020. This slight increase is largely attributable to our estimate that more retailers are now subject to warranty requirements. The associated labor burden figure increased from \$62,123,688 in 2017 to \$70,594,222 in 2020. This labor cost increase is attributable in part to our estimate that more retailers are now subject to the Rule as well as a slight increase in the clerical hourly rates since 2017.

16. Plans for Tabulation and Publication

There are no plans to publish any information.