

Billing Code: 6750-01-S

FEDERAL TRADE COMMISSION

16 CFR Parts 701 and 702

RIN 3084-AB24 and AB25

Rule Governing Disclosure of Written Consumer Product Warranty Terms and Conditions; Rule Governing Pre-Sale Availability of Written Warranty Terms

ACTION: Final rule.

SUMMARY: In this document, the Federal Trade Commission (FTC or Commission) adopts amendments to the rules on Disclosure of Written Consumer Product Warranty Terms and Conditions (Disclosure Rule) and Pre-Sale Availability of Written Warranty Terms (Pre-Sale Availability Rule) to give effect to the E-Warranty Act, which allows for the use of Internet Web sites to disseminate warranty terms to consumers in some circumstances.

DATES: Effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: This document is available on the Internet at the Commission's Web site at www.ftc.gov. The complete record of this proceeding, including the final amendments to the Disclosure Rule and the Pre-Sale Availability Rule and the Statement of Basis and Purpose, is available at www.ftc.gov.

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SUPPLEMENTARY INFORMATION: This document states the basis and purpose for the Commission’s decision to adopt amendments to the Disclosure Rule and the Pre-Sale Availability Rule that were proposed and published for public comment in the Federal Register on May 24, 2016.¹ After careful review and consideration of the entire record on the issues presented in this rulemaking proceeding, including seven public comments submitted by a variety of interested parties,² the Commission has decided to adopt, with some modifications, the proposed amendments to the Disclosure Rule and the Pre-Sale Availability Rule intended to implement the E-Warranty Act and effectuate its purpose.

Beginning on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], warrantors and sellers will be required to comply with the amended Disclosure Rule and the amended Pre-Sale Availability Rule.

BACKGROUND:

I. The Magnuson-Moss Warranty Act and the E-Warranty Act

The Magnuson-Moss Warranty Act (MMWA) authorizes the Commission to prescribe rules requiring disclosure of warranty terms and requiring that the terms of any written warranty on a consumer product be made available to the prospective purchaser prior to the sale of the product.³ In 1975, the Commission issued both the Disclosure Rule, which establishes disclosure requirements for written warranties, and the Pre-Sale Availability Rule, which includes requirements for sellers and warrantors to make the text of any warranty on a consumer product available to the consumer prior to sale.

Among other things, the Pre-Sale Availability Rule requires most sellers to make

¹ 81 FR 32680 (May 24, 2016).

² Comments are available at <https://www.ftc.gov/policy/public-comments/initiative-652>.

³ 15 U.S.C. 2302.

warranties readily available either by: (1) displaying the warranty document in close proximity to the product or (2) furnishing the warranty document on request and posting signs in prominent locations advising consumers that warranties are available. The Pre-Sale Availability Rule requires warrantors to provide materials to enable sellers to comply with the Rule's requirements. The Rule also sets out how sellers should make warranty information available pre-sale if selling the product at retail locations, through catalogs, mail order, or door-to-door sales.

The E-Warranty Act⁴ (E-Warranty or the Act) amends the MMWA to allow, under certain circumstances, the posting of warranties on warrantors' Internet Web sites as an alternative method of complying with the Pre-Sale Availability Rule, and to permit sellers to make warranty terms available to consumers pre-sale via electronic means where the warrantor has chosen the online method. E-Warranty charges the Commission with promulgating consistent changes to the Disclosure Rule and the Pre-Sale Availability Rule within one year of the Act's passage.⁵

II. Amending the Disclosure Rule and the Pre-Sale Availability Rule in Accordance with E-Warranty

A. The Disclosure Rule

The Disclosure Rule⁶ establishes disclosure requirements for written warranties on consumer products that cost more than \$15.00.⁷ In 1975, the Commission issued the Disclosure Rule as authorized by Congress in the MMWA.⁸

⁴ E-Warranty Act, Public Law 114-51 (Sept. 24, 2015).

⁵ Under the E-Warranty Act, the Commission must issue the final amended rules by September 24, 2016.

⁶ 16 CFR part 701.

⁷ 40 FR 60171-60172 (Dec. 31, 1975)

⁸ 15 U.S.C. 2302.

The Disclosure Rule also specifies the aspects of warranty coverage that must be disclosed in written warranties, as well as the exact language that must be used for certain disclosures with respect to state law regarding the duration of implied warranties and the availability of consequential or incidental damages. Under the Disclosure Rule, warranty information must be disclosed in simple, easily understandable, and concise language in a single document. Similarly, the warrantor must disclose any limitations on the duration of implied warranties “on the face of the warranty,” as mandated by MMWA.⁹ In promulgating the Disclosure Rule, the Commission determined that certain material facts about product warranties must be disclosed because the failure to do so would be deceptive or misleading.

To comply with E-Warranty, the Commission revises the Disclosure Rule to specify that, for a warranty posted on an Internet Web site or displayed electronically, disclosures statutorily mandated to appear “on the face of the warranty” must be placed in close proximity to the location where the text of the warranty terms begins.

B. The Pre-Sale Availability Rule

The Pre-Sale Availability Rule¹⁰ details the methods by which warrantors and sellers must provide warranty terms to consumers prior to sale of the warranted item. The Commission issued the Pre-Sale Availability Rule in 1975 in response to a mandate from Congress as set forth in the MMWA.

In accordance with the mandate in E-Warranty, the Commission revises the Pre-Sale Availability Rule to allow warrantors to post warranty terms on Internet Web sites if they also provide a non-Internet based method for consumers to obtain the warranty

⁹ See 15 U.S.C. 2308(b).

¹⁰ 16 CFR part 702.

terms and satisfy certain other conditions, and to allow certain sellers to display warranty terms pre-sale in an electronic format if the warrantor has used the online method of disseminating warranty terms.

As discussed more fully below, these rule revisions are required by E-Warranty.

III. The Commission's Rule Changes and Analysis of Comments

The existing version of the Pre-Sale Availability Rule requires sellers to provide warranty terms pre-sale to consumers and allows them to choose among a variety of methods for doing so, including displaying the warranty terms in close proximity to the warranted products, furnishing them upon request prior to sale and posting prominent signs to let customers know that warranties can be examined upon request, printing them in a catalog in close conjunction to the warranted product, or having them available for consumers' review in a door-to-door sales presentation. The amendments will allow sellers the additional option of using an electronic method to make warranty terms available to consumers at the point of sale for warranted products where the warrantor has chosen the online method of disseminating the warranty terms.

Warrantors currently must provide sellers the warranty materials sellers need to meet their requirements under the Pre-Sale Availability Rule, such as providing copies of the warranty, providing warranty stickers, tags, signs, or posters, or printing the warranty on the product's packaging. The amendments do not alter the duties of warrantors who do not choose to employ an online method to supply warranty terms. E-Warranty provides that warrantors who choose the online method of disseminating warranty terms must provide consumers the address of the Internet Web site where the specific product's warranty terms can be reviewed and also supply a non-Internet method, such as a phone

number or mailing address, for consumers to request the warranty terms. Under the amendments, if a consumer or seller¹¹ makes such a request, the warrantor must provide the warranty terms promptly and free of charge.

The first rule revision alters §701.1 to add a definition of the term “manufacturer” at §701.1(g) (defining manufacturer as “any person engaged in the business of making a consumer product”), add that term in the definition of “warrantor,” and re-letter the paragraphs in §701.1 to account for the additional definition. The Commission makes these revisions in light of E-Warranty’s use of the term “manufacturer.”¹²

The next revision adds a new §701.1(j)(3) to specify that, in conjunction with warranty terms posted on an Internet Web site or displayed electronically, the phrase “on the face” means in close proximity to the location where the warranty terms begin.

Although the Disclosure Rule does not explicitly mention online commerce, it applies to the sale of warranted consumer products online.¹³ Commission staff recently updated the .Com Disclosures to provide additional guidance on disclosure obligations in the online

¹¹ The revised rule gives sellers the option of requesting the warranty terms free of charge from the warrantor because not all sellers have the ability to provide warranty terms pre-sale using electronic means when the warrantor has chosen the online method to supply warranty terms. For example, a small seller may not have Internet access or electronic devices to download and display warranty terms for consumers’ review at the point of sale. Those sellers’ duties to have warranty terms available pre-sale, however, have not changed under E-Warranty. The Commission believes that requiring warrantors to supply sellers with a hard copy of warranty terms upon request, in order to allow sellers to make them available for consumers’ review at the point of sale, effectuates Congress’s desire to ensure the continued availability of pre-sale warranty terms.

¹² The Retail Industry Leaders Association (RILA) suggests adding the term “manufacturer” to the definition of “warrantor” in §701.1, to match the proposed revised definition of “warrantor” in §702.1. Comment of RILA (available at <https://www.ftc.gov/policy/public-comments/2016/06/17/comment-00005>) at 2. The Commission proposed this revision in the original NPRM, as noted in the description of the Commission’s Proposed Rule Changes. *See* 81 FR at 32681. However, a scrivener’s error led to the deletion of the related rule text in the amendatory instructions.

¹³ One commenter suggests that the Commission also consider amending §701.3(a) to define the term “document” or “single document” to clarify how a warrantor can provide required information electronically in a “single document” pursuant to that paragraph. *See* Comment of the National Automobile Dealers Association (NADA) (available at <https://www.ftc.gov/policy/public-comments/2016/06/17/comment-00007>) at 2. The Commission believes that these terms have sufficiently understood common meanings and declines to make the suggested amendment.

context. As stated in the updated .Com Disclosures, warranties disseminated online are no different from paper versions and the same rules apply.¹⁴

The next revision is to §702.1(d) to include the manufacturer in the definition of “warrantor.” The Commission makes this revision to comport with E-Warranty’s use of the term “manufacturer.” The next revision adds a new §702.1(g) to define a “manufacturer,” in accordance with the addition of the term “manufacturer” in §701.1(g), as “any person engaged in the business of making a consumer product.”

The revisions to §702.3(a) allow sellers to provide warranty terms pre-sale through electronic means if the warrantor of the product has chosen the online method.¹⁵ If a seller uses an electronic means of displaying the warranty terms, that seller must still make the warranty text readily available for consumers’ examination prior to sale.

The changes to §702.3(b)(1)(i) will remove superfluous instances of the term “and/or” and “and” in that paragraph, as the prefatory language already notes that the warrantor must use one *or more* of the methods described in that paragraph to provide sellers with the prescribed warranty materials.

¹⁴ See FTC, .Com Disclosures: How to Make Effective Disclosures in Digital Advertising (2013), at 3, fn.7, available at <https://ftc.gov/os/2013/03/130312dotcomdisclosures.pdf>. The RILA comment at 2 asks the Commission to clarify whether and how Internet-only or omni-channel retailers have to comply with the Pre-Sale Availability Rule. These sellers’ obligations remain the same under E-Warranty—they must make the warranty terms available to consumers pre-sale. The requirement to make warranties available at the point of purchase can be accomplished easily with respect to online sales 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, and presenting the warranty in a way that it can be preserved, either by downloading or printing, so consumers can refer to it after purchase. *Id.* However, sellers at brick-and-mortar locations could not comply with the seller’s Pre-Sale Availability Rule obligations simply by referring the consumer to a Web site where the warranty could be found, as this would conflict with Congress’s mandate that the online method not supplant the seller’s duty to provide warranty terms at the point of sale.

¹⁵ NADA asks whether a dealer may provide a physical copy of the manufacturer’s warranty upon request, even if the manufacturer has elected the online method. See NADA comment at 3. If the warrantor has elected the online method, the seller can choose between providing the warranty terms through electronic means or through other means (such as furnishing a hard copy).

The next revision adds a new §702.3(b)(2) to reflect that, as an alternative method of compliance with the Pre-Sale Availability Rule, a warrantor may refer consumers to an accessible online copy of the warranty by providing to the consumer the Internet address where the specific product's warranty has been posted in a clear and conspicuous manner. To employ this option, the warrantor, among other duties, must supply in the product manual, or on the product or product packaging, the Internet address where the consumer can review and obtain the specific product's warranty terms, as well as the phone number, postal mailing address, or other reasonable non-Internet based means for the consumer or seller to request a free copy of the warranty terms.

Revised § 702.3(b)(2)(iv) requires any warrantor utilizing the online method to provide sufficient information with the consumer product or on the Internet Web site so that the consumer can readily locate the specific product's warranty terms. The Commission believes that this requirement comports with Congress's directive that online warranties be available to consumers "in a clear and conspicuous manner."¹⁶ Similarly, if a consumer or seller requests via phone, mail, or other reasonable non-Internet-based means, that the warrantor provide a hard copy of the warranty, revised §702.3(b)(2)(ii) requires the warrantor to provide it promptly and free of charge, which comports with existing pre-sale requirements for catalog and mail order sales.¹⁷

¹⁶ See 15 U.S.C. 2302(b)(4)(A)(i).

¹⁷ NADA asks how the warrantor's duty under §702.3(b)(2)(ii) to provide a hard copy of the warranty upon request interacts with the seller's duty under § 702.3(a)(2) to furnish the warranty terms upon request prior to sale. See NADA comment at 3-4. The seller's duty to furnish warranty terms for the consumer to review pre-sale in § 702.3(a)(2) requires only that the seller make the warranty terms available for review at the place of sale; the warrantor's duty to provide a hard copy of the warranty upon request (where the warrantor has elected the online method for providing warranty terms) ensures that consumers without the ability to obtain warranty terms from a Web site have the ability to secure a hard copy of the warranty terms. The warrantor's duty under §702.3(b)(2)(ii) stems from E-Warranty's requirement that consumers have a "reasonable non-Internet based means of contacting *the manufacturer* to obtain and review"

The next revision alters §702.3(c)(2)(i)(B) to reflect that a mail-order or catalog seller must provide the address of the Internet Web site of the warrantor where the warranty terms can be reviewed (if such Internet Web site exists), as well as either a phone number or address that the consumer can use to request a free copy of the warranty, and notes that the seller may provide the copy electronically if the product's warrantor has used the online method.

Finally, the next revision alters §702.3(d)(2) to reflect that a door-to-door seller may supply the warranty terms for the consumer's pre-sale review through an electronic option if the product's warrantor has employed the online method.

The Commission received seven comments in response to the Notice of Proposed Rulemaking. In response to one comment, the Commission makes one change in the final version of the Pre-Sale Availability Rule, as discussed below.

Comments generally supported the Commission's proposals.¹⁸ One commenter requests the Commission to clarify whether MMWA applies to all warranties required by other federal laws.¹⁹ The Commission notes that §700.1(a) of the Interpretations of Magnuson-Moss Warranty Act defines the scope of the MMWA and states it "applies to written warranties on tangible personal property which is normally used for personal,

warranty terms. 15 U.S.C. 2302(b)(4)(A)(ii)(II) (emphasis added). The Commission interprets this statutory language to mean that, if a warrantor chooses the online method and a consumer uses the non-Internet based means to contact the warrantor and request a copy of the warranty, the *warrantor* must provide the warranty terms to the consumer. This new requirement under the E-Warranty Act is independent of the existing requirement under the MMWA and current § 702.3(a)(2) that *sellers* must furnish the warranty terms upon request prior to sale.

¹⁸ See comments of Linda Gibson (available at <https://www.ftc.gov/policy/public-comments/2016/05/19/comment-00001>), Catherine Corn (available at <https://www.ftc.gov/policy/public-comments/2016/06/15/comment-00002>), Alliance of Automobile Manufacturers (available at <https://www.ftc.gov/policy/public-comments/2016/06/17/comment-00003>), RILA.

¹⁹ Comment of Erin Ashcroft (available at <https://www.ftc.gov/policy/public-comments/2016/06/17/comment-00006>). See also 42 U.S.C. 7541 and 40 CFR 1054.120.

family, or household purposes.”²⁰ The MMWA covers warranties required by other federal laws only to the extent such warranties fall within the scope of §700.1(a).

Another commenter suggests that the Commission provide guidance as to the meaning of the term “accessible digital format,” and urges the Commission to be reasonable in interpreting how warranty terms remain accessible on Web sites, how hard copies of warranties are to be provided, and the means by which the addresses of warranty Web sites may be accessed.²¹ The Commission agrees that providing an electronic warranty in an “accessible digital format” generally means the electronic warranty should be readily available to consumers on the warrantor’s Web site. Given the speed of technological innovation, the Commission believes defining the term might impose unnecessary limitations on the ability of companies to comply with E-Warranty using future digital innovations.²² The commenter’s remaining comments about the need for practical and flexible interpretations of the Rule raise issues that the Commission will consider when determining whether to bring an enforcement action for potential violations of E-Warranty and the related rules.

Two commenters urge the Commission to adopt a rule that would allow sellers to refer consumers to an Internet Web site where the warrantor has posted warranty terms to

²⁰ See 16 CFR 700.1(a).

²¹ Comment of the Consumer Technology Association (CTA) (available at <https://www.ftc.gov/policy/public-comments/2016/06/17/comment-00004>).

²² The CTA comment at 3-4 also suggests that the Commission permit display, in addition to the URL of the warranty terms, of machine-readable symbols, such as bar codes or QR codes, for consumers to access and review warranty terms. The Commission agrees that inclusion of these symbols with the URL could assist consumers seeking to access and review warranty terms, but declines, at this time, to permit such additional methods to replace the display of the URL containing the warranty terms for warrantors relying on the option set forth in § 702.3(b)(2). Warrantors, however, may display such symbols in addition to displaying the URL containing the warranty terms.

satisfy sellers' obligations under the Pre-Sale Availability Rule.²³ The Commission declines to do so. Congress's intention in enacting E-Warranty was not to disturb prospective purchasers' ability to obtain the full warranty terms at the point of sale, as envisioned by the Pre-Sale Availability Rule.²⁴ While consumers with electronic devices and Internet connectivity may be able to review warranty terms at the point of sale by visiting the Web site that contains the warranty terms, not all consumers have such devices and Internet connectivity.

NADA comments that use of the past tense in the phrase "specific product purchased by the consumer" in §702.3(b)(2)(iv) may cause confusion in the Pre-Sale Availability Rule,²⁵ because consumers could choose to review these warranty terms both before and after a sale. To remove any confusion, the Commission will alter the language for the final rule, replacing the phrase "specific product purchased by the consumer" with "specific warranted product."

²³ RILA comment at 2; NADA comment at 3 (questioning whether a seller could comply by referring a prospective buyer to the warranty Web site).

²⁴ *See, e.g.*, H. Rpt. 114-243 (Sept. 8, 2015) at 2-3 ("H.R. 3154 would require the FTC to update the warranty rules to allow manufacturers to fulfill their obligations by making warranty information available online or through other electronic means while ensuring that consumers[] and prospective consumers remain able to obtain copies of warranties at the point of sale ...").

²⁵ NADA comment at 2. The NADA comment raises several other issues. For example, NADA asks whether a seller can fulfill its obligation under §702.3(a) by merely supplying the prospective purchaser with the URL of the warranty terms' Web site (*e.g.*, a URL printed on a sign displayed in close proximity to the vehicle or printed in the owner's manual). *See* NADA comment at 3-4. Such an approach would be inconsistent with Congress's intent in passing E-Warranty. As noted in the foregoing footnote and accompanying text, Congress's passage of E-Warranty did not alter the requirement that warranty terms be available at the point of sale. If the warrantor has opted to use the online method and the seller cannot or chooses not to use an electronic method to display the warranty text upon consumers' request, the seller can ask the warrantor to supply a hard copy of the warranty terms to the seller, as provided in §702.3(b)(2)(ii). NADA also asks for guidance on how dealers who offer their own warranties can refer to warranty information in the Buyers Guide that must accompany every used vehicle pursuant to the Used Car Rule. The Commission notes that there is no conflict between the language in the Buyers Guide, which requires the dealer merely to inform a prospective purchaser whether the automobile for sale has a warranty, and the obligations of dealers who offer their own warranties and choose the online method in §702.3(b)(2).

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act²⁶ (RFA) requires each agency either to provide an Initial Regulatory Flexibility Analysis (IRFA)²⁷ with a proposed rule and a Final Regulatory Flexibility Analysis (FRFA)²⁸ with the final rule, or certify that the proposed rule will not have a significant economic impact on a substantial number of small entities.²⁹ The FTC does not expect that the rule revisions necessitated by E-Warranty will have a significant economic impact on small sellers and warrantors. As discussed above, the revisions will relieve those warrantors who choose the online method from providing warranty materials to certain sellers. Affected sellers, however, should be able easily to obtain the warranties and provide them to consumers for review at the point of sale, either by obtaining the warranties from the warrantor's Web site or by requesting a hard copy from the warrantor. Also, the amendments allow sellers of goods whose warrantors have employed the online method the ability to provide pre-sale warranty terms electronically. Thus, under the revised Rule, a small seller that is in compliance with current law would need to take only minimal additional action to remain compliant.

The small warrantor that does not choose the online method to supply warranty terms can remain compliant simply by continuing with its existing practices. If a small warrantor has previously been including the entire warranty with the warranted product and supplying warranty materials so that sellers can meet Pre-Sale Availability Rule obligations, but instead elects the online method under the amendments, the small warrantor will have a smaller overall compliance burden because it will be able to

²⁶ 5 U.S.C. 601-612.

²⁷ 5 U.S.C. 603.

²⁸ 5 U.S.C. 604.

²⁹ 5 U.S.C. 605.

provide the warranty terms solely on an Internet Web site. That small warrantor, however, will likely incur some costs to establish a phone number, address, or other non-Internet based method that consumers and sellers can use to request a free hard copy of warranty terms.

With respect to the amendments to the Disclosure Rule, a small entity that is in compliance with current law need not take any different or additional action under the revised rule, as the revisions merely explain how the “on the face of the warranty” requirement applies to online warranty terms.

Accordingly, this document serves as notice to the Small Business Administration of the FTC’s continued certification that the amendments will not have a significant economic impact on a substantial number of small entities.³⁰ To ensure the accuracy of this certification, the Commission sought comment on whether the proposed amendments would have a significant impact on a substantial number of small entities, including specific information on the number of entities that would be covered by the proposed amendments, the number of these companies that are small entities, and the average annual burden for each entity. Although the Commission certified under the RFA that the proposed amendments would not, if promulgated, have a significant impact on a substantial number of small entities, it included an IRFA in the NPRM and solicited public comment on it. None of the public comments received addressed the IRFA. The Commission continues to believe that the amendments it is adopting will not have a significant economic impact upon small entities, but nonetheless in the interest of caution is providing this FRFA.

³⁰ The Commission’s estimate of the number of small entities potentially affected by the rule amendments is set forth *infra*.

A. Need for, and Objectives of, the Rule Amendments

As outlined in Sections II through III above, the amendments to the Disclosure Rule and Pre-Sale Availability Rule are made in connection with Congress's passage of E-Warranty. E-Warranty allows, under certain circumstances, the posting of warranties on manufacturers' Web sites as an alternative method of complying with the Pre-Sale Availability Rule, and allows certain sellers to use an electronic method to supply pre-sale warranty terms.

The objective of the rule amendments is to provide warrantors an online method of complying with the Disclosure Rule and the Pre-Sale Availability Rule, allow certain sellers to use an electronic method to provide pre-sale warranty terms to consumers, and to define what "on the face" of an online warranty means in the Disclosure Rule.

B. Significant Issues Raised by Comments in Response to the Proposed Rule Amendments

The Commission's responses to issues raised by commenters are discussed above in Section III, including issues about (1) the interaction between a warrantor's duty to provide a hard copy of an online warranty upon request to either a seller or a prospective purchaser of a warranted product, and a seller's duty to furnish the warranty terms upon request prior to sale, and (2) whether sellers may satisfy their obligations under the Pre-Sale Availability Rule simply by referring consumers to an Internet website where the warrantor has posted warranty terms.

The Commission notes that the Chief Counsel for Advocacy of the Small Business Administration did not submit comments on the revisions.

C. Description and Estimate of the Number of Small Entities to Which the Rule Amendments Will Apply

The small entities to which the Disclosure Rule applies are warrantors. The small entities to which the Pre-Sale Availability Rule applies are warrantors and sellers of warranted consumer products costing more than fifteen dollars. The Disclosure Rule and the Pre-Sale Availability Rule currently define a “warrantor” as “any supplier or other person who gives or offers to give a written warranty.” The Pre-Sale Availability Rule defines a “seller” as “any person who sells or offers for sale for purposes other than resale or use in the ordinary course of the buyer’s business any consumer product.” The amendments add “manufacturers” to both Rules’ definitions of “warrantor.” Sellers include retailers, catalog and mail order sellers, and door-to-door sellers.

In 2014, the Commission estimated that there were 13,395 small manufacturers (warrantors) and 452,553 small retailers (sellers) impacted by the Rules.³¹

D. Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements

The amendments to the Disclosure Rule do not impose any new reporting, recordkeeping, or other compliance requirements (*e.g.*, new disclosures). Rather, the amendments merely explain how the existing “on the face of the warranty” requirement for disclosures applies to online and electronic warranty terms (*i.e.*, the required disclosures must be in close proximity to the warranty terms).

The Pre-Sale Availability Rule imposes disclosure obligations on sellers and warrantors of warranted consumer goods actually costing more than fifteen dollars.

³¹ See 79 FR 8185 (Feb. 11, 2014), which relates to the Pre-Sale Availability Rule, but should also apply to the Disclosure Rule.

Specifically, sellers must make warranty terms available prior to sale. Under the rule amendments, if the warrantor has chosen the online method, sellers may incur minimal additional costs if they need to request the warranty terms from the warrantor to provide them to consumers, but sellers will also have additional flexibility to make pre-sale warranty terms available to consumers electronically. Warrantors must either continue to provide sellers with warranty materials for sellers' use at the point of sale as they do under the current rule, or, under the revision, provide the address of the warrantor's Internet Web site where consumers can review and obtain warranty terms in the product manual or on the product or product packaging, and the warrantor's contact information for the consumer to obtain the warranty terms via a non-Internet method.

Neither the existing Pre-Sale Availability Rule nor the amendments require sellers or warrantors to retain more records than may be necessary to provide consumers the warranty terms. The small entities potentially covered by these amendments will include all such entities subject to the Rules, including suppliers, manufacturers and others who warrant consumer goods costing more than fifteen dollars and retailers, catalog and mail-order sellers, and door-to-door sellers who offer the warranted products. The professional skills necessary for compliance with the Rules as modified by the amendments would include (1) warrantors' office and administrative support staff to receive consumers' and sellers' requests for warranty terms using a non-Internet based method and (2) sellers' office and administrative support staff to request warranty terms for pre-sale availability to consumers for warranted goods where the warrantor has elected only the online method and the seller cannot or chooses not to display the warranty terms electronically.

E. Steps Taken by the Agency to Minimize the Significant Impact, if any, on Small Entities, Consistent with the Stated Objectives of Applicable Statute(s)

Commenters urged the Commission to adopt a rule that would allow sellers to comply with their obligations under the Pre-Sale Availability Rule simply by referring consumers to an Internet web site where the warrantor has posted warranty terms. In a recent rule review of the Pre-Sale Availability Rule, the Commission considered and declined to adopt similar suggestions by commenters that offline sellers be allowed to comply with the Rule by advising buyers of the availability of the warranty at a particular Web site.³² The Commission noted that, because the intent of the Rule is to make warranty information available at the point of sale, a seller could not comply with its Pre-Sale Availability Rule obligations simply by referring the consumer to a Web site where the warranty could be found.³³ Those same considerations still apply in the present rulemaking proceeding. The final rule amendments comport with Congress's desire to allow warrantors the option of providing warranty terms online, as long as warrantors offer a non-Internet based method for consumers to obtain the warranty terms, as well as with Congress's mandate that the online method not supplant the seller's duty to provide warranty terms at the point of sale.

Because the rule amendments provide an alternative means of compliance that is available to businesses of all sizes, it is not necessary to provide a specific small entity exemption.

The Commission believes the final rule amendments will be minimally burdensome for small businesses and that they comply with Congress's mandate to allow

³² 80 FR 42710, 42717 (July 20, 2015).

³³ *Id.*

warrantors to post warranty terms on an Internet Web site and certain sellers to employ a pre-sale electronic display option, while ensuring pre-sale availability of warranty terms at the point of sale.

V. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA),³⁴ federal agencies are generally required to seek Office of Management and Budget (OMB) approval for information collection requirements prior to implementation. Under the PRA, the Commission may not conduct or sponsor, and, notwithstanding any other provision of law, a person is not required to respond to an information collection, unless the information displays a valid control number assigned by OMB.

These amendments revise 16 CFR parts 701 and 702. The collection of information related to the Disclosure Rule has been previously reviewed and approved by OMB in accordance with the PRA under OMB Control Number 3084-0111. The collection of information related to the Pre-Sale Availability Rule has been previously reviewed and approved by OMB in accordance with the PRA under OMB Control Number 3084-0112.

As explained below, the amendments only slightly modify or add to information collection requirements that were previously approved by OMB. Under these amendments, a warrantor will be permitted, but not required, to use an online method for supplying warranty terms. The Commission does not believe that these amendments would impose any new or substantively revised collections of information as defined by the PRA. None of the public comments received addressed the PRA.

³⁴ 44 U.S.C. 3501-3520.

Under the most recent proposed clearance for the Pre-Sale Availability Rule, FTC staff estimated total annual hours burden to be 2,446,610. This figure represented a 20% reduction from the 2010 estimate based in large part on the growth of online sales and the online posting of warranty terms related to those sales. The most recent estimate included 2,315,608 hours for retailers and 131,002 hours for manufacturers. Staff estimated the total annual labor cost in 2014 to be \$51,379,000 (rounded to the nearest thousand).³⁵

In the most recently proposed clearance for the Pre-Sale Availability Rule, Commission staff also stated its belief that total annual capital or other non-labor costs are *de minimis* because the vast majority of sellers and warrantors already have developed systems to provide the information the rule requires. Compliance by sellers typically entails keeping warranties on file, in binders or otherwise, and posting an inexpensive sign indicating warranty availability. Warrantor compliance under the revisions entails providing sellers with a copy of the warranties together with the product or providing with the warranted good 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. 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 at the point of sale, prior to 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,

³⁵ See 79 FR 8185 (Feb. 11, 2014).

promptly and free of charge, in response to a seller's request. In addition, any burden on sellers will be offset by sellers having additional flexibility to make pre-sale warranty terms available to consumers electronically. Commission staff believes that, in light of the amendment, annual capital or other non-labor costs will remain *de minimis*.

List of Subjects

16 CFR part 701

Trade practices, Warranties.

16 CFR part 702

Trade practices, Warranties.

Authority and Issuance

For the reasons set forth in the preamble, the Commission amends 16 CFR part 701 as follows:

PART 701—DISCLOSURE OF WRITTEN CONSUMER PRODUCT WARRANTY TERMS AND CONDITIONS

- 1. The authority citation for this part continues to read as follows:

AUTHORITY: 15 U.S.C. 2302 and 2309.

- 2. Amend § 701.1 by redesignating paragraphs (g) through (i) as paragraphs (h) through (j), adding new paragraph (g), revising paragraph (h) to read as follows, and revising redesignated paragraph (j) to read as follows:

§ 701.1 Definitions

(g)

Manufacturer

means any person engaged in the business of making a consumer product.

(h)

Warrantor

means any supplier, manufacturer, or other person who gives or offers to give a written warranty.

(j)

On the face of the warranty

means:

(1) Where the warranty is a single sheet with printing on both sides of the sheet or where the warranty is comprised of more than one sheet, the page on which the warranty text begins;

(2) Where the warranty is included as part of a larger document, such as a use and care manual, the page in such document on which the warranty text begins;

(3) Where the warranty is on an Internet Web site or displayed electronically, in close proximity to the location where the warranty text begins.

PART 702—PRE-SALE AVAILABILITY OF WRITTEN WARRANTY TERMS

- 3. The authority for this part continues to read as follows:

AUTHORITY: 15 U.S.C. 2302 and 2309.

- 4. Amend § 702.1 by revising paragraph (d) and adding paragraph (g) to read as follows:

§ 702.1 Definitions

(d)

Warrantor

means any supplier, manufacturer, or other person who gives or offers to give a written warranty.

(g)

Manufacturer

means any person engaged in the business of making a consumer product.

■ 5. Revise § 702.3 to read as follows:

§ 702.3

Pre-sale availability of written warranty terms.

The following requirements apply to consumer products actually costing the consumer more than \$15.00:

(a)

Duties of seller.

Except as provided in paragraphs (c) through (d) of this section, the seller of a consumer product with a written warranty shall make a text of the warranty readily available for examination by the prospective buyer by:

(1) Displaying it in close proximity to the warranted product (including through electronic or other means, if the warrantor has elected the option described in paragraph (b)(2) of this section), or

(2) Furnishing it upon request prior to sale (including through electronic or other means, if the warrantor has elected the option described in paragraph (b)(2) of this

section) and placing signs reasonably calculated to elicit the prospective buyer's attention in prominent locations in the store or department advising such prospective buyers of the availability of warranties upon request.

(b)

Duties of the warrantor.

(1) A warrantor who gives a written warranty warranting to a consumer a consumer product actually costing the consumer more than \$15.00 shall:

(i) Provide sellers with warranty materials necessary for such sellers to comply with the requirements set forth in paragraph (a) of this section, by the use of one or more of the following means:

(A) Providing a copy of the written warranty with every warranted consumer product;

(B) Providing a tag, sign, sticker, label, decal or other attachment to the product, which contains the full text of the written warranty;

(C) Printing on or otherwise attaching the text of the written warranty to the package, carton, or other container if that package, carton or other container is normally used for display purposes. If the warrantor elects this option a copy of the written warranty must also accompany the warranted product; or

(D) Providing a notice, sign, or poster disclosing the text of a consumer product warranty. If the warrantor elects this option, a copy of the written warranty must also accompany each warranted product.

(ii) Provide catalog, mail order, and door-to-door sellers with copies of written warranties necessary for such sellers to comply with the requirements set forth in paragraphs (c) and (d) of this section.

(2) As an alternative method of compliance with paragraph (b)(1) of this section, a warrantor may provide the warranty terms in an accessible digital format on the warrantor's Internet Web site. If the warrantor elects this option, the warrantor must:

(i) provide information to the consumer that will inform the consumer how to obtain warranty terms by indicating, in a clear and conspicuous manner, in the product manual or on the product or product packaging: (A) the Internet Web site of the warrantor where such warranty terms can be reviewed, and (B) the phone number, the postal mailing address of the warrantor, or other reasonable non-Internet based means for the consumer to request a copy of the warranty terms;

(ii) provide a hard copy of the warranty terms promptly and free of charge upon request by a consumer or seller made pursuant to paragraph (b)(2)(i)(B) of this section;

(iii) ensure that warranty terms are posted in a clear and conspicuous manner and remain accessible to the consumer on the Internet Web site of the warrantor; and

(iv) provide information with the consumer product or on the Internet Web site of the warrantor sufficient to allow the consumer to readily identify on such Internet Web sites the warranty terms that apply to the specific warranted product.

(3) Paragraph (a)(1) of this section shall not be applicable with respect to statements of general policy on emblems, seals or insignias issued by third parties

promising replacement or refund if a consumer product is defective, which statements contain no representation or assurance of the quality or performance characteristics of the product; provided that

(i) The disclosures required by § 701.3(a) (1) through (9) of this part are published by such third parties in each issue of a publication with a general circulation, and

(ii) Such disclosures are provided free of charge to any consumer upon written request.

(c)

Catalog and mail order sales.

(1) For purposes of this paragraph:

(i)

Catalog or mail order sales means any offer for sale, or any solicitation for an order for a consumer product with a written warranty, which includes instructions for ordering the product which do not require a personal visit to the seller's establishment.

(ii)

Close conjunction means on the page containing the description of the warranted product, or on the page facing that page.

(2) Any seller who offers for sale to consumers consumer products with written warranties by means of a catalog or mail order solicitation shall:

(i) Clearly and conspicuously disclose in such catalog or solicitation in close conjunction to the description of the warranted product, or in an information

section of the catalog or solicitation clearly referenced, including a page number, in close conjunction to the description of the warranted product, either:

(A) The full text of the written warranty; or

(B) The address of the Internet Web site of the warrantor where such warranty terms can be reviewed (if such Internet Web site exists), as well as that the written warranty can be obtained free upon specific request, and the address or phone number where such warranty can be requested. If this option is elected, such seller shall promptly provide a copy of any written warranty requested by the consumer (and may provide such copy through electronic or other means, if the warrantor has elected the option described in paragraph (b)(2) of this section).

(d)

Door-to-door sales.

(1) For purposes of this paragraph:

(i)

Door-to-door sale

means a sale of consumer products in which the seller or his representative personally solicits the sale, including those in response to or following an invitation by a buyer, and the buyer's agreement to offer to purchase is made at a place other than the place of business of the seller.

(ii)

Prospective buyer

means an individual solicited by a door-to-door seller to buy a consumer product who indicates sufficient interest in that consumer product or maintains sufficient contact with the seller for the seller reasonably to conclude that the person solicited is considering purchasing the product.

(2) Any seller who offers for sale to consumers consumer products with written warranties by means of door-to-door sales shall, prior to the consummation of the sale, disclose the fact that the sales representative has copies of the warranties for the warranted products being offered for sale, which may be inspected by the prospective buyer at any time during the sales presentation. Such disclosure shall be made orally and shall be included in any written materials shown to prospective buyers. If the warrantor has elected the option described in paragraph (b)(2) of this section, the sales representative may provide a copy of the warranty through electronic or other means.

By direction of the Commission.

Donald S. Clark,
Secretary.