

Via Electronic Filing

June 17, 2016

Donald S. Clark
Office of the Secretary
Federal Trade Commission
600 Pennsylvania Avenue NW
Suite CC-5610
Washington, DC 20580

RE: Matter No. P044403 – Amending Warranty Rules Pursuant to the E-Warranty Act

Dear Secretary Clark and Commissioners,

The Retail Industry Leaders Association (RILA) respectfully submits the following comments to the U.S. Federal Trade Commission (FTC or Commission), regarding its proposed amendments to the Rule Governing Disclosure of Written Consumer Product Warranty Terms and Conditions (Disclosure Rule) and Rule Governing Pre-Sale Availability of Written Warranty Terms (Pre-Sale Availability Rule).¹ RILA appreciates the opportunity to provide the perspective of its members regarding these amendments and hopes that the Commission and agency staff carefully consider RILA's views while developing the final amendments to these rules.

RILA promotes consumer choice and economic freedom through public policy and industry operational excellence. Our members include the largest and fastest growing companies in the retail industry – retailers, product manufacturers, and service providers – which together account for more than \$1.5 trillion in annual sales. RILA members provide millions of jobs and operate more than 100,000 stores, manufacturing facilities, and distribution centers domestically and abroad.

RILA recognizes the Commission's leadership in the area of consumer protection and supports the FTC's primary mission of promoting fair and transparent business practices, encouraging innovation, and, through vigorous competition, enhancing consumer choice in the marketplace. RILA further supports the FTC's efforts to accomplish its statutory obligations without unduly burdening legitimate business activities.

Overall, RILA supports the Commission's efforts to implement the provisions of the E-Warranty Act of 2015² through the proposed amendments to the Disclosure Rule and Pre-Sale Availability Rule.³ The proposed amendments provide practical guidelines that will enhance consumer accessibility of warranty provisions while also increasing operational flexibility for retailers to comply with pre-sale availability warranty regulations. However, several sections of the proposed amendments are unclear and in need of clarification and further elaboration. RILA comments below highlight these sections and offer suggestions for improvement.

¹ 16 C.F.R. §§ 701, 702

² E-Warranty Act, Public Law 114-51 (Sept. 24, 2015)

³ 81 Fed. Reg. 32680

Proposed Amendments to 16 C.F.R. § 701, Rule Governing Disclosure of Written Consumer Product Warranty Terms and Conditions

- RILA members support the Commission’s continued exclusion of retailers and sellers from the definition of warrantor and obligations under the current Disclosure Rule.
- The proposed amendments add a new definition of “manufacturer” within the definition section of Disclosure Rule. However, unlike the proposed changes to 16. C.F.R. § 702, the Pre-Sale Availability Rule, the proposed amendments to §701.1 of the Disclosure Rule do not add “manufacturer” to the list of entities included within the definition of “warrantor.” For purposes of clarity and consistency, RILA suggests that the word “manufacturer” be added to the definition of “warrantor” under § 701.1.
- RILA supports the proposed amendments to § 701.1(j), which will allow warrantors to use internet sites to disseminate warranty information to consumers while at the same time ensuring that internet warranty terms meet the same clarity and transparency requirements in terms of their display and format as written warranty terms.

Proposed Amendments to 16 C.F.R. § 702, Rule Governing Pre-Sale Availability of Written Warranty Terms

- RILA members appreciate and welcome the increased flexibility and options of method of disclosure provided by the proposed amendments for sellers and warrantors for pre-sale warranty disclosures. The ability to provide warranty terms by electronic means will increase sellers’ options as to methods of providing necessary information to consumers, thereby effectuating informed consumer choice, while also significantly reducing costs related to regulatory compliance.
- In addition, RILA supports the proposed amendments’ continued requirement for warrantors to provide sellers with non-Internet-based warranty materials at no costs to retailers and consumers if necessary.
- However, the proposed amendments are not fully clear regarding the obligations of sellers to make pre-sale warranty information available in a situation where the warrantor has opted to use its internet site for purposes of disclosure of warranty information. The obligation to provide warranty information to consumers lies with the warrantor. Sellers are merely conduits for conveying this information to consumers. Under the language of the proposed amendments, it is not clear whether sellers would have any additional obligations beyond providing the warrantors’ warranty website internet address information to consumers as part of the sellers’ obligations to provide pre-sale warranty information. RILA recommends that the Commission clarify the language in the final rule to make it clear that in those situations where a warrantor has opted for internet warranty disclosures, a seller is able to meet its pre-sale availability obligations by providing consumers with the warrantor’s internet address for the warranty information.
- In addition, the proposed amendments only address the pre-sale availability obligations of brick and mortar, mail-order, catalog and door-to-door “sellers.” The rules do not detail or clarify the obligations and responsibilities of Internet-only and omnichannel retailers. The coverage of only brick and mortar, mail-order, catalog and door-to-door “sellers” was appropriate when the Magnuson-Moss Warranty Disclosure Act rules were first promulgated in 1975, but does not reflect today’s ever-increasing move toward a

seamless omnichannel retail experience for consumers. RILA members recommend that the FTC include within the rule further clarification regarding the responsibilities of Internet-only and omnichannel retailers, akin to proposed provisions regarding brick and mortar, mail-order, catalog, and door-to-door “sellers.”

Conclusion

RILA appreciates the Commission’s consideration of our comments on the proposed amendments. RILA and its members share the Commission’s commitment to consumer protection, increasing and enhancing consumer choice, and maintaining a fair and vigorously competitive marketplace. We look forward to continuing to work collaboratively with the agency to advance our shared goals.

Sincerely,


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