



June 17, 2016

Submitted Electronically

Office of the Secretary
Federal Trade Commission
Suite CC-5610 (Annex E)
600 Pennsylvania Avenue, NW
Washington, DC 20580

Submitted electronically via <https://ftcpublishcommentworks.con.ftc//E-WarrantyAmendments>

Re: Amending Warranty Rules Pursuant to the E-Warranty Act, Matter No. P044403.

The National Automobile Dealers Association (“NADA”)¹ submits the following comments in response to the notice of proposed rulemaking; request for public comment (“NPRM”) that the Federal Trade Commission (“FTC” or “Commission”) published in the *Federal Register* in the above captioned matter.²

In the NPRM, the FTC is addressing recent legislative changes to the Magnuson-Moss Warranty Act (“Mag-Moss”) by “giv[ing] effect to the E-Warranty Act, which allows for the use of Internet Web sites to disseminate warranty terms to consumers in some circumstances.”³ There are two relevant rules issued pursuant to Mag-Moss which will be affected by the proposed changes in the NPRM: (1) the “Disclosure Rule,” and; (2) the “Pre-Sale Availability Rule,” with the bulk of the changes affecting the Pre-Sale Availability Rule.

Automobile dealers sell consumer products that are subject to the Disclosure and Pre-Sale Availability Rules. Automobile warranties are an important part of a vehicle purchase and ready availability of warranty information is important to purchasers and prospective purchasers of automobiles. Dealers are reliant on their manufacturer partners to provide adequate and accurate warranty information so that they can provide that information to consumers.

NADA fully supports the concept behind the NPRM and the E-Warranty Act. The ability to provide warranty information electronically increases efficiency, decreases costs, and is in line with the expectation of the overwhelming majority of consumers. The NPRM, however, as proposed, raises certain questions that we would ask the Commission to consider and clarify before finalizing the rulemaking.

¹ NADA represents over 16,000 franchised dealers in all 50 states who (i) sell new and used cars and trucks; (ii) extend vehicle financing and leases to consumers that routinely are assigned to third-party finance sources; and (iii) engage in service, repair, and parts sales. Our members collectively employ over 1 million people nationwide. Most of our members are small businesses as defined by the Small Business Administration.

² 81 Fed. Reg. 32,680 – 32,686 (May 24, 2016).

³ *Id.* at 32680.



Disclosure Rule

The NPRM proposes to change 16 CFR § 701.1 by adding a definition of “Manufacturer,” and by adding to subsection (j), the definition of “*On the face of the warranty*” an additional subsection (3), stating:

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

We note that an ambiguity remains in the NPRM due to the requirement in §701.3(a) which requires “[a]ny warrantor warranting to a consumer by means of a written warranty a consumer product actually costing the consumer more than \$15.00” to disclose certain information “clearly and conspicuously [] *in a single document . . .*” To avoid any confusion about what this requirement means with respect to electronically-displayed warranty information, we would suggest that the Commission consider defining “document” or “single document” so that it is clear how a warrantor can provide the required information electronically and in a “single document.”⁴

Pre-Sale Availability Rule

The proposed changes to §702.3 raise several additional questions.

First, there is little clarity as to how a warrantor’s compliance with the proposed §702.3(b)(2) actually leads to the availability of warranty information *prior to* the sale. Indeed, while (b)(2) purports to apply to the “pre-sale” availability of written warranty terms, some of the proposed language suggests otherwise. For example, §702.3(b)(2)(iv) states:

“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 product purchased by the consumer.”

That language does not appear to apply to the pre-sale availability of warranty materials. This language appears to be intended to ensure that consumers are able to determine the appropriate warranty for the item purchased. That same information would of course be relevant to prospective purchasers as well.⁵

⁴ Presumably, if a warrantor includes all of the information required under §701.3(a) in the same electronic location, or at the same Web site URL, that would be considered a “single document” for purposes of §701.3(a).

⁵ Language aside, it is unclear how a warrantor’s display of the required warranty materials and terms on a website actually results in the warranty information being available to the consumer prior to the sale. That is perhaps because of the way that subsection (b)(2) is tied to the seller duties in subsection (a). Indeed, the majority of the text in section (b)(2) may be better placed into a new subsection under (b)(1)(i), or subsection “(E).” The website



As proposed, the changes would also create a number of questions and several potential difficulties for sellers who must meet their duties under §702.3(a), which currently requires the seller to make the text of the warranty available to prospective buyers by either displaying the text in close proximity to the warranted product, or furnishing it upon request prior to sale (along with the display of a sign advising prospective buyers of the availability).

That is because the NPRM proposes to allow sellers to meet either of these obligations “*through electronic or other means, if the warrantor has elected the option described in paragraph (b)(2) of this section.*” How a seller can actually meet that obligation, however, remains unclear. For example, with respect to §702.3(a), what exactly is the “*it*” that must be displayed in close proximity to the warranted product if the warrantor selects the (b)(2) option. Presumably it is the text of the warranty, but if the warrantor has provided that on a Web site, does the seller comply by simply displaying the website where consumers can find the warranty text? Does this mean that for a car dealer, for example, to meet the requirements of §702.3(a)(1), they must physically display a document that contains the warrantor’s Web site URL in close proximity to the vehicle? Is it enough that the warrantor has (pursuant to §702.3(b)(2)(i)) provided the information required (the warranty Web site, the phone number and physical address, etc.) in the physical owner’s manual of the new vehicle?⁶ In other words, does the physical presence of the owner’s manual in the vehicle meet the obligation under 702.3(a)?

If a seller selects (a)(2) (furnishing it upon request, and prominently displayed signs notifying consumers that the warranty is available upon request), what must that sign disclose? For example, can the seller meet its obligation with a sign that says something like:

“*All new vehicle warranty information is available at www.automanufacturer.com/warranty*”

or must the sign simply note that the warranty is available upon request? Must the dealer then actually make a physical copy available upon request? May a dealer provide a physical copy upon request, even if the warrantor (manufacturer) has elected the (b)(2) option, or must the dealer simply provide the manufacturer website? What does the requirement under (b)(2)(ii) that the warrantor “provide a hard copy of the warranty terms promptly and free of charge” mean? Does that mean that the warrantor must send (electronically or otherwise) the warranty to the consumer upon request, or does it mean that the seller must have a hard copy available to provide upon request? This latter interpretation appears unlikely as the same duty applies to

display of the warranty is arguably not an alternative to compliance with paragraph (b)(1), it is perhaps more logically included as one of the means by which a warrantor could provide the materials needed for the seller to comply with its obligations under subsection (a), and therefore may be better placed in that portion of the proposed regulation.

⁶ Proposed §702.3(b)(2)(i) states that the warrantor must: “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 . . .”



requests for hard copies from the seller. However, how does that affect the seller's duty to "furnish[] it upon request" in (a)(2)?

Section 703.3(b)(2) also raises difficulties for sellers because a warrantor who chooses to comply with its duties under §702.3(b) by electing the option under (b)(2) has duties only to the consumer, not the seller.⁷ Under §702.3(b)(1), the warrantor must "provide sellers with warranty materials necessary for such sellers to comply with the requirements" of §702.3(a). That same obligation does not appear in (b)(2), which as an alternate to (b)(1) only requires the warrantor to meet certain obligations to the *consumer*, not the seller.⁸ Sellers must be provided the information and materials necessary to meet their obligations in §702.3(a), and therefore, either the language in §702.3(b)(1)(i) must also be included in (b)(2), or other language must be included that would place that obligation upon the warrantor.

Automobile Dealer Warranties – Buyers Guide

Lastly, we would ask the Commission to clarify the effect of the NPRM and the E-Warranty Act on the Buyers Guide. Automobile dealers often offer their own warranties on vehicles they sell. In addition, dealers are required to post a Buyers Guide on every used vehicle they offer for sale pursuant to the Used Car Rule. The Buyers Guide contains language that states: "*Ask the dealer for a copy of the warranty document for a full explanation of warranty coverage, exclusions, and the dealer's repair obligations.*"⁹ Dealers must use the appropriate version of the Buyers Guide as outlined by the Commission, and generally may not alter or amend the language.¹⁰

Given the scope of the E-Warranty Act, and the fact that in certain cases dealers act as warrantors to the vehicles they sell, presumably dealers could opt to meet their own warranty disclosure obligations under §702 by posting the required warranty information on their own

⁷ There is a requirement in §702.3(b)(2)(ii) that the warrantor must provide a hard copy to the seller, but only upon request from the seller "made pursuant to paragraph (b)(2)(i)(B)."

⁸ Specifically, (b)(2) requires the warrantor to:

- (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 product purchased by the consumer.

⁹ See https://www.ftc.gov/system/files/documents/plain-language/CFR_Buyers_Guides_English.pdf

¹⁰ See <https://www.ftc.gov/tips-advice/business-center/guidance/dealers-guide-used-car-rule> Stating, for example that "[t]he disclosure must be stated in the exact language quoted above."



Web site.¹¹ We would ask the Commission to provide guidance to dealers as to how they could provide a Buyers Guide that refers to a Web site or other accessible digital format. For example, in lieu of the language outlined above, whether the Buyers Guide could state: *“For a copy of the dealer’s warranty, including an explanation of warranty coverage, exclusions, and the dealer’s repair obligations, go to [insert website or digital location].”*

We appreciate the opportunity to comment on this matter. Please contact me if we can provide further information that would be useful to the Commission.

Sincerely,

Bradley T Miller
Director, Legal and Regulatory Affairs

¹¹ Id. (“If you offer a written warranty, or if the manufacturer's warranty still applies, you also must comply with the Magnuson-Moss Warranty Act and other FTC Rules, including the “Warranty Disclosure Rule.”)