



BILLING CODE: 6750-01-S

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Federal Trade Commission (FTC or Commission).

ACTION: Notice.

SUMMARY: The FTC plans to ask the Office of Management and Budget (OMB) to extend for an additional three years the current Paperwork Reduction Act (PRA) clearance for information collection requirements contained in the FTC's Rule Governing Pre-sale Availability of Written Warranty Terms. The current clearance expires on April 30, 2020.

DATES: Comments must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Interested parties may file a comment online or on paper by following the instructions in the Request for Comments part of the SUPPLEMENTARY INFORMATION section below. Write "Pre-sale Availability Rule; PRA Comment: FTC File No. P072108" on your comment, and file your comment online at <https://www.regulations.gov> by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Christine M. Todaro, Attorney, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580, (202) 326-3711.

SUPPLEMENTARY INFORMATION:

Proposed Information Collection Activities

Under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501–3520, federal agencies must get OMB approval for each collection of information they conduct, sponsor, or require.

“Collection of information” means agency requests or requirements to submit reports, keep records, or provide information to a third party. 44 USC 3502(3); 5 CFR 1320.3(c). As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the FTC’s existing PRA clearance for the information collection requirements associated with the Commission’s Rule Governing Pre-sale Availability of Written Warranty Terms, (the Pre-sale Availability Rule), 16 CFR 702 (OMB Control Number 3084-0112).

The Pre-sale Availability Rule, 16 C.F.R. 702, is one of three rules¹ that the FTC issued as required by the Magnuson Moss Warranty Act, 15 U.S.C. 2301 et seq. (Warranty Act or Act).² The Pre-sale Availability Rule requires sellers and warrantors to make the text of any written warranty on a consumer product costing more than \$15 available to the consumer before sale. Among other things, the Rule requires sellers to make the text of the warranty readily available either by (1) displaying it in close proximity to the product or (2) furnishing it on request and posting signs in prominent locations advising consumers that the warranty is available. The Rule requires warrantors to provide materials to enable sellers to comply with the Rule’s requirements and also sets out the methods by which warranty information can be made available before the sale if the product is sold through catalogs, mail order, or door to door sales. In addition, in

¹ The other two rules relate to the information that must appear in a written warranty on a consumer product costing more than \$15 if a warranty is offered and minimum standards for informal dispute settlement mechanisms that are incorporated into a written warranty.

² 40 FR 60168 (Dec. 31, 1975).

2016, the FTC revised the 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 terms and satisfy certain other conditions.³ The revised Rule also allows certain sellers to display warranty terms pre-sale in an electronic format if the warrantor has used the online method of disseminating warranty terms.

Burden Statement

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.⁴ 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.⁵ 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,

³ 81 FR 63664-70 (Sept. 15, 2016).

⁴ The 2014 estimate was 1,028 large manufacturers and 30,299 small manufacturers subject to the Rule.

⁵ The 2014 estimate was 7,745 large retailers and 508,575 small retailers subject to the Rule.

which became effective on October 17, 2016.⁶ 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 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

⁶ See footnote 3.

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).⁷

Total annual capital or other non labor costs: De minimis.

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 electronically, 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

⁷ The wage rates are derived from occupational data found in the Bureau of Labor Statistics, Occupational Employment and Wages (May 2018).

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.

Request for Comments

Pursuant to Section 3506(c)(2)(A) of the PRA, the FTC invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond. All comments must be received on or before [insert date 60 days after date of publication in the FEDERAL REGISTER].

You can file a comment online or on paper. For the FTC to consider your comment, we must receive it on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Write "Pre-sale Availability Rule; PRA Comment: FTC File No. P072108" on your comment. Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online, or to send them to the Commission by courier or overnight service. To make sure that the Commission considers your online comment, you must file it through the <https://www.regulations.gov> website by following the instructions on the web-based form. Your comment -- including your name and your state -- will be placed on the public record of this proceeding, including the <https://www.regulations.gov> website. As a matter of discretion, the

Commission tries to remove individuals' home contact information from comments before placing them on www.regulations.gov.

If you file your comment on paper, write "Pre-sale Availability Rule; PRA Comment: FTC File No. P072108" on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the publicly accessible FTC Website at www.regulations.gov, you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any "trade secret or any commercial or financial information which . . . is privileged or confidential" – as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2) – including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled "Confidential," and must comply with FTC Rule 4.9(c).

In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record.⁸ Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted publicly at www.regulations.gov, we cannot redact or remove your comment unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at <https://www.ftc.gov/site-information/privacy-policy>.

Heather Hipsley,
Deputy General Counsel.

⁸ See FTC Rule 4.9(c).

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