December 15, 1986, or prior to the accumulation of 19,000 landings, whichever occurs later, perform visual or X-ray inspections for cracking of the body frames and adjacent skin from body station 140 through 520 in accordance with Boeing Service Bulletin 747–53A2265, Revision 3, dated July 29, 1986, or later FAA-approved revisions.

I. If X-ray results give indications of cracking, visually inspect the structure to determine the full extent of frame cracking in accordance with the following schedule:

1. Prior to further flight for all findings that indicate possible skin cracking; cracks exceeding the limits of Boeing Service Bulletin 747–53A2265, Revision 3, dated July 29, 1986, in one or more frames; or cracking in two or more adjacent frames.

2. Within 150 landings for all findings that indicate partial severance of one frame not exceeding the limits of Boeing Service Bulletin 747–53A2265, Revision 3, dated July 29, 1986, provided no adjacent skin cracking or adjacent frame cracking is found.

J. If any cracking is found by visual inspection, repair in accordance with FAA-approved procedures prior to further flight, unless the conditions set forth in Paragraph H., Section III, of Boeing Service Bulletin 747–53A2265, Revision 3, dated July 29, 1986, or later FAA-approved revision, are met. Visually inspect adjacent structures in accordance with Section III, of the service bulletin and repair, if necessary.

O. The initial upper deck right side inspection from body station 340 to 400 need be accomplished only if (1) any cracking is found, or if any cracking was previously repaired, on upper deck left side from body station 340 to 400, excluding any body station 360 frame web cracking at left stringer 3 adjacent to the crew escape hatch lower forward corner; or (2) if left side structure was previously replaced or modified.

R. Installation of new and improved body frame structure in accordance with FAA-approved procedures or Boeing Service Bulletin 747–53–2272, dated January 12, 1987, or later FAA-approved revisions, is considered terminating action for the repetitive inspections required by this AD for the structure replaced and other adjacent structure (considered to be stringers, clips, and skin associated with the frame).

This amendment becomes effective April 16, 1987.

Issued in Seattle, Washington, on March 5, 1987.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87–5216 Filed 3–11–87; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 86–NM–26–AD; Amdt. 39–5411]

Airworthiness Directives; Sperry SPZ–7000 Digital Automatic Flight Control System; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction of final rule.

SUMMARY: This action corrects an error in Airworthiness Directive (AD) 85–07–03R1, Amendment 39–5411 (51 FR 32198; September 10, 1986), applicable to the Sperry SPZ–7000 Digital Automatic Flight Control System installed in any helicopter. The amendment, as published, contained an error in reference to the affected computer part numbers.

EFFECTIVE DATE: March 17, 1987.

ADDRESSES: The applicable service information may be obtained from Sperry Corporation, Aerospace and Marine Group, P.O. Box 29000, Phoenix, Arizona 85038. This information may be examined at the Federal Aviation Administration (FAA), Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Western Aircraft Certification Office, 15000 Aviation Boulevard, Hawthorne, California.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Thompson, Aerospace Engineer, FAA, Northwest Mountain Region, Western Aircraft Certification Office, ANM–173W, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009–2007; telephone (213) 297–1375.

SUPPLEMENTARY INFORMATION: On August 27, 1986, the FAA issued AD 85–07–03R1, Amendment 39–5411 (51 FR 32198; September 10, 1986), which provided optional terminating action for the operational restrictions on the Sperry SPZ 7000 Digital Automatic Flight Control System (DAFCS) in S.N.I.A.S. Model AS–365N helicopters. The terminating action is contingent upon the installation of the FZ–700 computer, part number 7003183–901, with modification "F." Subsequent to issuance of the AD, the FAA confirmed that the FZ–700 computer part numbers "7003138–901" and "7003138–902," as listed in paragraph B. of the AD, are incorrect. The correct part numbers are "7003183–901" and "7003183–902." Therefore, action is taken herein to make these corrections.

Since this action merely corrects an editorial error, it imposes no additional burden on any person. Notice and procedures hereon are unnecessary and contrary to the public interest, and good cause exists for making this correction effective in less than 30 days.

The FAA has determined that this document involves an action that only corrects an editorial error and does not impose any additional burden on any person. This action is, therefore, not major under Executive Order 12291 and not significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Because its anticipated impact is so minimal, it does not warrant preparation of a regulatory evaluation. For these reasons, I certify that it will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Correction

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration corrects § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a); 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.89.

§ 39.13 [Amended]

2. By correcting AD 85–07–03R1, Amendment 39–5411 (51 FR 32198; September 10, 1986), FR Document 86–19862, as follows:

In paragraph B., change the FZ–700 computer part numbers to "7003183–902" and "7003183–901," respectively.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Sperry Corporation, Aerospace and Marine Group, P.O. Box 29000, Phoenix, Arizona 85038. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Western Aircraft Certification Office, 15000 Aviation Boulevard, Hawthorne, California.

This action corrects Amendment 39–5411 (51 FR 32198; September 10, 1986).

This correction becomes effective March 17, 1987.

Issued in Seattle, Washington, on March 5, 1987.

Wayne J. Barlow

Director, Northwest Mountain Region.

[FR Doc. 87–5218 Filed 3–11–87; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 702

Pre-Sale Availability of Written Warranty Terms Rule

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Commission has amended the Pre-Sale Availability of Written Warranty Terms Rule ("Rule 702"), 16 CFR Part 702. The Rule, as presently written, specifies four methods that retailers may use to make warranties available to consumers prior to purchase. The Rule also governs duties of manufacturers in providing sellers with warranty materials.

The Commission has amended Rule 702 to omit specified retailer compliance options. In place of these specified options, the amended Rule 702 provides retailers with a choice of displaying the warranty text near the product or furnishing the warranty text and posting signs reasonably calculated to inform consumers that warranties are available upon request. The requirements of Rule 702's other provisions have been retained. The text of Rule 702 has been modified in minor respects to achieve consistency with the new standard.

The amendments of Rule 702 are premised upon public comments and survey research. Comments were received pursuant to the Commission's Notice of Proposed Rulemaking published May 1, 1985, 50 FR 18495. Surveys were conducted in 1981 and 1983 to measure the impact of Rule 702 on regulated industries. In addition, a Warranty Evaluation Study was conducted in 1982 to measure the impact of Rule 702 on consumers.

This Notice sets forth and explains the amendments to Rule 702.

EFFECTIVE DATE: April 13, 1987.

FOR FURTHER INFORMATION CONTACT: Carole I. Danielson, Research Analyst, Division of Marketing Practices, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580 (202) 326–3115.

SUPPLEMENTARY INFORMATION: Rule 702 was submitted to the Office of Management and Budget for review under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* In 1984, the rule was approved by OMB and assigned Control No. 3084–0056. The Amendments made by this Notice were approved by OMB, under the same control number. This approval will expire April 30, 1989.

The remainder of this announcement is divided into five sections. Section A describes the existing Rule 702 and the rationale for the amendments. Section B summarizes the comments received in response to the May 1, 1985 Federal Register Notice. Section C discusses the impact of Rule 702 on small businesses. Section D explains the amendments, and Section E sets forth the text of the amended Rule 702.

Section A—The Existing Rule 702/ Rationale for Amendment

The Magnuson-Moss Warranty Act, 15 U.S.C. 2301 *et seq.* directs the FTC to establish rules requiring that the terms of the written warranties for consumer products be made available to consumers prior to purchase. 15 U.S.C. 2302(b)(1)(A). In 1975, the FTC promulgated the Pre-Sale Availability Rule, 16 CFR Part 702, which provides retailers with four permissible methods for making warranties available prior to sale:[1] (1) Displaying the text of the warranty on or "in close conjunction to" the product; (2) maintaining a copy of the warranty in a binder and either displaying the binder in a readily accessible area or posting a sign advising consumers of the availability of warranties for examination prior to sale; (3) displaying the warranty text on the package of the warranted product; or (4) posting a notice disclosing the warranty text near the product.

The Commission has amended Rule 702 to omit the specified retailer compliance options. In place of these specified options, the amended Rule 702 provides retailers with a choice of displaying the warranty text near the product or furnishing the warranty text for examination to any consumer upon request and posting signs informing consumers that warranties are available upon request.

Evidence gathered to date supports an amendment to Rule 702 which allows retailers more flexibility in determining the form of pre-sale warranty disclosure. First, the evidence shows that retailers often supply consumers with the warranty information that the Magnuson-Moss Warranty Act seeks to promote. Staff's interviews with industry members and an investigation using test shoppers indicated that although many retailers, especially small ones, are unaware of the Rule and not in technical compliance, warranties are generally made available prior to purchase to consumers who seek them, if they persist.[2] This finding is consistent with evidence from a consumer survey,[3] which shows that only a small minority of consumers who asked were denied copies of warranty texts.[4] This runs contrary to suggestions that warranty information would not be made available to consumers, absent the current requirements of the Rule. Hence, detailed regulatory requirements are unnecessary.

Second, the specific methods of compliance set out in the existing Rule, which dictate the manner in which retailers make warranties available to consumers, do not serve consumers well. For practical reasons, most retailers employ the binder method of disclosure specified in the existing Rule.[5] The evidence demonstrates, however, that consumers rarely consult warranty binders. In addition, the Warranty Evaluation Survey suggests that most consumers believe that warranties are displayed with or on warranted products.[6]

Third, the upon-request standard will benefit consumers by encouraging retailers to provide warranty information in more useful ways that may be discouraged by the language of the present rule. The amended standard will encourage creative approaches to warranty disclosure which should increase the level of warranty information provided to consumers. For example, under the revised standard, retailers may present warranty information together with other product information. The existing rule may have discouraged this approach because it requires that binders containing warranty information be labeled "Warranties." Moreover, to the extent that differences exist in the importance of warranty information for different

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[1] Other provisions of Rule 702, governing the duties of manufacturers and others, have not been amended.

[2] *See* Notice of Proposed Rulemaking, 50 FR 18495, 18496–18497 (May 1, 1985).

[3] *See* "Warranty Rules Consumer Follow-up: Evaluation Study Final Report," (Warranty Evaluation Study) which was conducted by an independent contractor, Market Facts, to measure consumer knowledge and attitudes toward warranties. The Study, completed in 1984, was placed on the public record in this proceeding. *See* especially discussion of consumer experience with warranty availability, at 43–49.

[4] Only 3.6 percent of respondents stated that the warranty was not available prior to purchase, and of these only a small number reported that they were unable to obtain a warranty when they actually asked for it. Another 8.2 percent did not know whether the warranty was available, and 17.1 percent did not look for it. Warranty Evaluation Study, at 44, Table 3–17.

[5] Many products are too small to be packaged in a box on which the warranty is printed or to which the warranty is attached. Additionally, many manufacturers do not imprint their warranties on the package of a product because they use the space for advertising or other purposes. Floor signs containing warranty terms are seldom used.

[6] *See* Warranty Evaluation Study, at 47, Table 3.18.

products, the amended Rule will allow consumer preference to dictate the optimal form of warranty disclosure on a product-by-product basis. The Commission anticipates that methods of disclosure will vary among different products and among different types of stores. Thus, warranties for major appliances might be displayed inside floor samples of the appliances while warranties for smaller products, such as watches, might be retained by the merchant and shown upon request.

Finally, the amended Rule will alleviate must of the burden imposed by the current Rule. The method of compliance used most often by large retailers, keeping warranties in binders, is time-consuming and imposes costly paperwork burdens. Staff estimates that the amendments will result in a saving of more than 3.5 million work-hours per year for retailers.

Section B—Summary of Comments

A notice of Proposed Rulemaking soliciting public comment on revisions to Rule 702 was published in the **Federal Register** on May 1, 1985, *see* 50 FR 18,495. The Notice explained the current Rule, the proposed amendment and evidence on the record to support the amendments. The rule proposed by the Commission provided for the repeal of the four existing methods of retailer compliance with the pre-sale availability requirement and for the promulgation of the "upon-request" standard adopted in this notice. The Notice also solicited comment on the sign posting requirement adopted herein, and set forth specific questions concerning the efficacy and enforceability of the proposed standard. After reviewing the comments, the Commission has decided to promulgate the proposed rule and to include in it a requirement, corresponding to the one contained in the existing rule, that retailers post signs to inform consumers of the presale availability of warranties.

Twenty written comments were received. The comments reflect the views of manufacturers, retailers, state and local enforcement agencies and consumer groups. On the whole, retailers and manufacturers expressed support for the proposed amendments because they would reduce unnecessary compliance burdens and encourage flexibility in the manner in which warranties are made available to consumers prior to sale. Consumer groups and state and local enforcement agencies, however, uniformly expressed disapproval of the proposed amendments and argued that the changes would discourage informed buying. Trade associations were divided: three of the respondents supported the amendments as a means to reduce compliance burdens and four opposed the changes primarily because the amended Rule would continue to place the duty of providing warranties on retailers.

The majority of respondents failed to address the specific questions posed in the Notice but instead raised additional issues or made general comments on the regulation of warranty availability prior to sale. A summary of the substantive issues raised by respondents follows.

1. Whether the Commission Should Include as Part of an Upon-Request Warranty Availability Requirement Provisions Requiring Retailers to Post Signs in Retail Outlets Mentioning the Pre-Sale Availability of Warranties

Several comments asserted that there was a need to alert consumers to the pre-sale availability of written warranties through signs posted in retail outlets. The proposed rule did not contain such a requirement, but the Commission solicited public comment on whether to add it. The State Consumer Protection Board of New York, the Consumer Affairs Office of Palm Beach County, Florida, and the Center for Auto Safety ("CAS") argued that retailers should be required to post signs (e.g., at all cash registers) mentioning warranties to raise consumer awareness of the pre-sale availability of warranties. CAS argued that the Warranty Evaluation Study's finding that a majority of consumers know that warranties are available before purchase does not support the Commission staff's conclusion that signs disclosing the availability of warranties are unnecessary. According to CAS, signs would serve as a crucial notice of warranty availability to a large minority of consumers who are unaware that warranties are available prior to purchase. CAS stated that evidence on the public record does not indicate that the revised Guides Against Deceptive Advertising of Guarantees ("revised Guides"), 16 CFR Part 239, 50 FR 18462 (May 1, 1985), which require disclosure of the pre-sale availability of warranties in warranty advertising, can compensate for the absence of signs at retail outlets. Second, CAS argued that the Warranty Evaluation Study does not demonstrate that consumers who are currently aware of the pre-sale availability of warranties will know how to obtain access to warranties under the upon-request proposal. According to CAS, signs would operate to inform consumers of how to get warranties under the amended Rule.

The National Retail Merchants Association ("NRMA") believes that signs notifying consumers of the availability of warranty information are unnecessary. NRMA argued that signs would impose an additional cost on retailers without providing a benefit to consumers. Since the revised Guides already ensure that consumers will be informed that warranty terms are available prior to purchase, NRMA believes mandatory sign-posting under the Pre-Sale Availability Rule would largely duplicate existing regulatory safeguards.

The Commission has assessed the need to alert consumers to the pre-sale availability of written warranties through signs posted at retail outlets and had determined that a provision requiring that signs be posted should be retained in the rule to facilitate consumer awareness about the availability of warranty information. The evidence before the Commission indicates that the cost of posting signs is relatively low. The staff has estimated that the cost of compliance is approximately 280,000 work hours per year. Against this low cost, there is a potential for enhancing consumer awareness of the availability of warranty information upon request. According to the Warranty Evaluation Study, many consumers did not know whether a warranty was available for examination before they purchased a particular product.[7] Signs would enable these consumers to learn of the pre-sale availability of warranties when warranties are available only on request. In view of the low cost of compliance and the potential benefits that may be derived from the posting of signs, the Commission has amended the rule to include a requirement that retailers who choose the upon-request method of compliance post signs reasonably calculated to apprise consumers of the pre-sale availability of warranties.

2. Whether the Standards for Compliance in the Proposed Amendments are Clear, Specific, and Enforceable

Some comments expressed concern that a more specific performance standard is required to define

[7] In the Study, consumers were asked whether or not a warranty for the product was available before some specific recent purchase. As noted, 8.2 percent were not sure, 17.1 percent did not look, and 3.6 percent stated the warranty was not available. Consumers were not asked, however, whether they were aware that warranties are required to be available before purchase for all products that carry warranties.

compliance with an upon-request standard. CAS and the State Consumer Protection Board of New York argued that the proposed "available upon-request" standard is too lax and open-ended. The respondents stated that retailers should be provided with stricter guidelines (e.g., a requirement that consumers be provided with a warranty within minutes of a request). According to CAS, the "upon-request" standard is unenforceable because compliance with the standard cannot be objectively determined by inspection. Under an "available upon-request" standard, CAS argues, a retailer can always say that failures to meet requests are isolated instances. Because the Rule cannot be enforced, CAS believes it will not be followed.

The Commission finds CAS's argument regarding the enforceability of an "upon-request" standard unpersuasive, since the problem cited by CAS would exist even with more specific requirements. The failure to include a particular warranty for a particular product could always be dismissed as isolated, and some investigation would still be necessary. Under any requirement, however, approaches such as test shoppers should provide an effective technique for confirming Rule violations when necessary.

It bears emphasis, however, that the amended rule requires retailers to make warranties available to consumers "readily." In requiring that retailers make warranties "readily available for examination," the Commission intends to insure that consumers are not unduly delayed in receiving warranty information from retailers. In determining whether retailers are complying with the rule, the Commission will examine factors such as the length of time between the consumer's request and the retailer's production of the warranty, the number of store employees the consumer is required to contact to obtain a copy of the warranty, and the number of locations within a store to which the consumer must go to obtain the warranty. Obviously, these should be kept to a minimum if retailers are to fulfill the mandate that the warranty be "readily" available. A retailer would not be in compliance with the Rule, for example, if consumers were forced to wait for warranties to be mailed to them or if they were advised to travel to other store locations to get them. Likewise, a merchant would not be in compliance if his employees were so poorly informed about a central location for warranties that they caused consumers to seek out a number of employees or visit several floors before finally locating the warranties.

In short, the amended rule is intended to afford retailers added flexibility in determining how best to comply with the statutory mandate of making warranties available to consumers prior to sale, but does not relieve them of their responsibility to provide warranties expeditiously. Retailers are responsible for insuring that their employees are aware of, and are equipped to comply with, the requirements of this rule, and should take the necessary steps to insure compliance.

Sears, Roebuck & Co. ("Sears") raised an additional concern: That the final phrase of the proposed upon-request standard which states that the warranty text be made readily available by display or by "furnishing" it upon request needs clarification. Sears is concerned that "furnishing" may be interpreted to mean handling each customer his or her own copy. If this is the case, Sears believes the cost of pre-sale availability compliance would be multiplied by a hundred-fold because numerous photocopies of warranties would be required in each selling unit. Sears suggested that the rule specify that warranties can be made available by display or by "inspection" by the consumer.

Sear's concern is misplaced. The language preceding the upon-request requirement, "readily available for examination," connotes that a product's warranty must be available for inspection, not that the full text of a warranty must be provided for each consumer to retain. The Commission reaffirms here that the amended Rule is intended to require only that retailers make warranties available for inspection. This should conclusively resolve any doubts concerning the Rule's interpretation.

3. Whether Manufacturers Should be Required to Affix Warranty Information on a Product's Package

The issue of whether the retailer or manufacturer should bear the primary responsibility for providing warranty information prior to sale was raised. The National Mass Retailing Institute ("NMRI"), MRMA, the National Retail Hardware Association/Home Center Institute ("NRHA"), and Zayre support amendments to the Pre-Sale Availability Rule which would require the manufacturer to include, as part of the packaging of its product, accurate warranty information which the retailer could then display. NMRI states that the *primary obligation* of informing consumers of warranties should fall on those making the warranties, i.e., the warrantors.

For several reasons, a requirement that manufacturers affix the warranty to the product or package of consumer products is rejected. First, the costs to manufacturers of putting the warranty on the product are likely to be substantial and far in excess of the costs under the current Rule or under the upon-request modification. Placing the burden of providing information on retailers is appropriate because total costs will be much lower. Second, several retailers interviewed by staff objected to the clutter which would result if most store items had a warranty tag. Third, a requirement that manufacturers affix warranties to the exterior of all products would be duplicative in the many cases where product warranty information is already available. For instance, refrigerators and other similar appliances frequently have the warranty inside the product. Fourth, we have no evidence that consumers are more likely to read warranties if they are affixed to each consumer product or are separately provided upon request. Absent a showing that consumers would benefit by having the warranty on the product, the Commission will not modify compliance requirements in a manner that is likely to impose substantial costs on manufacturers.

4. Whether the Rule Should Include Explicit Directives to Require Sellers Who Make Television Solicitations of Mail or Telephone Order Sales to Disclose That Warranty Terms are Available Upon Request

NRMA and the National Association of Broadcasters opposed the inclusion in the Rule of Explicit directives to require sellers who make television solicitations of mail or telephone order sales to disclose that warranty terms are available upon request. NRMA argued that the need for this provision is obviated by the revised Guides which require that a television solicitation of mail or telephone order sales which mentions a warranty disclose that warranty information is available upon written request.[8] NRMA believes that such a directive would discourage advertising.

The New York State Consumer Protection Board supports the inclusion of directives aimed at television

[8] The revised Guides require that when any solicitation for mail order sales or for telephone order sale mentions a warranty or guarantee for the advertised product, it must disclose that complete details are available. *See* 16 CFR 239.2 (1986).

solicitations of mail and telephone order sales because prominent television disclosures of the pre-sale availability of warranties is an effective means to educate the consumers about the availability of warranties in general.

The majority of commenters opposed the inclusion of such directives in the Rule. No commenters offered evidence about the extent to which consumers have been injured by the current absence of this requirement. Commenters who opposed this requirement expressed concern about the cost and time constraints of making such disclosures on television. In view of the likely costs and uncertain benefits of the proposal, the Commission concludes that explicit directives aimed at television sales should not be added to the Rule.

5. Whether the Commission Should Raise the $15.00 Floor for Products Subject to the Rule to $50.00

Sears, NMRI, NRMA and NRHA believe that the Rule's current requirement, that retailers provide warranty information on products that cost in excess of $15.00, should be eliminated. Instead, they argue that the rule should contain a new $50.00 threshold. NRMA stated that items for which consumers generally seek warranty information cost more than $15.00. Hence, NRMA argued, it is more consistent with the realities of the marketplace to increase the threshold amount to $50.00.

The evidence, however, does not support raising the threshold amount of $50.00. The Warranty Evaluation Study suggests that even for items costing less than $50, a substantial fraction of consumers consider warranties important enough to obtain information about them prior to purchase.[9]

6. Whether the Existing Rule Should Continue to Apply to Motor Vehicle Dealers

CAS argues that the distinct characteristics of new motor vehicles and motor vehicle dealers merit retaining a rule requiring the display in binders of applicable warranties. According to CAS, motor vehicle dealers differ from retailers who sell a large number of products. Dealers sell only the products of a few manufacturers which usually offer one basic warranty. Hence, CAS believes it is less burdensome for dealers to comply with the current Rule's binder provisions than it is for the ordinary retailer.

This request is rejected. There is no evidence that new automobile purchasers, as a group, require special protection in warranty matters. In fact, the Warranty Evaluation Study [10] showed that automobile purchasers tend to read warranties more often than purchasers of other consumer products.[11] In the absence of evidence showing that new car buyers require more information concerning warranty availability, or have more difficulty obtaining it, there is no basis for separate standards for new motor vehicle dealers.

7. Whether "Mobile Homes" Should be Interpreted not to Constitute "Consumer Products"

The National Manufactured Housing Federation ("NMHF") recommended that factory built homes constructed in compliance with the Manufactured Home Construction and Safety Standards promulgated by the Department of Housing and Urban Development (24 CFR Part 3280) be exempted from Rule 702. According to NMHF, mobile homes do not fit the definition of "consumer product" under the Magnuson-Moss Warranty Act, 15 U.S.C. 2302, because preassembled residential dwellings, like residences assembled on-site are not "distributed in commerce," "used for household purposes" or "attached" to real property. Hence, NMHF requested that all residential dwellings be considered real property and therefore be exempt for the purpose of the Act.

This suggestion must be rejected. Regardless of the merit of this suggestion, we believe the proposal is well outside the scope of this rulemaking. No opportunity was given for comment on this issue and the issue is wholly different from those on which comments were sought.

8. Whether the Proposed Amendments to the Rule are Lawful

The Attorney General of New Mexico ("A.G.") argued that the Commission's proposed Rule is unlawful because it is not authorized by the Magnuson-Moss Warranty Act. According to the A.G., the Act imposes an affirmative duty on the Commission to ensure that consumers know they can obtain written warranties prior to the sale of a product. Although the Commission may determine the manner and form in which the warranty information is disclosed, the form must be clearly and conspicuously presented or displayed. The A.G. believes that under the proposed Rule, the "form" is not clearly and conspicuously presented because the retailer can wait to see if consumers request warranties; no affirmative disclosure is required. The A.G. therefore argues that the proposed amendment is not authorized by the Act, since it fails to ensure that consumers know that written warranties are available prior to sale.

Contrary to the A.G.'s contention, the upon-request standard is authorized [12] by the Act. The Act authorizes the Commission to "prescribe rules requiring that warranty terms be made available to consumers prior to sale." 15 U.S.C 2302(b)(1)(A). The proposed amendment which directs retailers to make warranties readily available upon request prior to sale is consistent with this statutory authorization and achieves the Congressional objective of increasing the availability of warranty information without imposing undue burdens on retailers.

Section C—Final Regulatory Flexibility Analysis

The Regulatory Flexibility Act provides for analysis of the potential impact on small businesses of Rules proposed by federal agencies. *See* 5 U.S.C. 603, 605(b). The Commission has determined that a very high percentage of businesses subject to the Rule are "small" based upon Small Business Administration size standards. Unfortunately, the data obtained during the staff investigation do not provide a precise measurement of the economic impact the proposed Rule amendments would have on small businesses. The

[9] *See* Warranty Evaluation Study at 49, Table 3.19. *See also id.* at 123, Table 3.49.

[10] *Id.* at 59, Table 3.23.

[11] The correlation between pre-purchase warranty reading and product was studied. For 10 products studied, pre-purchase reading varied from a low of 5.2 percent of consumers of food processors to a high of 12.2 percent of consumers of clothes washers. Consumers of automobiles ranked second for pre-purchase warranty reading at 11.9 percent. *Id.* at 58. The fraction of buyers of new automobiles who obtained warranty information from some source before purchase was 70 percent, greater than for any other product. *Id.* at 49.

[12] The A.G.'s argument that the "form" prescribed for warranty presentation under the revised Rule is not conspicuous constitutes an inaccurate reading of the Magnuson-Moss Warranty Act's express statutory language. Indeed, the commenter misapplied the requirements of section 102(b)(1)(B), 15 U.S.C. 2302(b)(1)(B), to the statutory mandate that the Commission prescribe rules ensuring the pre-sale availability of warranties. 15 U.S.C. 2302(b)(1)(A). Section 102(b)(1)(B) grants the Commission authority to prescribe rules governing the manner and form in which *written representations* regarding warranty information are presented or displayed. This provision is separate from section 102(b)(1)(B)'s pre-sale mandate. Therefore, the A.G.'s argument that the "form" prescribed for warranty presentations in the proposed Rule is not conspicuous and violate Magnuson-Moss is premised on an inaccurate reading of the Act.

information gathered does indicate, however, that the proposed changes will have an impact on a large number of small manufacturers and retailers, to some degree, by reducing their compliance costs. This section of the Notice describes the small businesses covered by the Pre-Sale Availability Rule, discusses the compliance measures called for by the amendments to the Rule, and considers whether any alternatives to the amendment could minimize the impact on small businesses.

The Commission has determined that nearly all retailers (952,916 companies or 99.3 percent) and manufacturers (11,365 companies of 97 percent) that will be affected by the amendments to Rule 702 are considered "small" using the size standards promulgated by the Small Business Administration. If the companies are compared according to annual receipts, small retailers represent approximately 47 percent and small manufacturers represent approximately 23 percent of gross annual receipts in their respective industries.

The Commission has also determined that the amendments to the Rule will reduce retailers' compliance costs by increasing their flexibility to select the disclosure approach that best suits their individual operations. Although the current Pre-Sale Availability Rule gives retailers four options for compliance, most retailers elect the binder option because it is the only one of the four which easily makes use of the copies of warranties submitted by manufacturers. Many retailers complained that the binder option requires allocation of personnel and resources to update and monitor warranty binders, which consumers rarely use. Our store surveys have shown that binders are often difficult for consumers to locate and use because they are incomplete or poorly organized. Thus, although the current Rule attempted to provide flexibility, many retailers have found themselves restricted, in practice, to one approach that is cumbersome and of questionable efficacy.

The investigation of industry indicated that larger retail organizations with numerous branch stores compile the binders at a main office and distribute them to their branches. This centralized compliance approach appears to afford lower costs for large retailers, per store, than for a smaller retailer with fewer stores and a decentralized system. The amendments to Rule 702 should reduce or eliminate this disparity between large and small enterprises by permitting retailers to use a flexible approach that conforms to their particular method of doing business.

The investigation also showed that retailers' costs and inconvenience would be reduced if they were not required to maintain warranty binders but could, instead, respond individually to specific consumer requests for warranties. The methods for ensuring that warranties are available when requested would vary according to the product and store operation.

We do not anticipate that this amendment to retailers' compliance options will have any impact on large or small manufacturers.

As part of the Commission's evaluation of the Pre-Sale Availability Rule and in response to the Regulatory Flexibility Act, we have considered alternatives to the revisions to Rule 702 that could accomplish the goals of the Magnuson-Moss Warranty Act but minimize the economic impact on small entities. The alternatives considered include: (1) Different compliance requirements for small businesses; (2) simplification of compliance requirements for small businesses; (3) use of performance rather than design standards in the Rule; and (4) an exemption for small businesses.

One of the principal goals of the amendment to the Pre-Sale Availability Rule is to comply with the congressional mandate in section 102 of the Warranty Act while minimizing the economic impact on all affected businesses. Section 102(b)(1)(A) of the Warranty Act directs the Commission to prescribe a rule requiring that written warranties be made available to consumers prior to sale. All of the alternatives suggested by the Regulatory Flexibility Act have been considered. The third option—use of a performance standard—is at the heart of the amended Rule. The Commission rejected enacting an exemption for small businesses because the congressional requirement for pre-sale availability of warranties applies equally to all transactions, regardless of whether they involve a small manufacturer or a small retailer. In addition, staff research indicates that more than 95 percent of the companies are small. Consequently, it would not be possible to exempt small businesses from the scope of the Rule and at the same time comply with the congressional mandate. Different standards for small businesses are unnecessary given the flexible nature of the standards proposed.

Section D—Explanation of Amendments to Rule 702

Section 702.3(a)—Duties of Seller

This section replaces the existing provision of Rule 702 which provides retailers with four permissible methods for making warranties available prior to sale. Three of those methods involve the open display of the warranty text on or near the product. The fourth method relies on binders containing warranty texts, accompanied by notices or signs informing consumers of the availability of the binders. The Amended Rule continues the requirement that retailers make warranties available to consumers for inspection prior to the sale of any consumer product. Rather than specify the form in which the warranty is to be made available, however, the Amended Rule creates a general requirement that retailers make warranties "readily available" to consumers, either by displaying their text or by making them available for examination by consumers upon request and posting signs advising consumers of the pre-sale availability of warranties. Any of the methods of disclosure specified in the current Rule would satisfy the requirements of the proposed Rule. In addition, however, retailers can discharge their obligations under the Amended Rule by making warranties readily available to consumers for inspection upon request and posting signs advising consumers of the pre-sale availability of warranties.

Of the various modifications discussed with manufacturers and retailers, the "upon-request" modification received the greatest support. The results of the store surveys indicate that the Amended Rule will offer retailers a method for making warranties available prior to sale that is consistent with present practices. Interviews with retailers and survey by test shoppers suggest that warranties are generally made available to consumers who ask for them, if they persist. This is confirmed by the Warranty Evaluation Study, which showed that only a small number of consumers were denied copies of warranty texts by merchants from whom they actually requested warranty information.[13] In addition, the Amended Rule will authorize other methods of disclosure that benefit consumers but may be prohibited or discouraged by the strict language of the present Rule. For

[13] *See* Warranty Evaluation Study at 43 and 44. Only 3.6 percent of respondents stated that the warranty for a product was unavailable before sale, and an even smaller number said they had requested the warranty and been unable to obtain it.

example, the present Rule may discourage merchants from displaying warranty information together with other information by requiring that any binder containing warranties be entitled "Warranties." Under the amendment, merchants are permitted to display warranties together with other product information, in binders or otherwise.

The Commission anticipates that the Amended Rule will lead to disclosure methods that will benefit the consumer. The staff's research shows the binder method of disclosure is the option most commonly used by retailers to comply with the Pre-Sale Availability Rule, but that consumers rarely use the warranty binders. Affording retailers greater latitude in choosing the manner of disclosure would allow them to select the optimal form of warranty disclosure to meet the demands of consumers and the dictates of the Rule. The Commission anticipates that methods of disclosure will vary among different products and among different types of stores. Thus, warranties for major appliances might be displayed inside floor samples of the appliances while warranties for smaller products, such as watches, might be retained by the merchant and shown upon request. Stores that compete on the basis of price only might display warranties in close proximity to the warranted products while stores that compete on the basis of shopping environment might show warranties only upon request. In any event, warranties will be made readily available prior to purchase to any consumer who wishes to examine them. The sign posting requirement will enable consumers to learn of the pre-sale availability of warranties. Retailers are required to make warranty information readily available to consumers by maintaining warranties in reasonable proximity to the warranted products or by producing warranties without unreasonable delay to consumers who request them.

Section 702.1(g)—Definition of Binder (deleted)

This section, which defines the term "binder," is deleted because revised § 702.3(a) no longer specifies the use of binders.

Section 702.1(c)—Definition of Written Warranty

This section, which defines the term "Written Warranty," is revised to clarify that the final clause of the definition modifies both subparts of the definition. This revision is necessary to correct an earlier printer's error.

The Commission has not adopted any substantive changes in the options available to manufacturers to ensure that warranties are available to retailers because it appears from the staff's investigation that manufacturers have not experienced significant burdens in complying with the present Rule.

The Commission has also not amended the Rule provisions concerning mail order, catalogue, and door-to-door sales.

List of Subjects in 16 CFR Part 702

Warranties, Trade practices.

PART 702—PRE-SALE AVAILABILITY OF WRITTEN WARRANTY TERMS

For the reasons discussed above, the Commission hereby issues the following amendments to the Pre-Sale Availability Rule, 16 CFR Part 702.

1. The authority citation for Part 702 continues to read as follows:

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

2. 16 CFR 702.1(c) is revised to read as follows:

§ 702.1 [Amended]

* * * * *

(c) "Written warranty" means—

(1) Any written affirmation of fact or written promise made in connection with the sale of a consumer product by a supplier to a buyer which relates to the nature of the material or workmanship and affirms or promises that such material or workmanship is defect free or will meet a specified level of performance over a specified period of time, or

(2) Any undertaking in writing in connection with the sale by a supplier of a consumer product to refund, repair, replace or take other remedial action with respect to such product in the event that such product fails to meet the specifications set forth in the undertaking,

which written affirmation, promise, or undertaking becomes part of the basis of the bargain between a supplier and a buyer for purposes other than resale of such product.

* * * * *

§ 702.1 [Amended]

3. 16 CFR 702.1(g) is removed.

4. 16 CFR 702.3(a) is revised to read as follows:

§ 702.3 [Amended]

* * * * *

(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, or

(2) Furnishing it upon request prior to sale 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.

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By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 87-5163 Filed 3-11-87; 8:45 am]

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DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners; Correction

AGENCY: United States Parole Commission, Justice.

ACTION: Final rule; correction.

SUMMARY: The Parole Commission is correcting the title of an offense example in the Offense Behavior Severity Index of the paroling policy guidelines contained in 28 CFR 2.20.

EFFECTIVE DATE: April 5, 1987.

FOR FURTHER INFORMATION CONTACT: Alan J. Chaset, Deputy Director of Research and Program Development, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, Telephone (301) 492-5980.

SUPPLEMENTARY INFORMATION: On February 26, 1987, the Parole Commission published a final rule in the **Federal Register** (52 FR 5761) which provided, among other things, guidelines for grading offenses associated with the freebased form of cocaine popularly known as "Crack." Rather than providing separate guidelines for the drug as had been proposed previously by the Commission, the new guidelines were incorporated within the existing offense example for cocaine. However, the title of the offense example, as published, did not correctly reflect this decision. The Commission, therefore, is making this correction.

The proposed change will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.