A Senator is invited to speak to the Chamber of Commerce, the Bar Association, the Insurance Association, etc., in his home state. The sponsoring organization or a person who is a member of such organization furnishes an airplane to pick the Senator up and return him either to his home within the state, or Washington. The airplane may be owned by an individual or by a corporation. Has a political contribution or expenditure been made within the meaning of the law?

Assume the same situation except that the airplane is furnished by an individual or corporation who is not a member of the organization, but who is simply making a friendly gesture on behalf of the organization or some member of the organization. In such event has a contribution or expenditure been made?

Please also assume for purposes of your opinion that none of the Senator's appearances or speeches is for, or on behalf of, a campaign or candidacy or any other person.

* * * * *

RICHARD S. ARNOLD.

Source: Richard S. Arnold, Legislative Assistant, Senator Dale Bumpers, United States Senate, Washington, D.C. 20510. (December 9, 1975.)

AOR 1975-124: Status of Copies of Federal Election Reports Filed with the Various Secretaries of State; Effect of Federal Election Laws on Florida Elections Laws (Request Edited and Paraphrased by the Commission) [A Condensation of Two Letters).

DEAR SIR: You are advised I have filed as a candidate for the office of President of the United States.

* * * * *

As I am now a candidate, it is requested your office provide me with an Advisory Opinion * * *

1. Is it illegal for anyone to use for political fund raising purposes the information contained in the *campaign contribution report* submitted by various candidates for public office and *filed* with the various Secretaries of State?

2. Do the copies (not submitted to the Federal Election Commission) fall within the category of items contemplated by the Federal Freedom of Information Act and becomes public information for use by any person for any purpose?

3. Do the "copies" of the Federal campaign contribution reports filed with the Secretaries of State ever become subject to *state laws* which prohibit use of contribution reports for fund raising purposes?

4. Was it illegal to use for political fund raising purposes the names identified in the General Accounting Office publication of contributors who provided monies to the 1972 presidential candidates?

5. Has the subsequent amendment to the election laws (with later re-alignment of responsibility) changed the law so that the use of the alphabetical listing of 1972 Presidential Campaign Receipts is now legal?

6. Has the current Federal Election Law totally preempted state laws for congressional and presidential elections?

7. Has the Federal law requiring a candidate to have a committee made it unnecessary for a Federal candidate to file his own separate contribution and expenditure report?

8. In the event the current Federal law has only partially preempted state election laws, have the following Florida laws been nullified by the current Federal law?

A. Has the Federal requirement for a committee nullified state laws requiring the candidate to file a report?

B. Did the current Federal election provision requiring a campaign treasurer and committee nullify Florida law permitting the candidate to be his own campaign treasurer?

C. Did the current Federal election provisions nullify Florida law permitting the use of one or more "Deputy Campaign Treasurers" who have the same power and authority as a campaign treasurer?

D. Did the * * * Federal election law nullify the provisions of the Florida law which prohibited expending funds for "printing" and "renting of halls" until approximately 60 days before an election?

9. * * * [I]n the event your office determines that all use of campaign contributions lists for fund raising purposes are illegal, we would appreciate an opinion on the legality of using "testimonial fund raising lists" for fund raising purposes.

10. Is it necessary to *register* the campaign committee (required by the Federal statute) *with the states* that require registration of political committees?

11. We propose to use as *voluntary workers* two persons who receive Federal funds. One of the individuals receives *Aid to Dependent Children* and the other individual is totally *disabled* and receives a small income as welfare. The Florida State Rehabilitation and the U.S. Social Security Administration have indicated both funds are U.S. Social Security funds. [Would the use of such voluntary workers be prohibited by the Federal Election Campaign Act of 1971, as amended?]

ROBERT L. BREWSTER.

Source: Robert L. Brewster, 2100 Howell Branch Rd., Plantation Apt. 36E, Maitland Florida. (November 19, 1975.)

Dated: December 22, 1975.

NEIL STAEBLER,
Vice Chairman for the Federal Election Commission.

[FR Doc.75-34849 Filed 12-30-75;8:45 am]

federal register

WEDNESDAY, DECEMBER 31, 1975

PART III:

FEDERAL TRADE COMMISSION

■

DISCLOSURE OF WRITTEN CONSUMER PRODUCT WARRANTY TERMS AND CONDITIONS, PRE-SALE AVAILABILITY OF WRITTEN WARRANTY TERMS, AND INFORMAL DISPUTE SETTLEMENT MECHANISMS

Rules, Regulations, Statements and Interpretations Under Magnuson-Moss Warranty Act

Title 16—Commercial Practices

CHAPTER I—FEDERAL TRADE COMMISSION

SUBCHAPTER C—RULES, REGULATIONS, STATEMENTS, AND INTERPRETATIONS UNDER MAGNUSON-MOSS WARRANTY ACT

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

PART 702—PRE-SALE AVAILABILITY OF WRITTEN WARRANTY TERMS

I. History of the Proceeding. The Federal Trade Commission, pursuant to Title I, sections 109 and 110 of the Magnuson-Moss Warranty—Federal Trade Commission Improvement Act, Pub. L. 93-637 (15 U.S.C. §§ 2309, 2310), hereafter referred to as "the Act", has conducted a proceeding for the promulgation of two Rules, one setting forth the terms and conditions to be disclosed in written consumer product warranties, and another setting forth requirements for making written warranties available to consumers prior to sale.

Notice of this proceeding, including the proposed rules, was published in the FEDERAL REGISTER on July 16, 1975 (40 FR 29895 (1975)). The notice urged all interested persons to express their approval or disapproval of the proposed rules, or to recommend revisions thereof, and to give a full statement of their views, supplemented by all appropriate documentation. The documents supporting the proposed rules, and a report of the Commission staff discussing the proposed rules and the supporting documentation, were placed on the public record and made available for examination and copying.

Interested parties were thereafter afforded opportunity to participate in the proceeding through the submission of written data, views and arguments, and to appear and express their views orally and to suggest amendments, revisions, and additions to the proposed rules. A period of 60 days was allowed for submission of written comments on the proposed rules. Public hearings, as announced in the notice, were held in Washington, D.C., September 15-18, 1975; in Chicago, Illinois, September 22-25, 1975; in Los Angeles, California, September 29 through October 1, 1975; and in San Francisco, California on October 2, 1975. Every person who had expressed a desire to present his or her views orally at these hearings was accorded an opportunity to do so. The public record remained open thirty days following the hearings for receipt of any other written data, views or arguments.

Upon careful analysis and review of the written and oral comments, the Commission has made certain modifications to the proposed Rules published July 16, 1975. The rules, the rationale for the modifications, and the record relating thereto, are discussed within the Statement of Basis and Purpose appearing below as part of this notice. The modifications do not raise issues of law or fact which were not fully addressed in and supported by the record. Therefore the Commission is promulgating these rules without further invitation for comment on the modifications.

II. *Background.* (A) *The Magnuson-Moss Warranty Act.* Recognizing the need for minimum warranty protection for consumers, for consumer understanding of warranties, for assurance of warranty performance, and for better product reliability, the 93rd Congress passed the Magnuson-Moss-Federal Trade Commission Improvement Act,[1] which was signed into law on January 4, 1975.

An examination of the legislative history of the Act reveals the congressional intent in requiring the disclosure of written warranty terms and conditions. The statements of Messrs. Moss and Magnuson in introducing the warranty legislation, as well as the Senate Report accompanying the legislation, highlight the need for warranty disclosures.

Congressman Moss, stated:

"The need for warranty reform has become apparent ever since the mid-sixties, when the Federal Trade Commission and the Senate Commerce Committee began investigating consumer product warranties.

. . . One of the most important effects of this bill will be its ability to relieve consumer frustration by promoting understanding and providing meaningful remedies. This bill should also foster intelligent consumer decisions by making warranties understandable. At the same time, warranty competition should be fostered since consumers would be able to judge accurately the content and differences between warranties and competing consumer products . . .

Perhaps one of the potentially most important and long range effects of this bill resides in its attempt to assure better product reliability. The bill . . . attempts to organize the rules of the warranty game in such a fashion as to stimulate manufacturers, for competitive reasons, to produce more reliable products. This is accomplished using the rules of the marketplace by giving the consumer enough information and understanding about warranties so as to enable him to look to the warranty duration of a guaranteed product as an indicator of product reliability."[2]

As further illumination on the background and need for the warranty legislation, and for disclosure of written warranty terms, the Senate report accompanying S. 356,[3] the Senate version of the warranty legislation, stated:

For many years warranties have confused and misled the American consumer. A warranty is a complicated legal document whose full essence lies buried in myriads of reported legal decisions and in complicated State codes of commercial law. The consumer's understanding of what a warranty on a particular product means to him frequently does not coincide with the legal meaning.

This was not always the case. When the use of a warranty in conjunction with the sale of a product first became commonplace, it was typically a concept that the contracting parties understood and bargained for, usually at arms length. One could decide whether or not to purchase a product with a warranty and bargain for that warranty accordingly. Since then, the relative bargaining power of those contracting for the purchase of consumer products has changed radically. Today, most consumers have little understanding of the frequently complex legal implications of warranties on consumer products. Typically, a consumer today cannot bargain with consumer product manufacturers or suppliers to obtain a warranty or to adjust the terms of a warranty voluntarily offered. Since almost all consumer products sold today are typically done so with a contract of adhesion, there is no bargaining over contractual terms. S. 356 attempts to remedy some of the defects resulting from this gross inequality in bargaining power, and return the sense of fair play to the warranty field that has been lost through the years as the organizational structure of our society has evolved. The warranty provisions of S. 356 are not only designed to make warranties understandable to consumers, but to redress the ill effects resulting from the imbalance which presently exists in the relative bargaining power of consumers and suppliers of consumer products."[4]

Senator Magnuson's remarks in introducing S. 356 to the Senate also described the necessity for requiring disclosure of warranty terms and conditions:

". . . [W]arranties have for many years confused, misled, and frequently angered American consumers . . . Consumer anger is expected when purchasers of consumer products discover that their warranty may cover a 25-cent part but not the $100 labor charge or that there is full coverage on a piano so long as it is shipped at the purchaser's expense to the factory . . ."

". . . [T]he bill is designed to promote understanding. Far too frequently, there is a paucity of information supplied to the consumer about what in fact is offered him in that piece of paper proudly labeled 'warranty.' Many of the most important questions concerning the warranty are usually unanswered when there is some sort of product failure. Who should the consumer notify if his product stops working during the warranty period? What are his responsibilities after notification? How soon can he expect a fair replacement? Will repair or replacement cost him anything? There is a growing need to generate consumer understanding by clearly and conspicuously disclosing the terms and conditions of the warranty and by telling the consumer what to do if his guaranteed product becomes defective or malfunctions. Presently the consumer only learns of the extent of his warranty coverage when his guaranteed product becomes defective or malfunctions and he is told that the guarantee in question does not cover the part that failed, or that the retailer does not handle the manufacturer's repair work, or that the guarantee does not cover labor costs and so forth."[5]

The Act, among other things, provides disclosure standards for written consumer product warranties. The Proposed Rule on Warranty Disclosures was based upon the disclosure requirements set forth in Section 102(a) of the Act. The Act also requires the Commission to prescribe rules to assure the availability of warranty information prior to the actual

[1] Magnuson-Moss Warranty-Federal Trade Commission Improvement Act, 15 U.S.C. 2301 *et seq.*

[2] 119 Cong. Rec. 972 (January 12, 1973) (remarks of Congressman Moss).

[3] Senate Comm. on Commerce, Report on S. 356, S. Rep. No. 93-151, 93d Cong., 1st Sess. (1973) [hereinafter referred to as "Senate Report"].

[4] *Id.*, at 6.

[5] 119 Cong. Rec. 968 (January 12, 1973) (remarks of Senator Magnuson).

pliers of consumer products."[4]

purchase. The Proposed Rule on Pre-Sale Availability of Written Warranty Terms was based on the authority given to the Commission in Section 102(b)(1)(A) of the Act.

(B) *FTC Guides Against Deceptive Advertising of Guarantees.* The items authorized for disclosure in written warranties in Section 102(a) of the Act are substantially the same as those which have been required by the Commission's *Guides Against Deceptive Advertising of Guarantees* (the "*Guides*"),[6] which codify the FTC case law concerning disclosure requirements for warranties. The *Guides*, applicable to both actual warranty documents and advertisements of warranties, enunciate the policy that in conjunction with any representation that a product is guaranteed there must be full and accurate disclosure of the terms, conditions, and limitations of such guarantee. As stated in the *Guides*, the representation must disclose the nature and extent of the guarantee, 16 CFR 239.1(a), the manner in which the guarantor will perform, 16 CFR 239.1(b), and the identity of the guarantor. The *Guides* also contain special provisions dealing with pro-rata adjustment of guarantees, "satisfaction or your money back" representations, lifetime guarantees, savings guarantees, and guarantees under which the guarantor does not or cannot perform. Since the Guides were promulgated in 1960, there have been well over 1,000 informal actions under them. The *Guides* have been cited in several cases and advisory opinions rendered by the Commission.[7]

With the proliferation of new products on the market and the increased use of product warranties as marketing devices in recent years, new problems in the area of warranties have arisen which necessitate a revision of the 1960 *Guides*. The steady influx of consumer complaint letters regarding warranties serves as further indication of the need to expand the *Guides* to encompass a wider range of warranty problems.[8]

(C) *House Interstate and Foreign Commerce Committee, Subcommittee on Commerce and Finance Staff Report On Consumer Product Warranties.* The staff of the House Interstate and Foreign Commerce Committee, Subcommittee on Commerce and Finance, at the direction of Chairman John E. Moss, published a study on September 17, 1974 concerning consumer product warranties currently being used in commerce.[9] The purpose of this study was to determine the effect of various government studies, including *The President's Task Force Report on Appliance Warranties and Service*[10] and the 1966 FTC investigation of automobile warranties, as well as voluntary action throughout the past decade on the quality of warranties for consumer products presently on the market. The staff of the House Commerce and Finance Subcommittee examined approximately 200 warranties from 51 American manufacturers. The products involved included household appliances, mobile homes, automobiles, television and radio receivers and stereo equipment. The Subcommittee staff found that no significant changes had occurred in warranty documents since 1969. According to the staff report:

> "(A)ny actions taken on the part of manufacturers and trade associations to clean up these guarantees during the past five years appear to have had minimal results. These certificates, often marked 'WARRANTY' and printed on good quality paper with a fancy filigree border, in many cases serve primarily to limit obligations otherwise owed to the buyer as a matter of law. This is done by disclaimers and exemptions and by ambiguous phrases and terms. All too often the warranties shroud and effectively cover-up the obligations of the seller."[11]

The conclusion of Congressman Moss highlighted the need for action on warranties: "It is all but fraud when a guarantee declares in large print that the manufacturer is giving protection to the buyer and in the fine print attempts to take away common-law buyer protection."[12]

(D) *NBCCA and MACAP Reports.* The business community, too, has recognized the need to re-examine and reformulate current warranties. A report "Product Warranties: Business Guidelines to Meet Consumer Needs," written by the Sub-Council on Warranties and Guarantees of the National Business Council for Consumer Affairs[13] reflects the business community's own interest in straightforward warranty content. The Council, composed of over 100 business leaders, was established by former President Richard M. Nixon in 1971 for the purpose of advising the Federal government on consumer affairs. The Sub-Council's report represents an effort to assist the business community in re-examining its warranty policies and practices in the light of consumer expectations. It recommends action which businesses might take to improve warranty practices.

The Major Appliance Consumer Action Panel (MACAP), sponsored by the Association of Home Appliance Manufacturers (AHAM), the Gas Appliance Manufacturers Association (GAMA), and the National Retail Merchants Association (NRMA), has conducted two studies on warranties in the major appliance industry.[14] The first study, conducted in 1971–72, analysed seventy warranties voluntarily submitted by members of the industry. These were evaluated against recommended warranty guidelines drafted by the Panel.

A more extensive follow-up study, undertaken in 1973, elicited response from 106 companies. In the 1973 study, the Panel's evaluation criteria were drawn from the appliance industry's voluntary recommended guidelines, published by the three associations that sponsor MACAP. The 1973 study found that 75% of the appliance industry was in compliance with MACAP's guidelines. The same degree of compliance was cited in MACAP's 1971–72 study. Only 17 of the 106 warranties submitted fulfilled all the guidelines. The appliance industry's inability to meet even industry-established criteria for warranties, as evaluated by industry members, lends further support for the necessity for Commission action on warranty disclosure.

III. Disclosure of Written Consumer Product Warranty Terms and Conditions. The items required for disclosure by this Rule are material facts about product warranties, the non-disclosure of which constitutes a deceptive practice.

Numerous Commission decisions[15] have affirmed the principle that the failure to disclose material facts in circumstances where the effect is to deceive a substantial segment of the purchasing public is a violation of Section 5 of the Federal Trade Commission Act.[16]

In addition to these cases, the Commission's Octane Rule[17] and Light Bulb Labeling Rule[18] indicate that the failure to disclose facts which are essential to

---

[6] *Guides Against Deceptive Advertising of Guarantees*, 16 CFR 239, adopted April 26, 1960.

[7] See, e.g. *Fingerhut Manufacturing Company, et al.*, 65 F.T.C. 751 (1964), *Consolidated Sewing Machine Co.*, etc. 71 F.T.C. 356 (1967), *Benrus Watch Company, Inc., et al.*, 64 F.T.C. 1018 (1964), *Wilmington Chemical Corporation, et al.*, 69 F.T.C. 828 (1966), *Montgomery Ward Co., Inc.* 70 F.T.C. 52, *affirmed* 379 F. 2d 666 (7th Cir. 1967) *Scott Mitchell House, Inc., et al.*, 73 F.T.C. 523 (1968), Advisory Opinion No. 248 (1968), Advisory Opinion No. 100 (1966), Advisory Opinion No. 427 (1970).

[8] FTC Warranty Complaints Tabulation, FTC Correspondence Section, July 7, 1975.

[9] Staff of House Interstate and Foreign Commerce Comm., Subcomm. on Commerce and Finance, Report on Consumer Product Warranties (1974) ("House Subcomm. Staff Report").

[10] Task Force On Appliance Warranties and Service, The President's Task Force Report On Appliance Warranties and Services (1969).

[11] House Subcomm. Staff Report, *supra* note 9, at 30.

[12] Washington Post, Sept. 19, 1974, § B, at 16, col. 1.

[13] Sub-Council on Warranties and Guarantees of the National Business Counsel For Consumer Affairs Product Warranties: Business Guidelines to Meet Consumer Needs (1972) [hereinafter "NBCCA Report"].

[14] Major Appliance Consumer Action Panel, MACAP Analysis of Major Appliance Warranties (1971, 1973 ("MACAP Report").

[15] See cases cited in Statement of Basis and Purpose, Trade Regulation Rule for the Prevention of Unfair and Deceptive Advertising and Labeling of Cigarettes in Relation to Health Hazards of Smoking (1961), 23 Fed. Reg. 8324 (July 2, 1964) (hereinafter referred to as Cigarette Statement), at 8351–8352, nn. 73, 74 and 75.

[16] 15 U.S.C. 45.

[17] Statment of Basis and Purpose to accompanying Trade Regulation Rule on Posting of Minimum Octane Numbers on Gasoline Dispensing Pumps (hereinafter cited as Octane Rule) 1972, at 8: "Failure . . . to identify the gasoline . . . may constitute a *deception* and an unfair trade practice in that it fails to provide the consumer with a criterion to which he can relate the gasoline with engine requirements of his automobile."

[18] Statement of Basis and Purpose accompanying Trade Regulation Rule on Incandescent Lamp (Light) Industry; Failure to Disclose Lumens, Life Cost and Other Data ("the Light Bulb Rule") (1972).

the consumer's ability to make an informal purchasing decision is a deceptive practice. Likewise, the failure to disclose information about consumer product warranties which is material to the making of an intelligent and knowledgeable consumer choice is deceptive.

Under the "technical truth" rule,[19] a claim or representation which is literally true is found to be deceptive because of a failure to disclose material facts that qualify and explain the claim. The rationale behind this principle is that the deception stems from the false or misleading impression which is created in the mind of the consumer by virtue of the fact that the claim is removed from its proper context. The concern is with the truth as viewed by the consumer, rather than with the technical truth. As a further example of the application of this Rule, the Commission, in *Clinton Watch Co.*[20] held that it was a deceptive trade practice for the respondent watch manufacturer to advertise a "lifetime guarantee" without disclosing that there was a charge for warranty service. Likewise, the failure to disclose all conditions, limitations, and exclusions as to product warranties renders any affirmative claims about warranties deceptive. "To tell less than the whole truth is a well known method of deception."[21] By the same token, absolute silence on a material fact may be deceptive where the public assumes from this silence that a state of facts exists when, in fact, affirmative disclosure would reveal that these assumptions are unfounded. In such instances, the consumer's normal and reasonably foreseeable expectations are exploited, and a false or misleading impression is created.

The omission of any material terms or conditions from a warranty may prevent the intelligent use of the warranty as informational input into the consumer's purchasing decision, and may contribute to the generation of unrealistic consumer expectations about product reliability or efficacy. Thus, consumers may be induced to make purchases that they would not otherwise have made, with a resulting gap between anticipated and actual product and warranty performance.

Silence on the subject of product warranties and warranty terms can lead consumers to make erroneous assumptions and decisions. For example:

(1) In the absence of a disclosure as to the identity of the warrantor, the consumer might assume that the warrantor is the retailer, whereas in fact the warrantor might be the manufacturer.

(2) If a warrantor is silent as to which parts, components, characteristics or properties are covered by the warranty, the consumer might erroneously assume that warranty coverage is more extensive than it actually is.

(3) Silence as to the fact that limitations on implied warranties are unenforceable in certain states may erroneously lead consumers in such jurisdictions to assume that the warranty document states the full extent and limit of their warranty rights.

These examples illustrate some of the ways in which some warranty documents in their current form can have the capacity or tendency to mislead consumers. Affirmative disclosure of warranty terms will serve to eliminate deception by providing material facts, the absence of which could lead consumers into purchasing one product, instead of a competing item, on the basis of what is ostensibly a better, more extensive warranty, but which in fact provides more limited coverage and fails to fully disclose all of its conditions and limitations. A requirement of minimum uniformity in warranty disclosures should enable consumers to make valid and informed comparisons of warranties for similar products, and insofar as their purchasing decisions are influenced by such comparisons, better able to make educated buying choices.

IV. The Final Rule. 1. *§ 701.1 Definitions.* Except as discussed below, the definitions in the final Rule are those set forth in proposed Part 701. As the definitions used in Part 702 have been made to conform to the corresponding definitions in Part 701, the following discussion applies to both Parts.

The definitions given in the proposed Rule for "The Act", "written warranty", "implied warranty", "remedy", "supplier", and "binder" have not been modified. With the exception of the terms "The Act" and "binder", the definitions correspond to those used in the Act. No substantial comment was received as to the use of these definitions.

a. *"Consumer product", "consumer" and "seller".* Comments from Standard Oil Co. of Indiana, Mohasco Corporation and others concerning the definitions of "consumer product" and "consumer" stated that the proposed Rule did not deal adequately with the problem of industrial or commercial use of products normally used for personal, family, or household purposes.[24] Several comments including those of Toyota Motor Sales, and the National Sporting Goods Association, recommended that warranties extended to commercial or industrial users of consumer goods should be exempted from the requirements of the Act.[25] O. M. Scott and Sons claimed that the proposed Rule would have allowed industrial users to put consumer goods to commercial use and then to claim the benefits of warranty protection intended for consumers.[26]

For the purposes of these rules only, the definition of "consumer product" was amended by adding the following language: "Products which are purchased solely for commercial or industrial use are excluded solely for purposes of this Part". Paralleling this revision, the following underlined language was inserted in the definition of "consumer": "Consumer" means a buyer (other than for purposes of resale *or use in the ordinary course of the buyer's business* of any consumer product . . ."[27]

The definition of "seller" was revised as follows: " 'Seller' means 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."[28] This definition was changed to conform to the definition adopted for "consumer". It is not the Commission's intent to apply these rules to purely commercial users.

b. *"Warrantor".* Sears Roebuck and Co. ("Sears") suggested that the definition of "warrantor" be limited to those offering written warranties and not include those only obligated under implied warranties. As proposed, the definition of "warrantor" would have made a seller who did not offer a written warranty of his own, but who was obligated under an implied warranty by operation of law, a "warrantor," and thus subject to the duties of a "warrantor" as well as a "seller" under § 702.3.[29]

Exxon Co. and Engine Service Associates, Inc. commented on the addition of the language ". . . arising under state law . . . in connection with the sale by a supplier." in § 702.1(d).[30]

For the purposes of these rules, the definition of "warrantor" has been redrafted to include only persons who give or offer to give a written warranty. The Commission concluded that the Act's definition was overly broad for purposes of a rule concerning disclosures in written warranties.

c. *"On the face of the warranty."* Section 108 of the Act[31] and section 701.3(a)(7) of the final Rule require that any

---

[19] *P. Lorillard Co.* v. *FTC*, 186 F. 2d 52 (4th Cir. 1950).

[20] 57 FTC 222, aff'd sub nom. *Clinton Watch* v. *FTC*, 291 F. 2d 838 (7th Cir. 1961).

[21] *P. Lorillard Co.* v. *FTC*, 186 F. 2d 52, 58 (4th Cir. 1950).

[22] (The Public Record is hereinafter cited as "R".) R 1-3-1, 11-12, O. M. Scott & Sons; R 1-3-1, 56, Mohasco Corp.; R 1-3-2, 678-79, Toyota Motor Sales, U.S.A., Inc.; R 1-3-2, 694, Standard Oil Co. Indiana; R 1-4-1, 21 National Sporting Goods Association; R 1-6, 156, Connecticut Citizen Research Group.

[23] R 1-3-1, 56, Mohasco Corp.; R 1-3-2, 678-79, Toyota Motor Sales, U.S.A., Inc.; R 1-4-1, 21, National Sporting Goods Association.

[24] R 1-3-1, 11, O. M. Scott & Sons.

[25] "Many products 'normally' bought by consumers are also purchased by industrial and commercial accounts for uses other than resale, i.e., they may be consumed entirely in the process of manufacture or indirectly become components in products for eventual resale, and so on. Much of the difficulty could be eliminated by inserting the underlined language as follows:

" 'Consumer' means a buyer (other than for purposes of resale or *other use in buyer's ordinary course of business*) . . ." R 1-3-2, 694, Standard Oil Co. (Indiana).

". . . (R)evise Section 701.1(h) so that it reads as follows: 'Consumer' means a buyer (other than for purposes or resale or *for purposes of use in its ordinary course of business*) . . ."

[26] "Similarly, the definition of 'seller' in § 702.1(e) should be revised as follows: 'Seller' means any person who sells or offers for sale for purposes other than resale *or other use in buyer's ordinary course of business* any consumer product." R 1-3-2, 695, Standard Oil Co. (Indiana).

[27] R 1-3-2, 657, Sears Roebuck & Co.

[28] R 1-3-2, 427, Exxon Company, U.S.A.; R 1-4-1, 226, Engine Service Association, Inc.

[29] Section 108(b) of the Act states that ". . . (implied warranties may be limited in duration . . . if such limitation . . . is set forth in clear and unmistakable language and prominently displayed on the face of the warranty."

limitations on the duration of implied warranties be disclosed "on the face of the warranty."

Section 104 of the Act requires that "a warrantor" offering a full warranty ". . . may not exclude or limit consequential damages for breach of any written or implied warranty on such product, unless such exclusion or limitation conspicuously appears on the face of the warranty."[30]

The definition of "on the face of the warranty" was added to clarify the required location of disclosures under Sections 104(a)(3) and 108(b). The final Rule provides:

"(i) 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 sheet on which the warranty text begins;

(2) where the warranty is included as part of a longer document, such as a use and care manual, the page in such document on which the warranty text begins."

The intent of this definition is to place important warranty information on page one of the multipage warranty where it can easily be scanned by a reader reviewing the designation(s). The "face" of a one page, one sided document is evident.

2. *§ 701.3 Disclosure of Written warranty terms. Scope of the Rule. "Actually Costing the Consumer More than $15.00."* Section 701.3 of the Proposed Rule required a warrantor warranting a consumer product "actually costing the consumer more than $5.00" to make the required disclosures. The duties of the seller and the warrantor in proposed Part 702 were also triggered by the $5.00 threshold. Comments on the Record[31] suggested that the final rules raise the threshold from $5.00 to a higher level.[32]

Two principal reasons were given for this suggestion:

(1) the cost of complying with the requirements of Parts 701 and 702 would be prohibitive in relation to the selling price of the product;[33] and the extra cost would force manufacturers to eliminate their warranty programs on the inexpensive items, and thus, the Congressional purpose of expanding the availability of warranties would be frustrated; [34] and

(2) since consumers rarely read warranties on relatively inexpensive items, requiring compliance with Part 701, thus increasing the length of the warranty, would further discourage the consumer from reading warranties prior to sale.[35]

The Commission has concluded that applying these rules only to products actually costing the consumer more than $15.00 would be in the public interest. Although the rules have been modified to eliminate unnecessary burdens, they will impose a compliance obligation. Although reasonable, this obligation is not a costless endeavor. The Commission is persuaded that existing disclosure and availability practices pertaining to inexpensive products, while far from perfect, have not caused substantial harm to the public. The need for warranty information before and after a purchase is affected by the cost of the product involved. Section 102(3) of the Act recognizes this fact. Faced with the possibility that compliance with these rules may result in a decision by warrantors not to offer written warranties, the Commission has concluded that, for these products, some warranty information is likely to be better than none at all. This conclusion is buttressed by the recognition that Section 5 of the Federal Trade Commission Act and Section 110 of this Act provide ample authority to deal with unfairness and deception in the warranty practices associated with inexpensive products. The Commission will not hesitate to use this authority where the public interest requires action.

The remaining question is whether the Act gives the Commission the authority to raise the $5.00 figure. Section 102(e) provides:

The provisions of this section apply only to warranties which pertain to consumer products actually costing the consumer more than $5.

In response to a request from the Commission' staff, the National Consumer Law Center submitted that the Commission does not have the authority to raise the $5 figure.[36]

Generally, courts have held that an agency has wide discretion in interpreting a statute and that any agency decision should be given great deference by a reviewing court.[36a] *Red Lion Broadcasting* v. *FCC*, 395 U.S. 367, 381 (1969). The Court in *Red Lion* stated:

. . . Agency construction of a statute should be followed unless there are compelling indications that it is wrong.

Moreover, deference to agency discretion is particularly high where the interpretation involves the first implementation of the statute, in other words, the "setting up of the machinery".

When faced with a problem of statutory construction this court shows great deference to the interpretation given the statute by the officers or agency charged with its administration. . . . Particularly is this respect due when the administrative practice at stake 'involves a contemporaneous construction of a statute by the men charged with the responsibility of setting its machinery in motion, of making the parts work efficiently and smoothly while they are yet untried and new'. *Udall* v. *Tallman*, 380 U.S. 1, 16 (1964) citing in part *Power Reactor Co.* v. *Electricians*, 367 U.S. 396, 408 (1960)

The legislative intent and the public policy behind the Act make it clear that the Commission has the authority to raise the $5 figure.

There are two possible constructions of Section 102(e) of the Act. The first is that Congress intended affirmatively to *include* all consumer products costing $5 and above within the scope of the Act. The second is that Congress only wanted to *exclude* all consumer products below $5 from protection of the Act. In other words, paragraph (e) was intended to impose a limit on Commission authority to apply Section 102 to products below $5 but not to prohibit the Commission from exercising discretion to select a *higher* threshold. Under this interpretation, the products Congress intended to exclude would still be excluded by the higher figure set by the Commission.

The legislative history of the Act supports the latter interpretation. The most important evidence of the intent behind Section 102(e) is the Conference Committee Report. The Report section dealing with dollar limitations, speaks of "exclusion". The Report shows that Congress was concerned with what was excluded rather than with what was included.[37]

---

[30] § 104(a)(3).

[31] The Public Record of this proceeding consists of 2546 pages of transcript from the public hearings (hereinafter cited as "Tr."), five volumes of staff submissions including the staff report, R 215-47-1-2, Vols. 1-5 (hereinafter cited as R 1-2), three volumes of comments from business, R 215-47-1-3, Vols. 1-3 (hereinafter cited as R 1-3), two volumes of comments from trade associations, R 215-47-1-4, Vols. 1-2 (hereinafter cited as R 1-4), one volume of comments from individual consumers, R 215-47-1-5, (hereinafter cited as R 1-5), one volume of comments from consumer groups, R 215-47-1-6 (hereinafter cited as R 1-6), one volume of submissions from federal agencies and members of Congress, R 215-47-1-7 (hereinafter cited as R 1-7), one volume of submissions from state agencies and officials, R 215-47-1-8 (hereinafter cited as R 1-8), one volume of submissions from academicians, R 215-47-1-9 (hereinafter cited as R 1-9), and one volume of Exhibits, R 215-47-1-13. (hereinafter cited as 1-13).

[32] R 1-3-1, 40-41, Purolator, Inc.; R 1-4-1, 583-584, American Apparel Manufacturers Association (AAMA); R 1-3-3, 1114, Midland Cooperatives, Inc.; R 1-4-2, 691, Association of Home Appliance Manufacturers (AHAM); R 1-4-2, 693, National Retail Merchants Association (NRMA).

[33] R 1-3-1, 38, Purolator, Inc.; R 1-4-1, 152, American Institute of Nail and Tack Manufacturers; R 1-4-1, 583, AAMA; R 1-3-3, 1114, Midland Cooperatives, Inc.; R 1-4-2, 693, NRMA.

[34] R 1-4-1, 152, American Institute of Nail and Tack Manufacturers; R 1-4-2, 691, AHAM; R 1-4-2, 693, NRMA.

[35] R 1-3-1, 38, Purolator, Inc.; R 1-3-3, 1114, Midland Cooperatives, Inc.; R 1-4-2, 693, NRMA.

[36] R 1-6, 160, National Consumer Law Center, Inc.

[36a] See also *In the Matter of Hollow Tree Lumber Company*, 91 N.L.R.B. 635 (1950). In that case the Board noted its long standing practice not to exercise its jurisdiction to the fullest extent possible under the authority delegated to it by Congress since such practice would better effectuate the purposes of their Act. The Board required that a certain dollar level be reached before they would invoke jurisdiction. Similarly here, the Commission would require a certain dollar level to be reached ($15) for implementation of the Act.

[37] H.R. Rep. No. 1589, 93d Cong. 2d Sess. 24 (1974):

"3. Dollar Limitations

Under the Senate bill, the labeling and designation provisions applied only to consumer products actually costing $5 or more. Any warrantor who was selling a consumer product costing less than $5 who used the full warranty designation would have been

Footnote continued on next page.

Consequential use of the word "only" in section 102(e) indicates an intention to *exclude* those items under $5. If the Congress had opted for an "inclusion" approach it is likely that the statute would have read, "this section *shall* apply to *all* products actually costing more than $5."

The $15 figure was chosen in order to gain the benefits of raising the $5 figure outlined previously, without losing coverage of any significant consumer products.

Guenther Baumgart, on behalf of the Association of Home Applicance Manufacturers, pointed out that a $15 figure would still bring almost all portable appliances within the purview of the Act, stating:

"Assuming for a moment that the threshold limit was raised to $15.00 (our recommendation), we feel that it would encourage the protection of the consumer rather than removing such protection. At a $15.00 threshold limit all of the major portable appliances such as an automatic drip coffeemaker, rotisserie, electric skillet would still come within the purview of the Act. The portable appliances excluded from the Act would be such marginal items as a corn popper or bun warmer . . . By raising the threshold limit manufacturers would be encouraged to continue warranties on present marginal items."[38]

Accordingly, Parts 701 and 702 have been amended, raising the threshold amount which triggers the duties under those parts, to $15.00.

"In a single document". The proposed Rule required that the items of warranty information be disclosed "in a single document." Many comments by warrantors were received, citing the potential costs and other difficulties of a "single document" requirement. Westinghouse Electric Corporation, National Electrical Manufacturers Association ("NEMA"), and others said that it was normal for warranties to be printed on the front, back, or middle page of a use and care manual,[39] especially in the appliance industry.[40] The Waltham Watch Company and the National Association of Chain Drug Stores argued that the reprinting of such manuals, to conform with the single document rule, would be unreasonably costly.[41] NEMA also suggested that imprinting the warranty directly on the product[42] might not conform to a "single document" rule.

The Air Conditioning and Refrigeration Institute argued that if the warranty were required to be separate from the manual of operating instructions, it would be more likely to get lost, whereas a manual, which could contain the warranty, would more likely be retained and used by the consumer.[43]

Standard Oil suggested that, in some instances, it would be physically impossible to put all the specifications and standards referenced in the warranty in a single document.[44] They estimated that literal compliance with "the single document" rule would add approximately $192,500 in annual costs.[45]

These comments reflect a misapprehension of the purpose of the single document language". "Single" does not equal "separate". The "single document" requirement does not preclude printing the warranty in a use and care manual, or directly on the product itself. It does require that all terms and conditions be presented in (at least) one location, as a coherent, easily assimilated statement.

Parties Who Can Enforce

701.3(a)(1) The identity of the party or parties to whom the written warranty is extended, if the enforceability of the written warranty is limited to the original consumer purchaser or is otherwise limited to persons other than every consumer owner during the term of the warranty;

Section 102(a)(2) of the Act authorizes the disclosure of "the identity of the party or parties to whom the warranty is extended." MACAP included a similar requirement in its 1971 guidelines for evaluating warranties, i.e., "a warranty should set forth to whom the warranty is extended." This guideline was dropped in the 1973 study. MACAP reasoned that the failure to state the "warrantee" would mean that any owner was covered by the subsequent warranty provisions, and therefore, that the warranty which does not make such a disclosure, while not meeting the guideline, would offer the broadest possible coverage with regard to this factor."

The proposed Rule required the disclosure of "the identity of the party or parties to whom the warranty is extended, including, where applicable, any limitation on its enforceability by any party other than the first purchaser at retail." Comments submitted by Montgomery Ward, Sears, Proctor Silex and others followed the reasoning of the 1973 MACAP study; i.e., that the consumer would (properly) infer from the absence of words of limitation that the warranty would extend to anyone in possession during the warranty period.[47] The Carpet and Rug Institute (CRI) the Boating Industry Association (BIA), the National Retail Merchants Association (NRMA) and others argued that the disclosure should be required only when the warranty does not extend to the original purchaser[48] and all transferees during the period of the warranty.[49] NRMA also suggested that this paragraph refer only to the *written* warranty, to clarify that the warranty need not serve as a "treatise on privity."[50]

The National Association of Photographic Manufacturers recommended that the language "first purchaser at retail," used in the proposed Rule, be altered to read "original consumer purchaser", since the word "consumer" is clearly defined in § 701, and since the avoidance of the words "at retail" would prevent misinterpretations where the warranted consumer product was sold in wholesale or discount stores at prices below suggested list price.[51]

The final Rule incorporates the three recommendations discussed above. The Commission has concluded that the changes reflected in the final Rule would be consistent with consumer understanding and would simplify warranty language.

---

subject to the full requirements in the bill. The House amendment *excluded* from the disclosure requirements of the bill products costing less than $5; it *excluded* from the designation requirements of the bill products costing less than $10. The minimum federal standard applicable to full warranties was not applicable to products costing less than $10, even in situations where warrantors of products costing less than $10, used the full warranty designation.

The conference substitute *excludes* from the disclosure requirements of the bill warranties on consumer products actually costing less than $5 and *excludes* from the designation requirements of the bill warranties on consumer products actually costing less than $10. However, the conference substitute provides that any warrantor giving a warranty characterized as a full warranty must comply with the minimum Federal standards set forth in section 104, no matter what the actual cost of the consumer product to which the warranty applies." [emphasis supplied].

[38] R 1-4-2, 691, AHAM.

[39] R 1-3-1, 1, Westinghouse Electric Corporation; R 1-4-1, 18, National Association of Chain Drug Stores; R 1-4-1, 90-91, National Electrical Manufacturers Association; R 1-4-1, 219, Air Conditioning and Refrigeration Institute; Tr. 1594-5, Waltham Watch Company.

[40] R 1-4-1, 18, National Association of Chain Drug Stores.

[41] "Ms. Berke: Our current regulations propose that the warranty be a single document set apart from any other information you might give on the products. Mr. Feinsmith: That is going to be very much more expensive then because if we can make it part of one document it cuts our costs by at least 50 percent." Tr. 1595, Waltham Watch Company; R 1-4-1, 18, National Association of Chain Drug Stores.

[42] R 1-4-1, 91, National Electrical Manufacturers Association.

[43] R 1-4-1, 219, Air Conditioning and Refrigeration Institute.

[44] "For example, the Amoco Oil Company tire warranty grants a replacement allowance based on depth of tread remaining. The allowances for each tire type are printed for dealers on four 8½ x 11 pages, and his instructions for the proper measurement of tread and adjustment of the tires require another four pages. The consumer is unlikely to require any of these pages himself especially since the value of the allowance changes from time to time." R 1-3-2, 696, Standard Oil Co. (Indiana).

[45] R 1-3-2, 697, Standard Oil Co. (Indiana).

[46] R 1-2-2, 778, MACAP.

[47] R 1-3-2, 491, Montgomery Ward & Co., Inc.; R 1-3-2, 606, Proctor-Silex; R 1-3-2, 645, Sears, Roebuck and Co.; R 1-4-1, 564-65, Boating Industry Associations; R 1-4-1, 600, National Retail Merchants Association; R 1-3-2, 606, SCM Corporation.

[48] Note that under Sections 104(b)(4) and 101(3) of the Act, a warrantor offering a full warranty is precluded from limiting warranty coverage to the original purchaser.

[49] R 1-3-1, 126, Carpet and Rug Institute; R 1-3-2, 491 Montgomery Ward & Co., Inc.; R 1-3-2, 606 Proctor-Silex; R 1-3-2, 645, Sears Roebuck and Co.; R 1-4-1, 564-65, Boating Industry Associations; R 1-4-1, 600, National Retail Merchants Association; R 1-3-2, 606, SCM Corp.

[50] R 1-4-1, 601, National Retail Merchants Association.

[51] R 1-4-1, 198-99, National Association of Photographic Manufacturers, Inc.

WARRANTY COVERAGE

701.3(a)(2) A clear description and identification of products, or parts, or characteristics, or components or properties covered by and where necessary for clarification, excluded from the warranty;

Sections 102(a)(3) and (12) of the Act provide for the disclosure of "the product or parts covered" and "the characteristics or properties of the products or parts thereof, that are not covered by the warranty". The MACAP guidelines similarly require "the product or specific parts covered and against what".[52] The NBCCA report states that "written warranties should specify the extent of parts coverage."[53]

The *Guides* require that:

"In general, any guarantee in advertising shall clearly and conspicuously disclose—

(a) The nature and extent of the guarantee. This includes disclosure of (1) What product or part of the product is guaranteed, (2) What characteristics or properties of the designated product or part thereof are covered by, or excluded from, the guarantee . . ."[54]

A long line of FTC orders have required the disclosure of "the nature and extent of the guarantee and the manner in which the guarantor will perform."[55] Although none of these orders delineates the meaning of "the nature and extent of the guarantee" or "the manner in which the guarantor will perform," the *Guides* establish that this general language encompasses the characteristics or properties covered by or excluded from the guarantee, the duration of the guarantee, the guarantor's manner of performance, the product or part guaranteed, and the purchaser's obligations. Thus, there is support for including this paragraph on the basis of past Commission case law.

A consumer letter, illustrative of the problems which this paragraph is designed to solve, complained that the consumer's automobile warranty explicitly did not extend to "service items", but did not enumerate those items which were considered "service items" by the manufacturer; as a result, it did "not indicate that [the automobile manufacturer] is using this term in an extremely broad and uncommon sense so a to exclude the myriad of items which would be included under other warranties using the same terminology".[56]

The proposed Rule required the disclosure of:

a clear description and identification of parts, characteristics, components and properties covered by, and excluded from the warranty.

Baldwin Piano, Sunbeam Corp. and many other participants found the words "characteristics" and properties" vague and urged deletion.[57] The final Rule amends the phrase containing these terms to read "*products*, or parts, or characteristics, or components or properties." The disjunctive language makes it ". . . clear that a warranty covering all defects in a product (which is a characteristic) must not also list every part, component, and property of the product covered. A reference to all defects in a product should include defects in all parts without a statement to that effect."[58] The addition of the word "products" uses the statutory language set forth in § 102(a)(3) of the Act,[59] as recommended by Ross, Hardies, O'Keefe, Babcock & Parsons ("Ross, Hardies"), SCM Corp., and Thermador.[60]

Warren Tool Corp., MACAP and NRMA and others suggested that warrantors be required to disclose either the items covered *or* those not covered by the warranty.[61] Gambles stated:

(T)he requirement could become rather cumbersome if the warrantor had to identify all the parts of a product not covered by the warranty if the warranty was limited to only one component or part of the product."[62]

"An example utilizing a major appliance can best show the problems which this provision would pose. Assume a product with two hundred parts carries a full one year warranty and thereafter a limited four year warranty on its major component. As drafted the regulation would require a detailed listing of 400 parts in the warranty text.

"For the full one year warranty period there would have to be a listing of each and every part contained in the product and an indication that those parts are covered by the warranty.

"The text of a limited portion of the warranty would have to indicate that the major component is covered and contain a listing of every other part as being excluded from that portion of the warranty. This is clearly unnecessary and unworkable and would only tend to confuse rather than enlighten even those consumers who would try to read and understand it."[63]

Toyota Motor Sales, the National Paint and Coatings Association, and the Southern Furniture Manufacturers Association (SFMA) stated that if a warrantor lists those items which are covered, those which are not listed should implicitly be excluded.[64]

The final Rule is similar to proposals submitted by Sears and NRMA.[65] Under this language the items not covered by the warranty need only be disclosed if the disclosure of what *is* covered is unclear, standing alone.

For example, a common warranty is one which covers all defects in material and workmanship. It should not be necessary to also include a list of all the possible causes of malfunctions of the product which would not be defects, e.g., misuse, abuse, externally caused casualties. . . . However, . . . if some part of the product covered by such a warranty were not covered as to a defect in that part, a clear statement that that part is excluded should be included in the warranty, e.g., "This warranty covers defects in material or workmanship in this product (except in light bulbs)." Without the statement of exclusion in such a warranty, it would appear to cover more than it does.[66]

For ease of communication to consumers, it should not be necessary in all cases to enumerate every covered part if the warranty covers the entire product with the exception of one or two minor parts. In such instances, the following language would meet the requirements of § 701.3(a)(2). "XYZ Company warrants your [_____], except the [_____]."[67]

The Association of Home Appliance Manufacturers (AHAM), in their written submission, stated:

Practice in the appliance and other industries is to warrant a product against manufacturing defects and to list the exclusions, such as light bulbs in a refrigerator or damage from misuse, fire, flood and the like.[68]

The Rule is intended to permit this practice. Conversely, if the warranty covers only a few parts, or characteristics, the warranty might state: "This product is not warranted in any way except against rust" or "This warranty covers the drive shaft *only*." A disclosure of the exclusions from the warranty accom-

[52] R 1-2-2, 779, MACAP.

[53] R 1-2-2, 821, National Business Council for Consumer Affairs.

[54] *Guides*, supra note 6, at § 239.1.

[55] See, e.g., *In the Matter of General Transmission Corporation of Washington, et al.*, 73 FTC 399 (1968); *In the Matter of Coleman Company, Inc.* 73 FTC 724 (1968); *In the Matter of Delco Carpets, Inc., trading as Delco Carpet Mills, Inc.*, 70 FTC 1706 (1966); *In the Matter of Midas, Inc., et al.*, 56 FTC 1564 (1960); *In the Matter of Comstock Chemical Co., Inc., et al.*, 56 FTC 33 (1959); *In the Matter of Stewart Auto Upholstering Co., et al.*, 59 FTC 1167 (1961); *In the Matter of Stern & Co., et al.*, 59 FTC 1418 (1961); *In the Matter of Fred B. Miller, et al.*, 56 FTC 1249 (1960); *In the Matter of Hilton Watch & Clock Co., Inc., et al.*, 61 FTC 742 (1963); *In the Matter of L. T. Baldwin*, 59 FTC 975 (1961).

[56] R 1-2-2, 729-31.

[57] R 1-3-1, 26, Baldwin Piano; R 1-3-1, 200, Ross, Hardies, O'Keefe, Babcock & Parsons; R 1-3-2, 366, Sunbeam Corp.; R 1-3-2, 607, SCM Corp.; R 1-3-2, 711, White Consolidated Industries; R 1-4-1, 220, Air Conditioners and Refrigeration Institute; R 1-4-1, 476-77, Association of Home Appliance Manufacturers; R 1-3-2, 606-07, SCM Corp.

[58] R 1-3-2, 646, Sears Roebuck & Co.

[59] "The *products* or parts covered." (emphasis added).

[60] R 1-3-1, 200, Ross, Hardies, O'Keefe, Babcock & Parsons; R 1-3-2, 607, SCM Corp.; Tr. 2314, Thermador.

[61] R 1-3-2, 347, Gambles; R 1-3-2, 492, Montgomery Ward & Co.; R 1-3-3, 787, Warren Tool Corporation; R 1-4-1, 372-73, MACAP; R 1-4-1, 601, National Retail Merchants Association.

[62] R 1-3-2; 347, Gambles.

[63] R 1-3-2, 492, Montgomery Ward.

[64] R 1-3-3, 1103, Toyota Motor Sales, U.S.A., Inc.; R 1-4-1, 132, National Paint and Coatings Association; R 1-4-1, 316, Southern Furniture Manufacturers Association.

[65] "A clear description and identification of parts, characteristics, components and/or properties covered by and, where necessary for clarification, excluded from the warranty." R 1-3-2, 646, Sears Roebuck & Co.

". . . (P)ermit *either* a clear statement of what is covered or a clear statement of what is not covered, and . . . add that if there are ambiguities language sufficient to clarify any such ambiguities is required." R 1-4-1, 601, NRMA.

[66] R 1-3-2, 646, Sears Roebuck & Co.

[67] R 1-3-2, 547-48, Nixon, Hargrave, Devans & Doyle; R 1-4-1, 476, Association of Home Appliance Manufacturers; R 1-4-1, 372, MACAP; R 1-3-2, 606-607, SCM Corp.

[68] R 1-4-1, 476, AHAM.

panied by a statement such as "all other [*parts*] are covered by this warranty" [69] would also satisfy the requirements of this paragraph.

WARRANTY PERFORMANCE

701.3(a)(3)

A statement of what the warrantor will do in the event of a defect, malfunction or failure to conform with the written warranty, including the items or services the warrantor will pay for or provide, and, where necessary for clarification, those which the warrantor will not pay for or provide;

Section 102(a)(4) of the Act authorizes the disclosure of "a statement of what the warrantor will do in the event of a defect, malfunction, or failure to conform with such written warranty—at whose expense—and for what period of time". The MACAP guidelines require the warrantor to state: "In case of a claim: Exactly what the warrantor will do and at whose expense." [70]

The *Guides* require the disclosure of:

The manner in which the guarantor will perform. This consists primarily of a statement of exactly what the guarantor undertakes to do under the guarantee. Examples of this would be repair, replacement, refund. If the guarantor or the person receiving the guarantee has an option as to what may satisfy the guarantee, this should be set out.[71]

Past FTC warranty orders have consistently required the disclosure of the manner in which the warrantor will perform. (See the discussion and citations in the explanation of section 701.3(a)(2), *supra*.)

The Commission has received a number of letters from consumers indicating the need for clarification in warranty documents as to what items or services the warrantor will and will not pay for or provide in the event of a failure defect or malfunction in the product.[72]

The proposed Rule required the disclosure of

a statement of what the warrantor will do to remedy a defect or malfunction in the product, or failure to conform with the written warranty, including but not limited to the items or services the warrantor will and will not pay for or provide.

Many industry comments were received to the effect that it would be unnecessarily verbose to require a statement reciting what the warrantor will not do in a warranty which clearly states what the warrantor will do.[73] Armstrong Cork Co. argued that compliance with this paragraph would unduly lengthen warranties, and that "a delineation of each conceivable item or service which will not be paid or provided would tax even the wildest imagination."[74]

The language adopted in this paragraph of the final Rule parallels that in section 701.3(a)(2), discussed *supra*. As suggested by Sears, a warrantor need only state what he will not do if the disclosure of what he will do, standing alone, is unclear.[75]

For example, if a warranty provides that the product will be replaced at no charge if the product is returned to the store, it should not be necessary to also recite that the product will not be repaired, or that the warrantor will not pay for travel expenses. The affirmative statement in such a warranty clearly states what the warrantor will do, and there is no implication that anything else will be done.[76]

The requirement of this sub-part could be satisfied by stating, for example: "We will pay for parts and service *only;*" or by disclosing the services which the warrantor will not perform, accompanied by a statement such as: "You must pay all other expenses incurred in obtaining repairs." [77]

A number of industry representatives objected to the use of the word "remedy" in the proposed Rule.[78] The language used in Section 102(a)(4) of the Act [79] was preferred. A warrantor is not required to "remedy" a product unless the applicable warranty is designated as a "full (statement of duration) warranty." The final Rule substitutes the statutory language, "in the event of" for the word "remedy."

WARRANTY DURATION

701.3(a)(4)

The point in time or event on which the warranty term commences, if different from the purchase date, and the time period or other measurement of warranty duration.

Section 102(a)(4) of the Act calls for the disclosure of "a statement of what the warrantor will do in the event of a defect, malfunction or failure to conform with such written warranty . . . and for what period of time." MACAP's guideline, requiring "the specific time for which the product or parts are covered" [80] was fulfilled by 95% of the warranties submitted in the 1973 study. The *Guides*, too, require the disclosure of "what is the duration of the guarantee".[81] The NBCCA report states that "written warranties should specify the specific duration of the warranty." [82]

Paragraph 701.3(a)(4) also requires the warrantor to specify the point in time (if other than the purchase date) when the warranty term begins. This is to ensure that the purchaser is informed as to whether the warranty terms starts to run immediately upon manufacture, purchase, delivery, or the date on which the product is first used. Several consumer letters illustrate the need for the disclosures required by this paragraph.[83]

The proposed Rule required the disclosure of:

The point in time or event on which the warranty term commences, and the time period or other measurements of duration for which the product and/or its parts, characteristics, components, or properties are warranted.

Montgomery Ward, Timex, and NRMA took the position that the consumer's normal expectation is that a warranty takes effect on the date of purchase. Therefore, the warrantor should be required to make a disclosure about the beginning of the warranty only when this is not the case.[84] The final Rule incorporates the language submitted by Montgomery Ward,[85] and requires that the commencement date of the warranty need only be disclosed "if different from the purchase date."

CONSUMER DUTIES

701.3(a)(5)

A step-by-step explanation of the procedure which the consumer should follow in order to obtain performance of any warranty obligation, including the persons or class of persons authorized to perform warranty obligation(s). This includes the name(s) of the warrantor(s), together with: the mailing address(es) of the warrantor(s), and/or the name or title and the address of any employee or department of the warrantor responsible for the performance of warrantor obligations, and/or a telephone number which consumers may use without charge to obtain information on warranty performance;

---

[69] R 1-3-2, 366, Sunbeam Corp.; R 1-3-3, 921, Amana Refrigeration, Inc.

[70] R 1-2-2, 779, MACAP.

[71] *Guides, supra* note 6, at § 239.1(b).

[72] See, e.g. R 1-2-2, 735-36 (undisclosed charge for service call during warranty period); R 1-2-2, 737-38 (undisclosed charge for warranty service call and for delivering product to and from repair shop); R 1-2-2, 741 (undisclosed "check-out" fee for in-warranty inspection of defective product); R 1-2-2, 742-44 (undisclosed labor charge for in-warranty repairs).

[73] R 1-3-1, 7, Coleman Co.; R 1-3-1, 126, 130-32, Carpet and Rug Institute; R 1-3-2, 419, Armstrong Cork Company; R 1-3-2, 647, Sears Roebuck & Co.; R 1-3-3, 788, Warren Tool Corporation; R 1-4-1, 601, National Retail Merchants Association.

[74] R 1-3-2, 419 Armstrong Cork Company.

[75] See R 1-3-2, 647, Sears' suggested language: "A statement of what the warrantor will do to remedy a defect or malfunction in the product, or a failure to conform with the written warranty, including but not limited to the items or services the warrantor will pay for or provide, and, where necessary for clarification, what the warrantor will not pay for or provide."

[76] R 1-3-2, 647, Sears Roebuck and Co.

[77] R 1-4-1, 601 National Retail Merchants' Association.

[78] R 1-3-1, 57, Mohasco Corporation; R 1-3-2, 430-432, Defrees & Fiske; R 1-2-2, 545, Nixon, Hargrave, Devans & Doyle; R 1-4-1, 18-19, Nat'l Association of Chain Drug Stores, Inc.; R 1-4-1, 92 Nat'l Electrical Manufacturers Association; R-4-1, 220, Air Conditioning and Refrigeration Institute; R 1-4-1, 477, Association of Home Appliance Manufacturers.

[79] "A statement of what the warrantor will do in the *event of* a defect . . ." (emphasis added).

[80] R 1-2-2, 779, Major Appliance Consumer Action Panel.

[81] *Guides, supra* Note 6.

[82] R 1-2-2, 821, NBCCA.

[83] R 1-2-2, 746 (warranty expired one year prior to the time consumer had purchased the product); R 1-2-2, 748 (warranty did not disclose that it ran from the date of production of the appliance).

[84] R 1-3-2, 495, Montgomery Ward & Co., Inc.; R 1-3-3, 935, Timex Corp.; R 1-4-1, 602, National Retail Merchants Association.

[85] "The point in time or event on which the warranty terms commences, if different from the purchase date, and the time period or other measurements of duration for which the product and/or its parts, characteristics, components or properties are warranted." R 1-3-2, 490 Montgomery Ward & Co., Inc.

Section 102(a)(7) of the Act authorizes the disclosure of "the step-by-step procedure which the consumer should take in order to obtain performance of any obligation under the warranty, including the identification of any class of persons authorized to perform the obligations set forth in the warranty."

MACAP found that its analogous requirement, i.e., that the warranty state "in case of a claim: exactly what the consumer must do and at whose expense" [84] was the guideline most frequently not fulfilled in the 1973 study. According to MACAP, this guideline "requires that a warranty describe the steps the appliance owner should follow to obtain in-warranty service",[85] The NBCCA report states that "written warranties should specify "the obligations of the owner." [86]

The *Guides* require the disclosure of "what, if anything, anyone claiming under the guarantee must do before the guarantor will fulfill his obligation under the guarantee, such as return of the product and payment of service or labor charge." [87] The fact that not all warranties currently fully disclose all the requirements which must be fulfilled by consumers in order to obtain warranty performance is illustrated by several consumer complaints.[88]

The disclosures required by paragraph 701.3(a)(5) are intended to inform the consumer of the full extent of his or her obligations under the warranty, and to eliminate confusion as to the necessary steps which he or she must take in order to get warranty performance.

This sub-paragraph of this section also requires that the warrantor apprise the consumer of the persons or organizations authorized to perform warranty service. This provision conforms with recommendations in the NBCCA report that "written warranties should specify where warranty service can be obtained." [89]

The proposed Rule required the disclosure of:

> A step-by-step explanation of the procedure which the purchaser should follow in order to obtain performance of any warranty obligation, including the persons or organizations authorized to perform warranty service, or a telephone number which consumers may use without charge from which such information may be obtained. This information shall include the name and address of any corporate officer or department responsible for the resolution of such matters, and/or any telephone number which consumers may use without charge for such purposes;

Many industry comments were received which stated that the number of service outlets or representatives were far too numerous to list in the warranty.[92] AHAM, in its written sunbmission stated that

> (a) literal interpretation of the requirement . . . would require the listing of hundreds or thousands of persons or organizations in a warranty.[93]

Also, independent or other service outlets used by a warrantor change from time to time.[94] Thus, any listing of such outlets compiled when a product is manufactured and shipped could be out-of-date by the time the product is displayed or sold. AHAM noted that:

> Frustration would inevitably result should a consumer read in a written warranty that the ABC Service Center will provide warranty service, only to find that ABC is no longer in business, through no fault of the warrantor, when a call for service is made.[95]

McGraw Edison Co., Sunbeam, Amana, and others claimed that the alternative of maintaining a telephone number which consumers can use without charge, from which such information could be obtained, would be too costly.[96] Many other negative comments from warrantors concerning the use of toll-free lines are included in the record.[97]

EIA stated that:

> (P)ersons calling on such a line could not be expected to confine their inquiries to obtaining names of repairmen. Persons on the receiving end of such telephone lines would necessarily have to be well informed and skilled in handling complaints. . . . (T)here . . . would be insufficient profit margin of a toll free telephone service. . . . In many cases, the manufacturers have no control over, and in fact may not even know who is authorized to sell and repair their products.[98]

Nixon, Hargrave, Devans and Doyle, ("Nixon, Hargrave"), Colt Industries, and others suggested use of the language used in § 102(a)(7) of the Act, "person or class of persons." [99] The Air Conditioning and Refrigeration Institute and SCM recommended that the language *"types* of organizations" [100] be adopted.

The final Rule requires the disclosure of the "persons or *class of persons* authorized to perform warranty obligations". The final Rule would permit a warrantor to use language such as "any authorized [----------] dealer," [101] or "contact your local dealer for warranty service," [102] provided that consumers have ready access to a listing of authorized facilities. This may be accomplished by supplying a listing with the product, providing a source for such information in the warranty, or where a national service network is provided, through reference to a telephone directory.

Further industry comments received on the proposed Rule stated that the warrantor should not be required to include the name and address of a corporate officer responsible for the resolution of warranty complaints. Union Carbide Corporation suggested that this be deleted or at least changed to permit the name of any person in the warrantor's employ, and not just a corporate officer,[103] or any appropriate department.[104] The Gas Appliance Manufacturers Association (GAMA) argued that if disclosure of a *name* of a corporate officer were required, personnel shifts would necessitate the reprinting of the warranty.[105]

NRMA submitted that the name and address or the phone number of a warranty "referee" should only be required if such a disclosure is applicable to the warrantor.[106] GAMA and NEMA commented that the phrase "resolution of"

---

[84] R 1-2-2, 789, Major Appliance Consumer Action Panel.

[85] R 1-2-2, 781, Major Appliance Consumer Action Panel.

[86] R 1-2-2, 821, National Business Council for Consumer Affairs.

[87] *Guides, supra* note 6, at § 239.1.

[88] R 1-2-2, 749 (warranty did not disclose that consumer was required to ship defective 18-foot boat back to factory and pay for shipping costs in order to get warranty performance); R 1-2-2, 751 (warranty did not disclose that a sales slip and validated certificate to indicate date of purchase were required for in-warranty service); R 1-2-2, 756 (undisclosed charge for postage and handling); R 1-2-2, 757 (undisclosed charge for warranty coverage).

[89] R 1-2-2, 821, NBCCA.

[92] R 1-4-1, 481, Association of Home Appliance Manufacturers; R 1-3-1, 312, Briggs & Stratton Corp.; R 1-3-2, 348, Gambles-Skogmo, Inc.; R 1-3-2, 368-369, Sunbeam Corp.; R 1-3-2, 383, Rockwell International; R 1-3-2, 546, Nixon, Hargraue, Devans & Doyle; R 1-3-2, 650, Sears, Roebuck & Co., R 1-3-3, 936, Timex Corp.; R 1-4-1, 184, Electronic Industries Association; R 1-3-1, 19-20, Walker Manufacturing; R 1-3-3, 846, General Electric Co.

[93] R 1-4-1, 481, AHAM.

[94] R 1-3-1, 342, Zenith Hearing Instrument Corp.; R 1-3-2, 348, Gamble-Skogmo, Inc.; R 1-3-2, 368-369, Sunbeam Corp.; R 1-3-2, 546, Nivon, Hargrave, Devans & Doyle; R 1-3-2, 650, Sears, Roebuck & Co.; R 1-3-3, 936, Timex Corp.; R 1-4-1, 482, Association of Home Appliance Manufacturers; Tr. 2275, California State Electronics Association.

[95] R 1-4-1, 482-83, Association of Home Appliance Manufacturers.

[96] R 1-3-1, 171-172, McGraw Edison Co.; R 1-3-1, 201, Ross, Hardies, O'Keefe, Babcock & Parsons; R 1-3-0, 369, Sunbeam Corp.; R 1-3-3, 923, Amana Refrigeration, Inc.; R 1-3-3, 936, Timex Corp.; R 1-4-1, 124, Automotive Parts & Accessories Association, Inc.; R 1-4-1, 481-82, Association of Home Appliance Manufacturers; Tr. 2316-17, John Schiewe, Ass't Vice President, Marketing and Product Manager, Thermador Wash-King.

[97] R 1-3-1, 134-135, CRI; R 1-3-1, 312, Briggs & Stratton Corp.; R 1-3-2, 348, Gamble Skogmo, Inc.; R 1-4-1, 39, National Association of Furniture Manufacturers, Inc.; R 1-4-1, 184-186, EIA; R 1-3-3, 848, General Electric.

"A toll-free number to a remote location would be a duplication of a cost for General Electric in view of our well-identified local service facilities."

[98] R 1-4-1, 184-86, EIA.

[99] R 1-3-2, 419, Armstrong Cork Co.; R 1-3-2, 546, Law firm of Nixon, Hargrave, Devans & Doyle, Washington, D.C.; R 1-3-2, 587, Colt Industries; R 1-3-3, 923, Amana Refrigeration, Inc.; Tr. 1722, David V. Kahn, Attorney, Chicago, Illinois; R 1-3-3, 844, General Electric.

[100] R 1-4-1, 222, Air Conditioning and Refrigeration Institute; R 1-3-2, 61, SCM; R 1-3-3, 956-957, Whirlpool Corp.

[101] R 1-3-1, 8, The Coleman Co., Inc.; R 1-3-1, 342, Zenith Hearing Instrument Corp.; R 1-4-1, 184, EIA.

[102] R 1-3-2, 348, Gamble-Skogmo, Inc. ("or contact your nearest ---------- store"); R 1-3-2, 496, Montgomery Ward & Co., Inc.; R 1-4-1, 184, EIA.

[103] R 1-3-1, 287, Union Carbide Corporation.

[104] R 1-3-1, 287, Union Carbide Corporation. See also R 1-3-2, 612, SCM.

[105] R 1-4-1, 26, Gas Appliance Manufacturers Association, Inc.

[106] R 1-4-1, 603, NRMA.

should be deleted since it implied that there was a dispute, which would not be the case when the warranty was extended.[107]

The final Rule deletes the words "resolution of such matters" and substitutes "the performance of warranty obligations." It provides three alternative means for the disclosure of how the consumer may contact the warrantor.

Armstrong Cork, Sears, NEMA, and Nixon, Hargrave stated that paragraph (a) of the proposed Rule, which required the disclosure of the "full name(s) and address(es) of the warrantor," overlapped with paragraph (h).[108] The substance of former paragraph (a) was incorporated as one of the three alternatives in section 701.3(a)(5) of the final Rule. The purpose of this disclosure is to provide an address which the consumer can use to communicate with the warrantor concerning warranty claims.[109] Such information need not be provided twice in the same warranty.

Section 102(a)(1) of the Act authorizes the Commission to require the disclosure of "the clear identification of the names and addresses of the warrantors". The MACAP guidelines similarly require the inclusion of "the name and address of the warrantor, on the same page as the body of the warranty."[110] The NBCCA report states that "written warranties should specify the identity of the warrantor."[111]

The *Guides* require the disclosure of "the identity of the guarantor," stating that:

> the identity of the guarantor should be clearly revealed in all advertising, as well as in any documents evidencing the guarantee. Confusion of purchasers often occurs when it is not clear whether the manufacturer or the retailer is the guarantor.[112]

A consumer complaint, indicating that the absence of the warrantor's address has been a problem, related that neither the warranty nor the package for a mattress cover, nor the cover itself disclosed the address of the warrantor. Thus, when the cover ripped, the consumer was unable to locate the warrantor so as to secure performance on the five-year warranty.[113] Another consumer stated, after having suffered considerable delay in having a hot water tank repaired,

> I honestly believe some of this confusion could have been eliminated if my warranty had spelled out exactly what department of the company warranty requests should be forwarded to. Maybe the FTC should require such information be included in warranty statements.[114]

The final Rule permits the warrantor to include such a department or an employee of the warrantor responsible for the performance of warranty obligations. The "corporate officer" language was dropped, in accordance with the comments discussed previously. It is not necessary to identify an individual in order to provide the consumer with proper access for obtaining warranty performance.

§ 701.3(a)(5) of the Rule also permits the warrantor to maintain a telephone number which consumers may use without charge. Use of such a device is not required. The purpose of the last sentence in section 701.3(a)(5) is to provide the consumer with a means for contacting the warrantor, and the use of any or all of the three alternatives set forth will satisfy this requirement.

Finally, it should be noted that the word "purchaser" has been replaced by the word "consumer," since the Rules define the word "consumer," and since the person invoking the warranty need not in fact be a "purchaser" of the product.[115]

INFORMAL DISPUTE SETTLEMENT MECHANISMS

701.3(a)(6)

Information respecting the availability of any informal dispute settlement mechanism elected by the warrantor in compliance with Part 703 of this subchapter;

Section 102(a)(8) of the Act authorizes the inclusion in warranties of "information respecting the availability of any informal dispute settlement procedure offered by the warrantor . . .". The Senate Report provides the rationale behind the analogous provision in the Senate version of the bill:

> . . . [T]he consumer should be notified of his ability to seek redress through . . . any informal dispute settlement mechanisms that the warrantor may offer. Furthermore, if the warrantor is required to inform the consumer of his rights in the event the warrantor fails to perform, the Committee believes that the warrantor will have greater incentive to perform as promised.[116]

As the NBCCA report states:

> [T]he consumer's need for warranty information continues and is more pronounced after the product has been purchased . . . some companies have begun to encourage consumers to make toll-free calls to a centralized location . . . In other cases, metropolitan consumer response offices have been established to serve these needs. However organized, some convenient means of obtaining information on the product . . . warranty should be available to consumers after sale.[117]

The proposed Rule required the disclosure of "(i)nformation respecting the availability of any informal dispute settlement procedure as specified in Part 703 of this subchapter." Mohasco Corp. and CRI stated that such information should be required only where such a procedure is offered or required by the warrantor, and not wherever a procedure is merely "available," regardless of whether or not the warrantor offers or requires it.[118] In order to clarify the intent of this section the language of this provision has been revised to read "mechanism elected by the warrantor in compliance with Part 703 of this subchapter."

LIMITATION ON IMPLIED WARRANTIES AND REMEDIES

701.3(a)(7)

Any limitations on the duration of implied warranties, disclosed on the face of the warranty as provided in Section 108 of the Act, accompanied by the following statement:

"Some states do not allow limitations on how long an implied warranty lasts, so the above limitation may not apply to you."

701.3(a)(8)

Any exclusions of or limitations on relief such as incidental or consequential damages, accompanied by the following statement, which may be combined with the statement required in sub-paragraph (7) above:

"Some states do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to you."

Section 102(a)(6) of the Act provides for the disclosure of "exceptions and exclusions from the terms of the warranty." The MACAP guidelines require disclosure of "exceptions, disclaimers or exclusions with the same prominence as the affirmative statements in the body of the warranty."[119]

The Uniform Commercial Code, ("U.C.C.") which, with variations, is the law in the District of Columbia and in every state except Louisiana, provides, at §§ 2-314 and 2-315, that in a contract for sale certain warranties are implied by law. The implied warranties of merchantability (which encompasses the concept that goods must be fit for the ordinary purpose for which they are used) and fitness for a particular purpose (which may arise when a seller has reason to know the particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to furnish suitable goods) in certain circumstances may provide a buyer with broader protection and rights than a written warranty document.

Although the U.C.C. provides a procedure whereby such implied warranties may be disclaimed and excluded, several states have prohibited disclaimers or ex-

---

[107] R 1-4-1, 26, Gas Appliance Manufacturers Association, Inc.; R 1-4-1, 92-93, National Electrical Manufacturers Association.

[108] R 1-3-2, 418, Armstrong Cork Co.; R 1-3-2, 547, Law firm of Nixon, Hargrave, Devans & Doyle, Washington, D.C.; R 1-3-2, 644, Sears Roebuck and Co.; R 1-4-1, 91, National Electrical Manufacturers Association.

[109] R 1-3-1, 56 Mohasco Corporation.

[110] R 1-2-2, 779, MACAP Report (1973).

[111] R 1-2-2, 821, NBCCA Report.

[112] R 1-2-1, 269 *Guides*, at § 239.1(c). See also *In the Matter of Royal Audio Instruments, et al*, 66 FTC 989 (1964); *In the Matter of ADF Warehouse, Inc., et al*. 66 FTC 1267 (1964); *In the Matter of B. R. Page Company, et al*. 66 FTC 1319 (1964); *In the Matter of Universal Sewing Service, Inc., et al*. 54 FTC 643 (1957).

The address, as well as the name of the guarantor, has been required by the Commission. *In the Matter of World Wide Television Corporation, et al*. 66 FTC 961 (1961); *affirmed* 352 F. 2d 203 (3rd Cir. 1965). See also *In the Matter of Central Sewing Center, Inc., et al., d.b.a. Tri State Distributing*, (63 FTC 788 (1963)).

[113] R 1-2-2, 726 (consumer letter).

[114] R 1-5-, 524 (consumer letter).

[115] R 1-3-2, 546, Law firm of Nixon, Hargrave, Devans & Doyle, Washington, D.C.

[116] R 1-2-2, 167, Senate Report.

[117] R 1-2-2, 822, NBCCA Report.

[118] R-1-31-1, 57-58, Mohasco Corporation; R 1-3-1, 137-138, CRI.

[119] R 1-2-2, 780, MACAP Report (1973).

clusions and have made them legally unenforceable.[120] The use of disclaimers or exclusions of implied warranties and limitations and exclusions of remedies under implied warranties in any state where such a clause or clauses are enforceable as written has the clear capacity and tendency to deceive purchasers in those states as to the true nature of their warranty rights and remedies. A consumer may reasonably be expected to believe that a warranty document states the full extent and limit of his warranty rights and remedies and rely on that belief. This reliance tends to eliminate attempts to determine whether such a written warranty states limitations, disclaimers or exclusions fully or correctly.

Paragraph (k)(1) of the proposed Rule provided that:

"Where any such modification, limitation, or exclusion is unenforceable under applicable State law, that fact shall be disclosed in a manner which specifically names such jurisdictions."

This proposal elicited substantial industry opposition. Many warrantors claimed that this requirement was unduly onerous in that it would necessitate research of the case law in every state in which a product is offered for sale, often in all fifty states.[121] Many industry representatives noted that a constant monitoring and review of state law would be required in order to keep abreast of any modifications.[122] Warranties would have to be revised continuously and reprinted because of changes in state law.[123] Armstrong Cork argued that because state law is constantly changing, the warranty could "be incorrect by intervention of judicial act before the ink was dry. . . ."[124] North American Philips Corp. stated that this could cause ". . . confusion to the consumer because it would be impossible to avoid having different warranty cards being distributed at the same time because of the products that would be in the distribution pipeline whenever a change occurred."[125]

Another line of criticism challenged the Rule's imposition on warrantors of the duty to interpret uncertain unsettled state law.[126] Standard Oil of California stated that this could lead to "public confusion resulting from inconsistent and/or inaccurate monitoring and reporting of state law by various warrantors."[127] Warren Tool, the Electronic Industries Association (EIA), and others objected that this would require warrantors to advise consumers as to complex issues of law.[128]

The Association of Auto & Truck Recyclers (NATWA) argued that the Rule, "in effect, precludes many warrantors from modifying, limiting or excluding implied warranties or consequential damages, although the Act itself specifically allows these types of modifications, limitations or exclusions."[129] Others stated that compliance with this requirement would unduly lengthen warranties.[130]

The proposed Rule also required disclosure of "all modifications and limitations on implied warranties, and all exclusions of or limitations on relief such as incidental or consequential damages." Nixon, Hargrave noted that this language appeared to permit the modification of implied warranties,[131] prohibited by Section 108(a) of the Act.[132]

Paragraph (k)(2) of the proposed Rule required that "any limitation on or exclusion of consequential damages for breach of any written or implied warranty on the consumer product shall be disclosed on the face of the warranty, as provided in § 104 of the Act."

Mohasco, Briggs & Stratton Corp., Chrysler Corp., Nixon, Hargrave, and CRI argued that the Commission ignored the intention of Congress by imposing the requirement of stating exclusions or limitations on consequential damages on the face of the warranty on "limited" warranties.[133] The Act requires only that such disclosure be made on the face of "full" warranties.[134a]

In light of the substantial criticisms of paragraph (k) of the proposed Rule, the Commission has deleted this paragraph, and has substituted paragraphs 701.3(a)(7) and (8). The final Rule does not require that warrantors specifically name the jurisdictions in which limitations or exclusions are unenforceable under state law. It does require that the consumer be alerted to the possible inapplicability of limitations on the duration of implied warranties or exclusions or limitations of incidental or consequential damages in his or her jurisdiction by the use of brief, simple disclosures. These may be combined, if both are applicable, and may also be combined with the statement required by § 701.3(a)(9), discussed *infra*. These disclosures will not serve to unduly lengthen warranty statements and will put consumers on notice as to the possible inapplicability of paragraphs concerning limitations and exclusions in the warranty. The language used in paragraphs (a)(7) and (8) is

---

[120] See, e.g.: § 2-312 *et seq.*, replaced by new Title Consumer Warranties, CALIF. CIVIL CODE ch. 1333, Stats. 1970. W. VA CODE, § 46-6-107 (supp. 1974). MASS. GEN LAWS ch. 106, § 106, § 2-316 A (supp. 1974), MD. Ann. Code, art. 95 B, § 2-316 (A) (Supp 1974). WASH. REV. CODE § 62 A, 2-316(4) (Supp. 1974). OREGON STAT. Ch. 413, §§ 72.8010-8200 (enacted Aug. 19, 1973). MAINE REV. STAT. ANN., Title 11, § 2-316(5) (Supp. 1974).

[121] R 1-3-1, 27, Baldwin Piano and Organ Co.; R 1-3-1, 41, Purolator, Inc.; R 1-3-1, 58, Mohasco Corporation; R 1-3-1, 71, Law firm of Guren, Merritt, Sogg & Cohen, Cleveland, Ohio; R 1-3-1, 81-82, Firestone Tire & Rubber Co.; R 1-3-1, 191 Association of Auto & Truck Recycles; R 1-3-1, 201-202, Bruce J. McWhirter, Attorney.; R 1-3-1, 288, Union Carbide Corp.; R 1-3-2, 356, Mark J. Lowenstein, Attorney; R 1-3-2, 408, Boise Cascade Corp.; R 1-3-2, 549-550, Law firm of Nixon, Hargrave, Devan & Doyle, Washington, D.C.; R 1-4-1, 125, Automotive Parts & Accessories Association, Inc.; R 1-4-1, 134, National Paint and Coatings Association, Inc.; R 1-3-3, 789, Warren Tool Corporation; R 1-4-1, 259, CRI; R 1-4-1, 478, Association of Home Appliance Manufacturers; Tr. 2047, Berkson, Counsel, Singer Sewing Machines.

[122] R 1-3-1, 27, Baldwin Piano and Organ Co.; R 1-3-1, 58, Mohasco Corp.; R 1-3-1, 81-82, Firestone Tire & Rubber Co.; R 1-3-2, 356, Law firm of Altheimer & Gray, Chicago, Illinois; R 1-3-2, 370-371, Sunbeam Corp.; R 1-3-2, 408 Boise Cascade Corp.; R 1-3-2, 499, Montgomery Ward & Co., Inc.; R 1-3-2, 653, Sears, Roebuck and Co.; R 1-4-1, 134, National Paint and Coatings Association, Inc.; R 1-3-3, 789, Warren Tool Corporation; R 1-4-1, 282, Specialty Equipment Manufacturers Association; R 1-4-1, 259, CRI; R 1-3-3, 849, General Electric; Tr. 2047, Berkson, Counsel, Singer Sewing Machines.

[123] R 1-3-1, 27, Baldwin Piano & Organ Co.; R 1-3-1, 48-49, North American Philips Corp.; R 1-3-1, 172, McGraw-Edison Co.; R 1-3-1, 288, Union Carbide Corp.; R 1-3-2, 350-351, Standard Oil Co. of California; R 1-3-2, 356, Law firm of Altheimer & Gray, Chicago, Ill.; R 1-3-2, 370-371, Sunbeam Corp.; R 1-3-2, 384, Rockwell Intl.; R 1-3-2, 388, Scoville Housing Products Group; R 1-3-2, 408, Boise Cascade Corp.; R 1-3-2, 499, Montgomery Ward & Co., Inc.; R 1-3-2, 550, Law firm of Nixon, Hargrave, Devans & Doyle, Washington, D.C.; R 1-3-2, 653, Sears, Roebuck and Co.; R 1-3-3, 790, Warren Tool Corporation; R 1-4-1, 282, Specialty Equipment Manuafcturers Association; R 1-4-1, 259, CRI; Tr. 2047, Berksen, Counsel, Singer Sewing Machines.

[124] R 1-3-2, 420, Armstrong Cork Co. See also R 1-3-2, 499, Montgomery Ward & Co., Inc.; R 1-3-2, 653, Sears, Roebuck and Co.; R 1-4-1, 222, Air Conditioning and Refrigeration Institute; R 1-4-1, Day, 186-187, Electronic Industries Association; R 1-3-2, 613, SCM; R 1-3-3, 849, General Electric Co.

[125] R 1-3-1, 48-49, North American Philips Corp.

[126] R 1-3-1, 8-9, The Coleman Co., Inc.; R 1-3-1, 22, The Coleman Co., Inc.; R 1-3-1, 202, Bruce J. McWhirter, Attorney, Chicago, Illinois; R 1-3-2, 392, Shell Oil Co.; "(T)his subsection requires a manufacturer, to make interpretive decisions as to the legal significance of judicial opinions in the various state courts when their legal significance may be unclear or open to dispute by intelligent and knowledgeable parties."; R 1-3-3, 924, Amana; R 1-4-1, 606 NRMA.

[127] R 1-3-2, 351, Standard Oil Co. of California.

[128] R 1-3-1, 42, Purolator, Inc.; R 1-3-1, 288, Union Carbide Corp.; R 1-3-3, 790-791, Warren Tool Corporation; R 1-4-1, 186-187 EIA.

[129] R 1-3-1, 191, Association of Auto and Truck Recyclers. See also R 1-3-2, 612, SCM; R 1-3-3, 849, General Electric Co.

[130] See e.g., R 1-3-1, 202, Bruce J. McWhirter, Attorney, Chicago, Illinois; R 1-3-1, 313, Briggs & Stratton Corp., R 1-3-2, 653, Sears, Roebuck and Co.; R 1-4-1, 606, NRMA: Tr. 2047, Berkson, Singer Sewing Machines.

[131] R 1-3-2, 549, Law Firm of Nixon, Hargrave, Devans & Doyle, Washington, D.C.; R 1-3-3, 1035, General Motors Corp.

[132] "No supplier may disclaim or modify (except as provided in subsection (b) any implied warranty to a consumer with respect to a consumer product . . . ."

[133] R 1-3-1, 59, Mohasco Corp.; R 1-3-1, 313, Briggs & Stratton Corp.; R 1-3-2, 474, Chrysler Corp.; R 1-3-2, 550, Law firm of Nixon, Hargrave, Devans & Doyle; R 1-4-1, 260-261, CRI.

[134a] "In order for a warrantor warranting a consumer product by means of a written warranty to meet the Federal minimum standards for warranty— . . . (3) such warrantor must not exclude or limit consequential damages for breach of any written or implied warranty on such product, unless such exclusion or limitation conspicuously appears on the face of the warranty." Section 104(a)(3).

similar to several proposals made on the record.[134]

The language "all modifications and limitations on implied warranties" has been changed to "any limitations on the duration of implied warranties," to eliminate any conflict with the requirements of Section 108.

The requirement that limitations on or exclusions of consequential damages be disclosed as provided in Section 104 of the Act has been deleted. Full warranties must of course comply with the applicable requirements of the Act.

Finally, the proposed Rule required that:

> Any modification, limitation, or exclusion, or any statement that such modification, limitation, or exclusion is unenforceable under applicable State law shall be set apart from the balance of the warranty by the use of type size larger than the body copy of the warranty, or by the use of all capital letters, or by underlining.

Although this paragraph has been deleted from the final Rule, such deletion should not be viewed as a tacit statement on the part of the Commission that limitations are not to be made conspicuously. Rather, in this instance, the Commission recognizes that some flexibility in making such disclosures may be necessary. The failure to make disclaimers conspicuous, as required by § 2-316 of the U.C.C., renders such disclaimers ineffective. The use of underlining, capital letters, or larger type size are examples of possible means of satisfying the statutory mandate of prominence and conspicuousness.[135]

DISCLOSURE OF THE WARRANTY RIGHTS

701.3(a)(9)

A statement in the following language:

> This warranty gives you specific legal rights, and you may also have other rights which vary from state to state.

Section 102(a)(9) of the Act authorizes the Commission to require the inclusion of a "brief, general description of the legal remedies available to the consumer."

The full and accurate disclosure of warranty terms is a major element in the warranty enforcement program created by the Act. The Act is designed to give individuals the information they need to enforce their warranty rights. To do this, the individual must have at least a threshold understanding of the legal significance of the warranty document.

If attempts by consumers to assert their warranty rights are to be made easier and encouraged, as Congress intended, written warranties must disclose information about the buyer's legal rights and remedies. As the record amply demonstrates, there is substantial room for improvement in the public's general understanding of buyer's rights and remedies. The Act recognizes the written warranty as the logical and efficient means of accomplishing this result. The warranty is, in the end, simply part of the agreement between buyer and seller. It is wholly proper that the terms and significance of the agreement be understood by the buyer as well as the seller. The free market economy depends upon adequately informed buyers to stimulate competition.

The proposed rule sought to achieve the goals described above without unduly lengthening the written warranty. The proposed rule required the disclosure of one of the statements below:

> This warranty gives you specific legal rights. You also have implied warranty rights. In the event of problem with warranty service or performance, you may be able to go to a small claims court, a State court, or a Federal district court.
>
> or
>
> This warranty gives you specific legal rights. You also have implied warranty rights, including an implied warranty of merchantability which means that your product must be fit for the ordinary purposes for which such goods are used. In the event of a problem with wararnty service or performance, you may be able to go to a small claims court, a State court, or a Federal district court.

The proposed disclosures elicited substantial comment, both adverse and favorable. While some voiced a basic disagreement with the Act's basic goal of informing buyers of their rights and remedies, several lines of comment developed on the record. Westinghouse, Sunbeam, Shell Oil, Walker Manufacturing Co. and others expressed the concern that consumers would be encouraged to go to court, rather than trying the normal remedies outlined in the warranty, or dealing directly with the warrantor initially.[136] Sears argued that the proposed language "could mislead some consumers into the belief that they *must* resort to the courts to obtain any performance under the warranty."[137] Husky Oil Co., Guren, Merrit, Sogg & Cohen ("Guren, Merritt"), and others felt that inclusion of such a provision would encourage litigation[138] in already congested courts.[139] Lear Siegler, Inc. and National Association of Photographic Manufacturers argued that the disclosures were in conflict with the legislative intent of the Act to encourage informal settlements.[140]

North American Philips Corp., AHAM, and others claimed that the proposed statements would serve to confuse rather than inform consumers.[141] SCM Corp. stated:

> The implication of both versions of the specified statement is that judicial remedies are readily available without cost or difficulty to a consumer who is dissatisfied with warranty performance. The fact that jurisdictional requirements may bar an action in federal court, that federal or state court procedure must be followed, that an attorney may be necessary, and the fact that there may be costs to the consumer which may or may not be reimbursable at the end of the proceeding make the inclusion of the proposed statements unreasonable and misleading to consumers.[142]

AHAM, in its written submission, stated:

> Encouraged by a written warranty to seek redress in court, unable in many instances to find the proper court, and finding in most instances that the assistance of a lawyer is necessary, a dissatisfied purchaser would be rewarded only with disillusionment and frustration. Unfortunately, the frustration and disillusionment and resulting animosity would be directed against the warrantor. . . .[143]

General Mills Fun Group and Eddie Bauer commented that insertion of such statements would subject them to a barrage of questions from consumers as to their legal rights, and that answering such inquiries would increase their operating costs.[144] Westinghouse, Black and Decker, Sears, EIA and others expressed the view that these statements were appropriate for a consumer education campaign, but not for disclosure in warranties themselves.[145] Westbend Co., among others, argued that the nuances of implied warranties and legal rights could not adequately be explained to consumers in just five or six lines.[146] Zenith Radio

---

[134] R 1-3-1, 27 Baldwin Piano and Organ Co. ("Some states do not permit limitations on the duration of an implied warranty and some states require warrantor to award incidental and consequential damages. . . ."); R 1-3-1, 117, Ford Motor Co. ("Modifications, limitations or exclusions on implied warranties may be unenforceable in some states. . . ."); R 1-3-1, 501, Montgomery Ward (". . . The modification or limitation on implied warranties set forth in this warranty is unenforceable in some states. . . .")

[135] See R 1-3-3, 849, GE ("The provision describing how to make modifications, limitations, etc., conspicuous or prominent should if considered at all, be by way of example.")

[136] R-1-3-1, 2, Westinghouse Electric Corp.; R-1-3-2, 372, Sunbeam Corp.; R-1-3-2, 393, Shell Oil Co.; R-1-3-2, 703, Standard Oil Co., (Indiana); R-1-4-1, 3-4, California State Electronics Association; R-1-4-1, 223, Air Conditioning and Refrigeration Institute; R-1-3-1, 19, Walker Manufacturing; R-1-3-3, 850, General Electric Co.; Tr. 2276, Woolliscraft, California State Electronics Association.

[137] R-1-3-2, 655, Sears, Roebuck and Co.; See also R-1-3-2, 724, Bose Corporation; R-1-3-3, Waltham Watch.

[138] R-1-3-1, 72, David A. Schaefer, Attorney, Cleveland Ohio; R-1-3-2, Zenith Radio Corp.; R-1-3-2, 432, Henry J. Underwood, Jr., Attorney, Chicago, Illinois; R-1-4-1, 93, National Electrical Manufacturers Assoc.; R-1-4-1, 135, National Paint and Coatings Association, Inc.; Tr. 2048, Berkson, Counsel, Singer Sewing Machines.

[139] R-1-3-1, 97, Goodyear Tire & Rubber Company; R-1-3-1, 164, Lear Siegler, Inc.

[140] R-1-3-1, 165, Lear Siegler, Inc.; R-1-4-1, 203, National Association of Photographic Manufacturers, Inc.

[141] R-1-3-1, 49, North American Philips Corp.; R-1-3-1, 313, Briggs & Stratton Corp.; R-1-3-2, 393, Shell Oil Co.; R-1-3-2, 655, Sears, Roebuck and Co.; Tr. 165, Ray Allerbach, Executive Director, American Institute of Kitchen Dealers; R-1-4-1, 484, AHAM; R-1-4-1, 539, Motor & Equipment Manufacturers Association.

[142] R-1-3-2, 615, SCM. See also R-1-4-1, 135, National Paint and Coatings Association, Inc.

[143] R-1-4-1, AHAM.

[144] R-1-3-2, 456-457, General Mills; R-1-3-2, 463, Eddie Bauer.

[145] R-1-3-1, 2, Westinghouse Electric Corp.; R-1-3-1, 189 Black and Decker; R-1-3-2, Sears, Roebuck & Company; R-1-3-2, 703, Standard Oil Co. (Indiana); R-1-4-1, 27, GAMA; R-1-4-1, 125, Automotive Parts and Accessories Assoc., Inc.; R-1-4-1, 187, E.I.A.

[146] R-1-3-1, 79, West Bend Co.; R-1-3-1, 189, Black and Decker; R-1-3-3, 958, Whirlpool Corp.

Corp., Nutone Division, and others claimed that even the inclusion of the existing statements would unduly lengthen warranties.[147]

The need for some form of disclosure as to the consumer's legal rights is documented in the record.[148] Hershel Elkins, California Deputy Attorney General, in his testimony stated:

> . . . (T)he experience we have have indicates that consumers, if they have an occasion to look at their warranty . . . believe that that restricts their rights to go further. In fact, we have had individuals who have gone back to the sellers, and the sellers have said 'Look; take a look at your warranty. It says right here that this is the only protection you have.' And consumers often do not realize that they have other theories. They have implied warranty. There is also negligence even without warranties. There are all sorts of breach of contract theories which might be utilized; and that is not an end all . . .[149]

The final Rule does not require the disclosure of either of the two alternatives as proposed. Since the proceeding did show the need for some kind of disclosure concerning warranty rights, a brief general statement was adopted, which puts the consumer on notice that other rights might accrue to him or her, in addition to those cited in the warranty. The substance of the language used in this statement follows several suggestions offered in the written comments on paragraphs (k) and (l) of the proposed Rule.[150] By the use of such statement, suggests NRMA, the consumer can

> be informed generally of his or her contract, tort, and strict liability rights in a manner that suggests that further inquiry as to the nature of those rights might be fruitful, but without confusing or misleading as to the details.[151]

The Commission concluded that paragraph (a)(9) of the final rule can accomplish this task without imposing unreasonable burdens on warrantors. The warranty need not be a legal treatise. Indeed, the final rule should preclude such a result. However, the warranty must at least contribute to the buyer's understanding of its legal consequences. To require less could result in misleading the public by failing to negate the assumption (often incorrect) that the warranty sets forth the buyer's only recourse. The final rule will go far to correct this situation and will adequately implement the intent of Congress.

SEALS OF APPROVAL

7013(b)

Paragraph (a)(1)-(9) of this section shall not be applicable with respect to statements of general policy on emblems, seals or insignias issued by third parties promising remedial action with respect to a consumer product, which statements contain no representation or assurance of the quality or performance characteristics of the product; provided that (1) the disclosures required by paragraph (a)(1)-(9) are published by such third parties in each issue of a publication with a general circulation, and (2) such disclosures are provided free of charge to any consumer upon written request.

This paragraph was added to the final Rule in response to concerns expressed by *Parents* and *Good Housekeeping Magazines* that the proposed rule would force the elimination of "seal" programs.[152] It relieves these and other similar seal programs from having to set forth the disclosure requirements set forth in 701.3(a) in the actual seal itself. These disclosures must, however, be set forth in a publication. The required disclosures are thus the same for seal programs as for other warranties; only the medium for disclosure has been altered.

A specific provision for seal programs has been granted because of circumstances which the Commission believes are unique. First, third party seals are too small to contain the disclosures required by the rule and still remain legibly printed and readable by the consumer.[153] Also, magazines such as *Parents* and *Good Housekeeping* are not in the chain of distribution of products bearing the seal. They are merely third-party guarantors.[154] Finally, the public policy stated in 102(a) of the Act of "improving competition in the marketing of consumer products" would not be served by a rule which terminated seals of approval such as Parents and Good Housekeeping.[155] Whatever the merits of such programs, we do not choose to eliminate them at the stroke of a pen. The Commission has instructed its staff to monitor the impact of this exception and to recommend modifications if needed to protect the public.

OWNER REGISTRATION CARDS

701.4

When a warrantor employs any card such as an owners' registration card, a warranty registration card, or the like, and the return of the card is a condition precedent to warranty coverage and performance, the warrantor shall disclose this fact in the warranty. If the return of such card reasonably appears to be a condition precedent to warranty coverage and performance, but is not such a condition, that fact shall be disclosed in the warranty.

The disclosures required by this section are in accord with specific disclosures required by the Act. Section 102(a)(5) authorizes the disclosure of "[a] statement of what the consumer must do and the expenses he must bear." Section 102(a)(7) provides for the disclosure of "[t]he step-by-step procedures which the consumer should take in order to obtain performance of any obligation under the warranty . . ." Section 701.4 which requires the warrantor to disclose in the warranty document itself, the purposes for which the card is intended, is necessary in order to alert the consumer as to whether or not the return of the card is a precondition to warranty service or performance.

MACAP's 1973 evaluation of warranties notes that an increased number of companies stated in their warranties that the consumer was required to return a warranty registration card in order to have the warranty honored. A special questionnaire was sent to the 48 companies who included such a requirement to ascertain (1) whether in practice the return of the warranty registration card was required in order for the company warranty to be honored; (2) whether the warranty would be honored without the return of such card; and (3) whether there were other reasons why the return of such card was helpful to the company.[156] Twenty-eight of the thirty-two companies that responded to this inquiry replied that the warranty would be honored in practice even if the registration card was not returned. MACAP also found, in evaluating the comments of the responding companies, that there are a number of uses for warranty registration card information. The predominant uses were (1) verification of warranty status in dispute situations; (2) identification of the "original owner"; (3) identification of the product location for purposes of product modifications, product recall, and evaluation of the need for service centers and/or parts distributors; and (4) marketing or sales purposes. On the basis of this information, MACAP recommended that appliance warrantors who use such cards "candidly and clearly state the purpose of the card, if other

---

[147] See e.g., R-1-3-1, 2, Westinghouse Electric Corp.; R-1-3-2, 388, Scovill Housing Products Group; R-1-3-2, 401, Zenith Radio Corp.

[148] Tr. 738, Goldberg ("the deaf community like many other minority communities does not really know that they have legal rights"); Tr. 1290, Kaufman, Assistant Attorney General, State of Illinois ("I think . . . if you said to 100 [people] on the street, 'what is an implied warranty?'; I don't think they would be able to answer your question."); Tr. 234-1-42, Max Factor, Deputy City Attorney, Los Angeles, California ("701.3(k) & (l) . . . is one of the hearts of the statute . . . That is telling the consumers what their rights are."); Tr. 2391, Julian D. Rhine, Assistant District Attorney, San Francisco, California ("I don't think the consumer is really aware of his right.").

[149] Tr. 2032, Elkins.

[150] R-1-3-1, 288, Union Carbide Corp., (". . . (T)his section should . . . include a generally stated requirement that warranties must include a statement that consumers may have implied warranty rights in addition to the rights provided by the written warranty."); R-1-3-2, 501, Montgomery Ward ("This warranty gives you specific legal rights. You also have implied warranty rights . . ."); R-1-3-3, 849, 6E ("This warranty gives you specific legal rights. You may also have implied warranty rights which vary from state to state . . ."); R-1-3-1, 49, North American Phillips Corp. ("This warranty gives you specific legal rights. Because of pertinent statutes in your state you may have additional rights . . ."); R-1-4-1, 608, NRMA ("This warranty gives you specific legal rights, and you may also have other rights, which vary from state to state.").

[151] R-1-4-1, 608, National Retail Manufacturers Association.

[152] R-1-3-1, 292-301, Good Housekeeping Magazine, R-1-3-3, 1051, Arent, Fox, Kintner, Plotkin & Kahn.

[153] R-1-3-1, 292-301, Good Housekeeping Magazine, Tr. 403, Parents Magazine.

[154] R-1-3-1, 296, Good Housekeeping Magazine, Tr. 395-96, Parents Magazine.

[155] R-1-3-1, 1050, Arent, Fox, Kintner, Plotkin & Kahn.

[156] R-1-4-1, 434, Major Appliance Consumer Action Panel.

than or in addition to registration of the product to assure warranty service." [97]

The NBCCA report lends further support to MACAP's recommendation as to warranty registration cards. The report states:

> registrations on consumer usage may be reasonable but should be used only when the restriction has a real purpose. For example, consumers should not be misled to believe that mailing a registration card is necessary precondition to obtaining the benefits of a warranty. In sum, any restriction or other obligation imposed upon the consumer should be clearly defined and carefully explained in the material available to the consumer at the time of purchase.[98]

The practice of stating that the card is a prerequisite to warranty coverage and performance, even where this is never enforced, may chill the assertion and exercise of warranty rights. Some purchasers may not request warranty service if they did not return the card in the prescribed period of time, because of the mistaken (although logical) belief that the warranty accurately states the warrantor's intentions.

Furthermore, a requirement, that a purchaser complete and return a warranty registration card appears to be unenforceable under Section 2–313 of the U.C.C. An express warranty must be "a basis of the bargain", or part of the actual sales transaction. According to the House Subcommittee Staff Report,

> most warranties and warranty registration cards appear to be of the type that are packaged with the product. . . . This discovery often takes place at home, long after the actual sales transaction has been completed. Thus, the requirement of filling out and returning a warranty registration card in order to obtain full warranty protection . . . is likely to be held invalid by most courts.[99]

The House Subcommittee Staff states further that

> some of the warranties that had these cards did not expressly require that the cards be filled out and returned, but instead state to 'please' do so. However, the fact that it is labeled 'Warranty Registration Card' and is attached to the warranty can nevertheless convey the idea that the card is needed to validate the warranty . . . (M)ost of these cards appear to be clearly for the benefit of the manufacturer—to obtain marketing information . . . Questions seeking this kind of information can pose a threat to privacy, especially if it is given under the mistaken notion that the buyer will obtain full warranty protection by doing so.[100]

This section of the Rule is intended to eliminate the deception inherent in the situation where a warrantor purports to condition warranty protection upon a timely return of the registration card, while in fact using such cards solely for marketing or other purposes.

The original proposal had also required a disclosure in the warranty of the purpose for which a card was used, if the return of such card was not a condition precedent to warranty coverage.[101] NEMA, AHAM, SCM, and others argued against including a statement about an unrelated subject (e.g., market research) in an already lengthy warranty.[102] Cox, Langford, and Brown stated that "(s)uch a requirement may encourage manufacturers to condition their warranties on the return of such cards, and therefore reduce the protection given to consumers." [103] Sears claimed that "(s)uch a disclosure in the warranty may even mislead consumers into believing that since the disclosure is in the warranty that the card must have something to do with the warranty." [104]

This requirement has been modified in the final Rule, which requires disclosure only if the card is or reasonably appears to be required for warranty performance. The strictures of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, are adequate to deal with any other deceptive uses of non-warranty related cards.

PARAGRAPHS DELETED FROM THE PROPOSED RULE

701.3(a) Section 701.3(a), which required the disclosure of "the full name(s) and address(es) of the warrantor(s)", has been incorporated as an alternative in paragraph 701.3(a)(5). (See discussion of paragraph 701.3(a)(5), *supra*.)

701.3(e) Paragraph 701.3(e) of the proposed Rule required the disclosure of:

> The period of time, stated in terms of hours, business days or days, within which, after notice of a defect, malfunction, or failure to conform with the warranty, the warrantor will perform any obligations under the warranty.

This provision evoked much negative comment from warrantors. Many industry representatives stated that the warrantor could not control the length of time within which warranty obligations could be performed because of the use of independent contractors, such as retail dealers.[105] Other warrantors claimed that they could not control the length of time because of problems in securing parts or supplying replacement parts.[106] CRI, EIA, NRMA and many others argued that requiring the inclusion of such a time period would not be helpful to consumers because it would lead warrantors to set long, maximum times for performance, representing the most extreme cases.[107] Montgomery Ward, General Electric, and others stated that averages could not be obtained [108] and would not be useful even if they could be derived.[109]

Many warrantors cited the variables which make setting a time for performance exceedingly difficult. In different

---

[97] R–1–4–1, 436, Major Appliance Consumer Action Panel.

[98] R–1–2–2, 818, National Business Council for Consumer Affairs.

[99] R–1–2–1, 57, House Subcommittee Staff Report.

See *Koellmer v. Chrysler-Motors, Corp.* 6 Conn. Cir. 478, 8UCC Rep. Serv. 668 (1970). A properly worded disclaimer clause contained in the operator's manual for a new truck was held ineffective by a Connecticut court because the manual was delivered after the sale had been consummated.

[100] R–1–2–1, 57, House Subcomm. Staff Report.

[101] Section 701.4(b)(2) of the proposed Rule stated:

"If the return of such card is not a condition precedent to warranty coverage, the warrantor shall clearly and conspicuously disclose in the warranty document the purpose for which such card is utilized. In such instance, the warrantor shall not designate the card as 'warranty registration card', but shall appropriately label or title the card according to the purpose or purposes for which it is intended, e.g., 'marketing research card', or 'product safety registration card'."

[102] R–1–3–1, 3, Westinghouse Electric Corporation; R–1–3–1, 172, McGraw-Edison Company, R–1–3–1, 314, Briggs and Stratton Corporation; R–1–3–2, 502, Montgomery Ward and Co.; R–1–3–2, 704, Standard Oil Company; R–1–4–1, 28, Gas Appliance Manufacturers Association; R–1–4–1, 93–94, National Electrical Manufacturers Association; R–1–4–1, 222, Air Conditioning and Refrigeration Institute; R–1–4–1, 488, Association of Home Appliance Manufacturers; R–1–3–2, 617, Proctor-Silex Corporation.

[103] R–1–3–2, 713, White Consolidated Industries, Inc.

[104] R–1–3–2, 657, Sears, Roebuck and Company.

[105] R–1–3–1, 7, Colemen Co., Inc.; R–1–3–1, 14, Engineering Products Co.; R–1–3–1, 96–97, Goodyear Tire and Rubber Co.; R–1–3–1, 188, Black & Decker Tool Co.; R–1–3–1, 204, Ross, Hardies, O'Keefe, Babcock & Parsons; R–1–3–1, 311, Briggs and Stratton Corp.; R–1–3–1, 341–342, Zenith Hearing Instrument Corp.; R–1–3–2, 366–67, Sunbeam Corporation; R–1–3–2, 382–83, Rockwell International; R–1–3–2, 386–87, Nutone Division, R–1–3–2, 392, Shell Oil Company; R–1–3–2, 407–8, Boise Cascade Corporation; R–1–3–2, 425–26, Exxon Company, U.S.A.; R–1–3–2, 446, J. I. Case Co.; R–1–3–2, 438, Outboard Marine Co., R–1–3–3, 934–35, Timex Corp.

[106] See, e.g., R–1–3–1, 19, Walker Manufacturing, R–1–3–1, 96–97, Goodyear Tire & Rubber Co.; R–1–3–2, 347–48, Gamble-Skogmo, Inc.; R–1–3–2, 366–67, Sunbeam Corp.; R–1–3–2, 382–83, Rockwell International; R–1–3–2, 466, J. J. Case Co.; R–1–3–2, 493–95, Montgomery Ward & Co., Inc.; R–1–3–2, 675, Beatrice Foods Co.; R–1–3–3, 1023–26, General Motors Corp.; R–1–4–1, 123–124, Automotive Parts and Accessories Association, Inc.; R–1–4–1, 199–200, National Association of Photographers Manufacturers, Inc.; R–1–4–1, 215–16, Texas Automobile Dealers Association.

[107] See, e.g., R–1–3–1, 126–27, Carpet and Rug Institute; R–1–3–1, 188, Black and Decker Power Tools Co.; R–1–3–2, 347–48, Gamble-Skogmo, Inc.; R–1–3–2, 382–83, Rockwell International; R–1–3–2, 392, Shell Oil Co.; R–1–3–2, 466, J. I. Case Co.; R–1–32, 458, Outboard Marines, Co.; R–1–3–2, 548, Nixon, Hargrave, Devans & Doyle; R–1–3–2, 647–49, Sears, Roebuck and Co.; R–1–3–3, 921–22, Amana Refrigeration, Inc.; R–1–3–3, 934–35, Timex Corp.; R–1–4–1, 19, National Association of Chain Drug Stores; R–1–4–1, 145–46, National Association of Bedding Manufacturers; R–1–4–1, 199–200, National Association of Photographic Manufacturers; R–1–4–1, 183–184, Electronics Industry Association; R–1–4–1, 597, National Retail Merchants Association.

[108] R–1–3–2, 493–95, Montgomery Ward & Co.; R–1–3–2, 548, Nixon, Hargrave, Devans, & Doyle; R–1–4–1, 123–24, Automotive Parts & Accessories Association; R–1–3–3, 847, General Electric Corp.

[109] R–1–3–2, 493–95, Montgomery Ward & Co.; R–1–3–3, 955–56, Whirlpool Corp.; R–1–3–3, 847, General Electric Corp.

areas, a different service organization or differing backlog may account for a variation in the amount of time needed for performance of obligations.[170]

A compelling argument, directed at the effects of the insertion of the proposed language, was presented by Thomas W. Clark, Director of Marketing Services of Bang & Olufsen of America, Inc. ("B & O A"). In his testimony he stated:

> . . . (L)arge manufacturers could use their sheer size to gain a competitive edge. . . . (M)any of B & O A's authorized service stations repair a great many different brands. A large manufacturer whose products represent, for instance, 30–40 percent of a repair facility's business has the economic power to promise consumers a three-day repair period and force the repair facility to honor it at the expense of one such as B & O A whose products represent less than one percent of the facility's business. The ultimate result of this provision could well be to reduce competition in the market place, a result directly contrary to the interest of the consumer it is meant to "protect".[171]

This paragraph was proposed because consumer complaints had indicated that securing timely repairs under warranty was a major problem. If the consumer were apprised at the outset of the period of time within which the warrantor would perform any warranty obligations, he or she would be better able to differentiate among similar warranties for competing products, and any false expectations as to time for repairs could be dispelled. However, although the problem of obtaining timely warranty performance which motivated the inclusion of this paragraph is serious, the Commission, having reviewed the record, is of the opinion that the insertion of this paragraph in this Rule is not the appropriate means for addressing this problem. Because warrantors might be encouraged, on the basis of the inclusion of such a provision, to set and operate under a longer time for repair than currently exists in practice, the best interest of the consumer would be served by deletion of this requirement.

701.3(g) Section 701.3(g) of the proposed Rule required the disclosure of

> any requirement or duty which must be fulfilled by the purchaser as a condition precedent to securing warranty performance, including any expenses which must be borne by the purchaser.

Of the comments which were received concerning this paragraph, most were directed at the interrelation and overlap between paragraphs (g) and (h) of the proposed Rule.[172] The Commission has determined that the information disclosures called for in (g) are fully addressed by § 701.3(a) (3) and (5) of the final Rule. The information required by those sub-paragraphs includes disclosure of all responsibilities which the consumer must perform in order to obtain warranty performance. Therefore, paragraph (g) was deleted from the final Rule.

701.3(j) Paragraph (j) of the proposed Rule required the disclosure of

> any limitations on the time of day or days of the week during which the warrantor will perform his warranty obligations if such performance is not available Monday through Saturday, 9:00 a.m. to 6:00 p.m. local time.

This paragraph spawned a deluge of negative comments from warrantors. Many warrantors stated that they provided for too many service facilities to specify the working hours of each in the warranty.[173] Others, such as The Coleman Co. and Kohler Co., claimed to have no control over the hours during which warranty service is available.[174] Others simply did not know the hours that their services were open for business.[175] Baldwin Piano, Altheimer & Gray, and SFMA complained that since different stores had different hours, warrantors would have to determine the ultimate destinations of their products and would be forced to print several different warranties.[176] Sunbeam, Chrysler Corp. and others stated that the hours for service establishments changed frequently, making compliance with this paragraph difficult.[177] CRI, Sears, Questor Corp., and others claimed that this paragraph would force servicers to conform to the same hours, exceeding the Commission's authority under Section 102(a).[178] Other industry representatives stated that the hours set forth in the proposed paragraph were not consonant with those of most businesses.[179]

This paragraph was inserted in the proposed Rule because it was felt that the consumer should know whether or not a warrantor's service hours were more limited than those normally offered by others in the same or similar line of business. This information could play a part in the consumer's purchasing decision.

The Record is replete with comments stressing that the inclusion of this paragraph would lead to voluminous warranties, and that the servicers would be forced to conform to the same hours. Therefore, although the Commission feels that this paragraph might have provided useful information to consumers, it has decided that the public interest is best served by its deletion, since the language as originally proposed would have created a disincentive for the setting of flexible hours.

701.3(m)

Paragraph (m) of the proposed Rule required that the warranty contain:

> If the terms "Life", "Lifetime", or words of similar meaning are used to indicate the duration of a warranty, a clear and conspicuous disclosure of the life referred to.

Although this paragraph does not appear in the final Rule, the disclosure which it requires, i.e., that of the life referred to, is required by Section 701.3 (a)(4), which requires the disclosure of the duration of the warranty. Further-

---

[170] R-1-3-1, 188, Black & Decker Power Tools; R-1-3-2, 166-67, Sunbeam Corp., R-1-3-2, 493-95, Montgomery Ward & Co.; R-1-3-2, 675, Beatrice Foods Co.; R-1-3-3, 921-22, Amana Refrigeration, Inc.; R-1-3-3, 1023-26, General Motors Corp.; R-1-3-3, 1069, Argosy Manufacturing Co.; R-1-3-3, 846, General Electric Corp.; Tr. 2315-16, John Schiewe, Assistant Vice President, Marketing and Product Manager, Thermador Waste-King.

[171] Tr. 1989-90, B & O A.

[172] R-1-3-2, 649, Sears, Roebuck and Co.; R-1-4-1, 38, National Association of Furniture Manufacturers; R-1-4-1, 73, National Retail Merchants Association; R-1-3-1, 312, Briggs & Stratton Corp.; R-1-3-3, 936, Timex Corp.; R-1-3-2, 611, Proctor-Silex Corp.

[173] R-1-3-1, 14, Engineering Products Co.; R-1-3-1, 58, Mohasco Corp.; R-1-3-1, 76, Kohler Co.; R-1-3-1, 78, West Bend Co.; R-1-31, 164, Lear Siegler, Inc.; R-1-3-1, 188, Black & Decker Tool Co.; R-1-3-1, 201 Ross, Hardies, O'Keefe, Babcock & Parsons; R-1-3-1, 256-57, Arthur, Dry & Kalish; R-1-3-1, 342, Zenith Hearing Instrument Corp.; R-1-3-2, 384, Rockwell International; R-1-3-2, 447, J. I. Case, Inc.; R-1-3-2, 548-49, Nixon, Hargrave, Devans & Doyle, R-1-3-3, 936, Timex Corp.; R-1-3-3, 1028, General Motors Corp.; R-1-4-1, 132, National Paints & Coatings Association; R-1-4-1, 227, Engine Service Association, Inc.; R-1-4-1, 281-82, Specialty Equipment Manufacturers Association; R-1-3-1, 201, Ross, Hardies, O'Keefe, Babcock & Parsons; Tr. 2046-47, Daniel Berkson, Corporate Counsel, Singer Sewing Machines.

[174] R-1-3-1, 5, Coleman Co.; R-1-3-1, 76, Kohler Co.; R-1-3-1, 127-128, Carpet and Rug Institute; R-1-3-1, 164, Lear Siegler, Inc.; R-1-3-2, 348, Gamble-Skogmo, Inc.; R-1-3-2, 384, Rockwell International; R-1-3-2, 387-88, Nutone Division; R-1-3-2, 392, Shell Oil Co.; R-1-3-2, 438, Outboard Marine Co.; R-1-3-2, 425-26 Exxon Company; R-1-4-1, 40, National Association of Furniture Manufacturers; R-1-4-1, 124, Automotive Parts & Accessories Association, Inc.; R-1-4-1, 222, Air Conditioning and Refrigeration Institute; R-1-4-1, 567, Boating Industries Association; R-1-3-3, 789, Warren Tool Corp.; R-1-4-1, 281-82, Specialty Equipment Manufacturers; R-1-3-3, 848, General Electric Corp.; Tr. 2316-17, John Schiewe, Assistant Vice President, Marketing and Product Manager, Thermador WasteKing.

[175] R-1-3-3, 936, Timex Corp.; R-1-3-1, Carpet and Rug Institute; R-1-3-3, 789, Warren Tool Corp.

[176] R-1-3-1, 27, Baldwin Piano and Organ Co.; R-1-3-2, 355, Altheimer & Gray; R-1-3-3, 789-90, Warren Tool Co.

[177] R-1-3-1, Association of Auto & Truck Recyclers; R-1-3-1, 256-57, Arthur, Dry & Kalish; R-1-3-2, 369, Sunbeam Corporation; R-1-3-2, 651-52, Sears Roebuck and Co.; R-1-4-1, 202, National Association of Photographic Manufacturers; Tr. 2046-7, Daniel Berkson, Singer Sewing Machine; R-1-3-2, 497-98, Montgomery Ward and Co., Inc.

[178] R-1-3-1, 128, Carpet and Rug Institute; R-1-3-1, 335, Questor Corp.; R-1-3-2, 369, Sunbeam Corp.; R-1-3-2, 651-52, Sears Roebuck and Co.; R-1-4-1, 567, Boating Industry Association; Tr. 2316-17, John Schiewe, Vice President, Thermador WasteKing.

[179] R-1-3-1, 68, Mohasco Corp.; R-1-3-2, 369, Sunbeam Corp.; R-1-3-2, 419-20, Armstrong Cork Co.; R-1-3-2, 432, Defrees & Fisher; R-1-3-2, 447, J. I. Case; R-1-3-2, 548-49, Nixon, Hargraves, Devans & Doyle; R-1-3-2, 723, Bose Corp.; R-1-3-3, 923, Amana Corp.; R-1-3-3, 1028, General Motors Corp.; R-1-4-1, 202, National Association of Photographic Manufacturers; R-1-4-1, 227, Engine Service Association, Inc.; R-1-4-1, 74, National Retail Merchants Association; R-1-3-3, 1070, Airstream and Argosy Inc.; R-1-3-3, 957, Whirlpool Corp.; Tr. 2275-6, H. G. Woolscraft, California State Electronics Association; Tr. 2316-17, John Schiewe, Vice President, Thermador WasteKing; R-1-3-2, 497-98, Montgomery Ward and Co.

more, Section 103(a)(1) of the Act requires a warrantor offering a "full" warranty to disclose the duration of the warranty in the warranty designation.[100]

It should also be noted here that the Commission still retains its jurisdiction over unfair and deceptive warranty practices under Section 5 of the Federal Trade Commission Act.[101]

Past Commission orders have required the disclosure of the lifetime referred to by the warrantor giving a lifetime guarantee. In *Matter of Burstein-Applebee Company, et al.*, 69 F.T.C. 16 (1966), respondent retailer advertised that their wristwatches were "guaranteed for life", whereas in fact such watches were not guaranteed for the life of the purchaser. The Commission ordered the respondent to cease and desist from

> Using the word 'Lifetime' or any other term of the same import to refer to any guarantee which is not for the duration of the life of the purchaser or original user without clearly and conspicuously disclosing the life to which such reference is made; or representing, in any manner, that the duration of a guarantee is other than respondents are able to establish is the fact.

See also *In the Matter of Solmica, Inc., et al.* 66 F.T.C. 566 (1964), *In the Matter of Fingerhut Manufacturing Company, et al.* 657 F.T.C. 751 (1964). A warrantor choosing a "lifetime" duration must thus disclose the lifetime referred to in the warranty, and must recognize that the warranty obligation cannot be revoked or modified so long as the measuring "life" continues.

A separate Rule provision on lifetime warranty duration is unnecessary. The final Rule requires a simple and readily understandable disclosure of warranty duration. Standing alone, the word "lifetime" does not meet this requirement.

OTHER COMMENTS

Virginia Knauer, Director of the Office of Consumer Affairs for the Department of Health, Education, and Welfare testified that "the proposed rule on disclosure of warranty terms will cause warranties to be lengthened in verbiage, which could in turn cause key facts to be submerged in information clutter unless the presentation of such facts is highlighted through rules or guidelines for presentation."[102] Professor Laurence Feldman, of the University of Illinois, commented that the proposed Rule "fails to recognize, as Shakespeare did that 'They are stick that surfeit with too much, as they that starve.'"[103] Many others cited the need for a requirement of some type of standardized format and headings,[104] because of the potential length of warranties complying with the requirements set forth in Part 701.

The Commission recognizes the need for warranties to be simple, understandable, and concise. The final Rule has been simplified and streamlined to accomplish that result. The Commission does not believe that the final rule will contribute to the evils of undue length and complexity. It is not prepared, on the basis of the record, to impose a standardized format on all consumer product warranties.

V. Pre-Sale Availability of Written Warranty Terms. Section 102(b)(1)(A) of the Act directs the Federal Trade Commission to "prescribe rules requiring that the terms of any written warranty on a consumer product be made available to the consumer (or prospective consumer) prior to the sale of the product to him."

Consumer product warranties are not always made available to the consumer prior to the sale of the product. Instead, the terms and conditions of the warranty are often available only after the sale has been consummated and the package opened or product delivered. A consumer complaint regarding a wristwatch warranty illustrates the types of problem which may arise with respect to prepackaged consumer products: "The buyer is instructed that while the watch is 'guaranteed', there is a 'service charge' of $2.75 for repairs during the warranty period. This information is not known prior to purchase, and due to the type of packaging of this item, the existence of a charge for any warranty service is not known until the sale is completed."[105]

If the warranty is in fact only available after the sale, the use of the warranty as an informational input in the consumer's purchasing decision and as a tool for making product comparisons is precluded. Furthermore, it may be argued that an express warranty undisclosed prior to sale is inoperative. Section 2-313 of the U.C.C. requires that an express warranty be "a basis of the bargain," or part of the actual sales transaction. Accordingly, the enforceability of a warranty, the existence of which the purchaser is made aware only subsequent to the actual sales transaction has been completed, would be questionable. The House Subcommittee Staff Report, found that only two of the 51 participating manufacturers offered warranties which were actually designed to be part of the actual sales contract.[106]

> The other warranties examined appear to be of the "prepackaged" variety—the type packaged with the product resulting often in the buyer not being aware of the terms of the warranty, or its existence, until he or she gets home and opens the box containing the product. In such instances, it is questionable whether the prepackaged warranty would be a basis of the bargain.[107]

Congressman Bob Eckhardt, a member of the Conference Committee on S. 356,[108] addressed the issue of pre-sale availability of warranty information:

> We require the FTC to write rules to assure the availability of warranty information prior to the actual purchase. The consumer should be able to base his/her decision to buy on the quality of the warranty as well as factors such as the cost and the appearance of the product. It is unfair for a consumer to learn only after arriving home and unpacking a sealed carton that what was said to be a full 5-year warranty does not cover costs of labor and parts. There are those who argue that in the case of such 'packaged warranties,' the consumer could legally challenge the effectiveness of the warranty. . . . This, I think, is true but it is an inadequate solution. There are only a handful of consumers who know that such a challenge could be made and even less of them with the financial resources and personal energy to make it, especially when a product costs only, say $30. Furthermore, we think it is an unfair burden to impose on the individual consumer. That is why we require the FTC to prescribe rules to assure availability of warranty information.[109]

Availability of warranty terms prior to sale is important for consumers in light of the increasing trend toward the sale of service contracts, particularly for major appliances. The scope and duration of the written warranty must form a significant element in the careful consumer's decision whether, or at what point in time, to sign a service contract.

That warranty information is currently either unavailable or difficult to procure at point of sale is illustrated by an informal survey undertaken by the Consumer Affairs Department in Detroit, Michigan.[110] Some of the findings of the survey indicated that

> In no case . . . was a copy of the full warranty available for inspection. "The warranty comes packed in the box' was the regular response. . . . The information available on lower cost appliances was significantly less than that experienced with major appliances. In no instance did a salesperson offer any information and in no case was a copy of the written warranty available . . . In general the results of this survey confirm the need for and the validity of the proposed rules . . .[111]

Like findings resulted from a similar endeavor by *Home Furnishings Daily*.

> In each instance, no information was volunteered, and when this reporter did get

---

[100] "If the written waranty meets the Federal minimum standards for warranty . . ., then it shall be conspicuously designated a 'full (*statement of duration*) warranty'."

[101] 15 U.S.C. 45 (1970).

[102] Tr. 7, Knauer.

[103] R-7-1-9, 13, Laurence P. Feldman, Ph.D.

[104] R-1-3-3, 970, Amana Refrigeration, Inc.; R-7-1-6, 3, Council on Aging for Southeastern Vermont; R-7-1-6, 12-13, Texas Public Interest Research Group; R-7-18, 150-153, Wisconsin Dept. of Justice; Tr. 21-2 Knauer; Tr. 774-77, Zweibel; Tr. 1327-1328 Jeffries; Tr. 2131 Drury; Tr. 2218-19 Pownell.

[105] R1-2-2, 761, Letter from (*consumer*) to Virginia Knauer, referred to FTC, February 25, 1974.

[106] House Subcom. Staff Report, *supra* note 9, at 13.

[107] *Id.*

[108] R 1-2-2, 877, Address by Congressman Bob Eckhardt, Gas Appliance Manufacturers Association Warranty Workshops, in Boca Raton, Florida, April 8, 1975.

[109] *Id.* at 882-883.

[110] R-1-8, 74-76 ("Several staff members went 'shopping' in various stores for a selected group of products. Products shopped for were automatic washing machines, color television sets and vacuum cleaners. . . . The shoppers were instructed to ask about the product and see what, if any, information was offered by a salesperson. Once the sales 'pitch' was concluded the shoppers were instructed to ask further questions about the warranty, ask to see it in writing. . . . The stores selected . . . included two major . . . department stores, two appliance chain stores, an independent appliance dealer and a national chain department store carrying its own brand of appliances.")

[111] R-1-8, 74.

answers to questions, data was often vague. Frequently, salesmen said warranty information was contained in instruction manuals, however, no instruction manuals were readily available. Only two lines . . . had warranty information on the front of refrigerators.[182]

Trying to get warranty information on a refrigerator was likened to "trying to defrost the North Pole with an ice pick."[182a]

Both of these informal surveys indicate that warranty data is currently difficult to obtain or unavailable at present.

SCOPE OF THE RULE

§ 702.3(a) Duties of the Seller

Section 702.3(a) of the proposed Rule required the seller to

. . . maintain a binder or a series of binders in each department in which any consumer product with a written warranty is offered for sale, containing copies of the warranties for the products sold in such department.

The proposal of a binder system as the means for making warranties available to consumers prior to sale met with considerable opposition. Many complaints were received from retailers concerning the logistics and the expense of setting up and maintaining a binder system.[183]

[182] Schwartz, Diana, "Warranty Data Difficult to Get in N.Y. HFD Shopper Finds," *Home Furnishings Daily*, November 5, 1975, at 15 col. 2.

[182a] *Id.*

[183] See, e.g. Tr. 446–47, Church ("The binder rule would require using square footage in a nonvolume way and would drive up square footage cost . . . In addition to space costs, the binders themselves would represent a significant cost . . .

In our stores 10 departments sell warranted products. In the hardware department we sell about 50 items under warranty. That department, therefore, would require at least three identical warranty books. The cost per store would be $33. To supply all hardware departments would cost $8,811. In our music and electronics department we sell more than 70 warranted items. For such a department I would estimate customer convenience requiring four sets of binders with two volumes per set. The cost per department would be $72, with a total cost for all departments running to $19,224. In the appliance departments, where more than 80 warranted items are sold, the total cost of three sets of warranty books per store would be $15,219. To maintain the notebooks, including clerical time used in writing manufacturers for copies of warranties, filing, and updating the warranty book, we estimate will cost 2,000 man-hours per year at the minimum wage rate of $2.10 per hour, for a total labor cost of $4,200. In addition to the foregoing costs, there will be the cost of replacement of binders and protective coverings. We estimate that if the binders were in fact used, they would have to be replaced at least once a year.

Therefore, to give effect to the rule, Rose's Stores would have an additional annual cost in excess of $200,000 per year. While those not familiar with retailing might consider this a small cost, the reality is that no cost is small, and most cost must be passed along to the customers in the prices they pay for goods."); TR 1865, Danners; TR. 2106–7, Sprouse; R1–3–3, 1099–1101, City Products. Virginia Knauer and Robert Sprouse, President of Sprouse-Reitz, among others, stated that the binder system was inconvenient for consumers to use, that it was not consonant with normal consumer buying patterns, and that consumers would not make the effort to use it.[184] George Zweibel of DC Neighborhood Legal Services and J. T. Church of Roses Stores Inc. suggested that the use of only one set of binders would be insufficient to serve consumers' needs.[185] The specter of consumers fighting to get to the warranty binders was also raised.[186]

There was no substantial record support from consumers or consumer groups for the use of the binder system as initially proposed.

A major and repeated concern voiced in an overwhelming number of comments was the inflexibility of the proposed rule.[187] The failure of the Commission to take cognizance of the range of retail establishments which would fall under the aegis of the proposed Rule was cited by NRMA, American Retail Federation ("ARF"), and others.[188] ARF stated:

The retailers affected . . . encompass the full range of merchants from the small, independent specialty store to the large, traditional multidepartment store . . . In the larger multi-department stores the heavy volume of customers and the vast quantities of consumer products carried and sold each day make the use of warranty binders simply impractical. In high volume discount and self-service stores, these problems are magnified by lack of sales personnel required to keep the binders updated and by the fast turnover of consumer products frequently sold on a 'one-time' basis only.[189]

Other comments as to the inflexibility of the proposed rule, including those of Montgomery Ward, noted that the Commission had failed to recognize the variety of products encompassed by the Rule.[190] Similarly, it was argued that the proposed scheme failed to take into account the "many different ways that consumer products are sold."[191] Furthermore, ARF claimed that "(t)he merger of *seller* and *warrantor* in the case of private brand retailers . . . has . . . been overlooked by the Commission staff."[192]

The final Rule heeds the retailers' cry for greater flexibility. It provides the seller with four alternative means by which warranties can be made available to prospective buyers prior to sale. The seller must, as a minimum, employ one of the means cited, but may use any additional means desired. It should be noted that only the "text" of the warranty need be disclosed, rather than the actual warranty document.

702.3(a)(1)(i) "clearly and conspicuously displaying the text of the written warranty in close conjunction to each warranted product;"

The idea of displaying the warranty with the product being offered for sale was suggested or endorsed by Hook Drugs, Georgia Retail Association, SCM, F. W. Woolworth Co. ("Woolworths"), and others as a viable means for pre-sale warranty disclosures.[193]

This sub-paragraph substantially incorporates the language suggested in the statement submitted by the American Retail Federation.[194]

702.3(a)(1)(ii)

Maintaining a binder or series of binders which contains(s) copies of the warranties for the products sold in each department in which any consumer product with a written warranty is offered for sale. Such binder(s) shall be maintained in each such department, or in a location which provides the prospective buyer with ready access to such binder(s), and shall be prominently entitled "Warranties" or other similar title which clearly identifies the binder(s). Such binder(s) shall be indexed according to product or warrantor and shall be maintained up to date when new warranted products or models or new warranties for existing products are introduced into the store or department by substituting superseding warranties and by adding new warranties as appropriate. The seller shall either:

(A) display such binder(s) in a manner reasonably calculated to elicit the prospective buyer's attention; or

(B) make the binders available to prospective buyers on request, and place signs reasonably calculated to elicit the prospective

[184] See, e.g. TR 11–12, Knauer ("We fear that a binder volume of warranties set apart from the price, specifications, and product itself, will not facilitate value comparisons . . . (T)he binder proposal does not take into consideration existing, long standing, and not easily altered consumer purchasing habits. Consumers will not be rapidly convinced (if at all) that they should run back and forth between display area and location of warranty binder . . ."); TR 2103–4, Sprouse ("The buying habits of customers are . . . varied . . . They definitely do not come to pore over books filled with various warranties . . . It is not until a major appliance is being purchased that warranty information comes into play. And for those customers, . . . requiring them to consult binders to get information they need will not please nor help them. Because they will serve as a disincentive to their getting the information they should have.")

[185] See, e.g. TR. 781, Zweibel; TR. 445, Church.

[186] TR. 22, Knauer.

[187] R–1–3–1, 244, JC Penney; R–1–4–1, 58, NRMA; R–1–3–2, 358, S. S. Kresge; R–1–3–2, 439, Outboard Marine; R–3–2, 505, Montgomery Ward; R–1–3–2, 658, Sears, Roebuck; R–1–4–1, 109, Wyoming Retail Assn.; R–1–4–1, 213, American Retail Federation; R–1–4–1, 568–569, Boating Industries Assn.

[188] See, e.g. R–1–4–1, 57, NRMA; R–1–4–1, 212–213, ARF.

[189] R–1–4–2, 676–677, ARF.

[190] See, e.g. R–1–3–2, 505–506, Montgomery Ward; R–1–4–1, 58, NRMA; R–1–4–1, 212, ARF; R–1–4–2, 677–678, ARF.

[191] R–1–3–2, 658, Sears.

[192] R–1–4–2, 678–679, ARF.

[193] See, e.g. R–1–4–1, 58, NRMA ("a washing machine warranty could be tied to the agitator or taped to the top of the washtub . . . A toaster warranty could be taped to the display table . . ."); R 1–3–2, 505, Montgomery Ward ("The major appliance store or department would in most cases choose to place the warranty with the floor model . . ."); TR 291, Kelly; TR 2463, Evans; R 1–4–1, 25, GAMA; R 1–6, 11, Tex PIRG; R 1–5, 253, Consumer; R 1–3–1, 4 Hook Drugs; R 1–3–1, 77, Seeman Co.; R 1–3–1, 86, Georgia Retail Assn.; TR 1879, Danners.

[194] R 1–4–2, 680, ARF ("displaying each such warranted product accompanied by the terms of the written warranty").

buyer's attention in prominent locations in the store or department advising such prospective buyers of the availability of the binders, including instructions for obtaining access.

Some retailers such as Woolworths, Sears, and Montgomery Wards acknowledged that there were instances in which the binder might be the only or the best means for making pre-sale warranty disclosures.[206]

The language in the final Rule is substantially similar to that suggested in the written comments submitted by Sears and Roebuck.[207]

This sub-paragraph requires that the binders be maintained either in the department where the warranted product is sold, or in a location which provides the prospective buyer with ready access to the binders. Gambles, in its written submission, noted that "(w)hile the provision that binders be kept on a departmental basis is reasonable in the case of large retail outlets where it would be a burden on the customer to require that he or she go to one specific location in the store to find the binders, there are many small retail outlets which may have merchandise laid out by department, yet are small enough so that one complete set at a single location in the store would suffice."[208]

Thus, in such instances, it would be permissible to place the binders in a location other than in the departments in which the products are being sold.

The final Rule also affords the seller who elects to utilize the binder system a choice of either prominently displaying the binders, for example, at an appropriate counter, or making them available on request. If the latter alternative is chosen, a prominent notice or series of notices must alert the prospective buyer's attention to the existence of the binders and the means for obtaining access to them.[209]

The requirement that the binder be indexed is intended to maximize the ease with which the consumer can locate and compare the warranties contained in the binder for a particular type of product.

The seller is given latitude both to determine the kind of system to use for compiling the warranty information, and to decide whether to organize such a system according to warrantor or product.

Also, part of the seller's duty to maintain the binder includes keeping the binder current. If a new warranted product is introduced, the warranty for that product must be placed in the binder in the appropriate indexed section. If a new model is introduced, the warranty for such model must appear in the binder. If a new warranty supersedes a prior warranty, the old warranty must be removed from the binder.

702.3(a)(1)(iii)

Displaying the package of any consumer product on which the text of the written warranty is disclosed, in a manner such that the warranty is clearly visible to prospective buyers at the point of sale;

Seeman Co., Fieldcrest Mills and others suggested that the warranties be printed on or otherwise attached to the product containers.[210] If the warrantor elects to do this, the retailer may then display the package in a manner which makes the warranty clearly visible to prospective buyers.

The language adopted in this paragraph is derived from that suggested in several of the written submissions.[211]

702.3(a)(1)(iv)

Placing in close proximity to the warranted consumer product a notice which discloses the text of the written warranty, in a manner which clearly identifies to prospective buyers the product to which the notice applies.

Walker Manufacturing Co., National Tire Dealers and Retreaders Association, and others suggested that signs containing the warranty text be used in lieu of binders.[212] ARF stated that "private brand warrantors frequently use a common warranty for broad categories of products. Where this is done, warranty terms can be conveniently disclosed at point of sale by use of common signs located in closed proximity to the warranted products."[213] Accordingly, this alternative has been included in the final Rule. The language used is substantially derived from language suggested by ARF and Sears.[214]

702.3(a)(2)

Not remove or obscure any warranty disclosure materials provided by a warrantor, except:

(i) where such removal is necessary for store window displays, fashion shows, or picture taking; or

(ii) where the seller otherwise through means provided for in sub-paragraph (1) above, makes the terms of the warranty information available to the consumer.

The proposed Rule required that the seller "(n)ot remove or obscure any warranty information disclosure materials attached to a warranted consumer product by a warrantor."

The revised sub-paragraph in the final Rule provides two exceptions which allow the seller to remove warranty information. First, if the product is part of a store window display or a fashion show, or is being photographed, it need not bear any warranty information. This exception is permitted on the theory that warranty information will be available for the particular product in the department in which it is offered for sale.

Second, if the seller elects to make the warranty information available to the consumer by some means other than that provided by the warrantor, the seller may remove the information provided, so long as the alternate means complies with section 702.3(a)(1).

The language used in this provision is substantially drawn from that suggested by the ARF.[214]

---

[206] TR 2464, Evans ("In some areas we may . . . have to have a binder. For example in our jewelry department . . . The warranties that are involved in items such as that, we agree we would have to have them in a binder.") R 1-3-2, 662, Sears ("In a particular product situation, the use of binders may be found by a retailer to be the most feasible method of compliance."); R-1-4-1, 58, NRMA ("Binders could be used where no display option is workable, e.g. for products . . . which are inaccesible because they are locked in a display case."); R 1-3-2, 505, Montgomery Ward ("a binder or similar device might be utilized for the availability of the warranties in the camera department."); R 1-4-2, 677-678, ARF.

[207] See R 1-3-2, 663, Sears:

"Maintain a binder or a series of binders in the store or each department in which any consumer product with a written warranty is offered for sale which contains copies of warranties for the products sold in the store or department. Such binders shall be prominently entitled "Warranties" or other similar title which clearly identifies the binder. Such binders shall be indexed according to product or warrantor and shall be maintained up to date when new warranted products or models or new warranties for existing products are introduced into the store or department by substituting superseding warranties or by adding new warranties as appropriate. The seller shall make the binder available to consumers on request, and shall place signs in prominent locations in the store or department advising consumers of such availability."

[208] R 1-3-2, 345, Gambles.

[209] See suggestion in R 1-3-2, 505-506, Montgomery Ward ("If the latter method of availability is utilized for [binders] the consumer would be told by means of a clear and conspicuous notice where in the department those terms are available.")

[210] R-1-3-1, 77, Seeman Co.; R-1-3-1, 86, Georgia Retail Association; R-1-3-1, 339, Fieldcrest Mills; R-1-4-1, National Association of Chain Drug Stores, Inc. ("NACDS").

[211] R-1-3-2, 663, Sears ("Display any consumer product with a written warranty which is packaged and on which package the terms of the written warranty are disclosed in a clear and conspicuous manner so that such warranty disclosures are clearly visible to consumers at the point of sale"); R-1-4-2, 681, ARF ("displaying any packaged consumer product on which package the terms of the written warranty are disclosed in a clear and conspicuous manner so that such disclosures are available to the consumer").

[212] R-1-3-1, 19, Walker Manufacturing; R-1-4-1, 101 National Tire Dealers and Retreaders; R-1-3-2, 659, Sears ("Warranties common to a line of merchandise could be disclosed on one sign prominently displayed near the display of such merchandise.").

[213] R-1-4-2, 679, ARF.

[214] R-1-4-2, 681, ARF ("In those departments where a single warranty applies to many consumer products, placing a common notice in close proximity to those products disclosing the terms of that written warranty, provided, however, that it is clear to which consumer products the common notice applies"); R-1-3-2, 663, Sears ("Placing a sign in close proximity to the display of any warranted products . . . which sign . . . clearly discloses the terms of the written warranty and is visible to consumers at the point of sale; provided that nothing shall require a separate sign . . . on each warranted product on display if common signs . . . clearly identify the products to which the warranty terms disclosed thereon apply").

[214] R-1-3-2, 681, ARF "Not reasonably remove or obliterate any warranty information disclosure materials accompanying a war-

DUTIES OF THE WARRANTOR

(1) Under the proposed Rule, the seller was requested to

upon specific written or oral request from a prospective consumer, promptly provide a copy of each written warranty requested.

Much negative comment was received concerning this requirement. North American Philips Corp., CRI, and NRMA argued that the phrase "make available" used in the Act did not "contemplate that the written warrantor must 'provide' the full text of written warranties to each consumer who seeks to obtain it. Rather, the term 'make available' connotes 'availability for inspection', with delivery being required only if inspection is impossible." [215]

GAMA, NEMA, EIA, J. C. Penney Co. ("Penneys"), and others claimed that such a requirement was superfluous if warranties were available at point of sale.[216]

National Association of Catalog Showroom Merchandisers expressed the concern that "this rule invites harassment or predatory competition because someone could request 10,000 warranties with a single letter." [217]

Several warrantors submitted estimates of what compliance with this provision would cost them. Air Conditioning and Refrigeration Institute stated:

The cost of doing this includes much more than paper and printing. This includes making sure that the product is properly identified so that a copy of the applicable warranty can be provided. (This may require correspondence or telephone calls to make sure that the correct product, even down to the model number, has been specified.) Even if there are no special problems with product designation or identification, it would probably cost a manufacturer somewhere between fifty cents and one dollar to identify the product, locate the pertinent warranty, and mail it to a consumer.[218]

In view of the aforementioned comments, the Commission has decided that it would be in the public interest to eliminate this requirement.

The final Rule requires the warrantor to "provide sellers with warranty materials necessary for such sellers to comply with the requirements set forth in paragraph (a) of this section" and to "provide catalog, mail order, and door-to-door sellers with copies of written warranties necessary for such sellers to ranties necessary for such sellers to comply with the requirements set forth in paragraphs (c) and (d) of this section."

These paragraphs obligate the warrantor to provide the seller with the materials necessary to make the required pre-sale warranty disclosures to consumers. In the event that the warrantor does not deal directly with the seller or does not know who the sellers will ultimately be, the warrantor must distribute sufficient quantities of the required pre-sale materials through normal distribution channels to insure receipt by sellers.

The final Rule gives the warrantor four alternative means by which warranty materials may be provided to sellers in order for such sellers to comply with Section 702.3(a). The warrantor must, as a minimum, use one of these means, but may use any combination of the means listed or any additional means desired. The alternatives correspond to the four alternatives set forth in Section 702.3(a), under "Duties of the Seller."

702.3(b)(1)(i)(A)

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

This sub-paragraph parallels that in Section 702.3(a)(1)(i), which allows the seller to display the warranty text in close conjunction to the product, and that in 702.3(a)(1)(ii), which allows the seller to maintain a binder containing copies of the warranties for warranted consumer products being offered for sale.

Olin Corporation, Montgomery Ward, NRMA, and many others stated that the Commission should have specifically required that the warranty accompany the product.[219]

The language used in this paragraph follows that suggested in the written statement submitted by ARF, NRMA and Montgomery Ward.[220]

702.3(b)(1)(i)(B)

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

This sub-paragraph tracks that in 702.3(a)(1)(i), which permits the seller to display the warranty text in close conjunction to the product.

702.3(b)(1)(i)(C)

Printing on or otheriwse 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;

This sub-paragraph parallels 702.3(a)(1)(iii) which allows the seller to display the package of any product on which the warranty text is disclosed.

If the warrantor elects to print or otherwise attach the warranty to the package, a copy of the written warranty must also accompany the product. This is to ensure that the consumer will not inadvertently discard the package on which the warranty is printed, and, thus be left without a copy of the warranty in his or her possession.[221]

702.3(b)(1)(i)(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.

This sub-paragraph corresponds to that of 702.3(a)(1)(iv), which permits the seller to post a sign disclosing the text of the warranty.

If the warrantor chooses to provide such a sign, a copy of the written warranty must also accompany the product. This is to ensure that the consumer has a copy of the written warranty which he or she may retain to refer to in the event of a product failure, defect, or malfunction.

The proposed Rule required the warrantor to

clearly and conspicuously disclose any applicable warranty designation(s) contained in the written warranty for the product, and the following statement:

The retailer has a copy of the complete warranty on this product. Ask to see it.

(i) By means of a tag, sign, sticker, label, decal or other attachment to the product; and

(ii) By printing such disclosure on the principal display panel of the package, carton or other product container.

The purpose of this paragraph in the proposed Rule was to notify the consumer that warranties were available for examination upon request from the retailer, since there was no requirement that the binders be conspicuously displayed. Rather, they were only to be made available upon request. Under the final Rule, the warranties must either be conspicuously displayed on the product package, or in close conjunction to the warranted products. If a binder is used, it must either be conspicuously displayed, or a notice as to its availability posted conspicuously.

Thus, this paragraph has been eliminated from the final Rule, as it is no longer necessary as a means to inform the consumer of warranty availability.

---

ranted consumer product by a warrantor, except:

(i) where such removal is necessary for store window displays, fashion shows, or such other promotional purposes; or

(ii) where the seller otherwise, through means provided for in paragraph (1) above, makes the terms of the warranty information available to the consumer."

[215] R-1-4-1, 65, NRMA. See also R-1-3-1, 50, North American Philips Corp. ("The Act provids in Section 102(b)(1)(d) only that written warranties be 'made available' prior to the sale of the product. As written, the proposed rules go far beyond this requirement."), R-1-3-1, 150, CRI.

[216] R-1-3-1, 118, Ford Motor Co.; R-1-3-2, 458, General Mills; R-1-4-1, 28, GAMA; R-1-4-1, 95, NEMA; R-1-4-1, 187, EIA.

[217] Tr. 285, Kelley, National Association of Catalog Showrooms.

[218] R-1-4-1, 223-24 Air Conditioning & Refrigeration Institute. See also R-1-4-1, 28-9, GAMA; Tr. 2204-5 Dunbar.

[219] See, e.g., R-1-3-1, 16, Olin Corp.; Tr. 740, Goldberg, Student Legal Action Group; R-1-9, 17, Feldman, University of Illinois; R-1-3-2, 506, Montgomery Ward; R-1-4-1, 58 NRMA.

[220] R-1-4-2, 681, ARF ("Provide a copy of the warranty with every consumer product."); R-1-4-1, 60, NRMA ("The written warrantor shall accompany each product with a copy of its written warranty."); R-1-3-2, 508, Montgomery Ward ("Provide a copy of the warranty with every consumer product.")

[221] See Tr. 750, Goldberg: "I have . . . seen many instances with respect to pens, lighters, other devices like that where the warranty . . . is printed on the packaging. You open up the package and the warranty goes with it. . . . Very few consumers will save the wrapping . . . and call the manufacturer to task if it is defective."

702.3(b)(2)

Sub-paragraph (1) of this paragraph (b) shall not be applicable with respect to third parties issuing statements of general policy on emblems, seals or insignias 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)–(9) 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.

This sub-paragraph has been added in response to concerns expressed by magazines such as *Parents'* and *Good Housekeeping* that, under the present structure of their respective "seal" programs, they would be unable to comply with the pre-sale availability requirements set forth in the proposed Rule.[222]

This sub-paragraph therefore exempts such "seal" programs from the duties set forth in Section 702.3(b)(1). This specific exemption for such "seal" programs has been inserted for several reasons. Under the structure of the "seal" programs, the magazine merely authorizes the use of the "seal." It does not know if the seal is in fact used by the manufacturer or not. The seal may be used on only certain models, or on certain sizes, or in some parts of the country only. Therefore, there is no way of their knowing on what products the seal must be made available.[223]

Furthermore, because they are not in the chain of distribution, these publications have no way of knowing the identity of the retailers who are selling the products bearing its seal, even if the publication knew what products carried the seal.[224]

The Rule does require, however, that the publication make all disclosures within the magazine itself, and that it provide the consumer with a copy of the warranty, free of charge, at his or her request. The requirement or providing of a free copy of the warranty is necessary since the consumer would otherwise have no opportunity to read the warranty prior to the sale of a product bearing the seal unless he or she purchased the magazine containing the necessary disclosures. In all other pre-sale situations contemplated by the final Rule, the consumer can see the warranty at no cost. Thus, this requirement was inserted so as to provide the consumer with an equal opportunity to examine the warranty without incurring any expenses.

CATALOG AND MAIL ORDER SALES

Examination of the catalogs of several major catalog companies has revealed that such catalogs do publish product warranties.[225] However, the companies do not always include in their catalogs the specific warranties covering each product that carries a warranty. This problem is compounded by the fact that catalogs often advertise satisfaction guarantees as well as specific product warranties. Therefore, the purchaser may not be apprised of the specific warranty for the product purchased until he or she actually receives the item. This may serve to confuse the potential purchaser, for it is often unclear whether the mail order company's satisfaction guarantee replaces, supplements, or complements the specific product warranty. Many consumers have no other encounter with a mail order seller than an advertisement seen on television or in the back of a magazine. Therefore, if the requirement of making warranties available to consumers prior to purchase is to be met, it must apply to mail order advertisements and solicitations. It is important that the consumer know, prior to ordering products through the mail, whether such products have written warranties, and if so, the nature of such warranties.

This sub-paragraph is intended to eliminate the situation where the purchaser receives his or her first notification of the specific product warranty upon receipt of the ordered merchandise. Rather, the consumer will be able to examine the complete warranty prior to purchase, and will be able to use it to make a purchase decision.

The proposed Rule contained separate sections, setting forth the duties of catalog sellers and the duties of mail order sellers. Montgomery Ward and Mail Order Association of America ("MOAA") noted the overlap between these two paragraphs, and suggested that the two paragraphs be consolidated.[226] This suggestion has been adopted in the final Rule, with the definition of "catalog and mail order sales" provided as follows:

"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.

The proposed Rule had defined "catalog" as "any multi-page solicitation, flier, or brochure distributed to consumers in which more than one consumer product is offered for sale."

A "mail order seller" was one who offered for sale to consumers "a consumer product with a written warranty by means of direct mail solicitation or by means of an advertisement, in any medium, which includes instructions for ordering the product."

Montgomery Ward stated that these definitions, as written in the proposal, would encompass circulars, which are not catalogs, which "are intended to offer merchandise to the consumer at the advertised price which must be purchased at our stores. . . . The written warranties will be available for . . . inspection at the store."[227] The primary distinction between circulars and catalog/mail order sales, stated MOAA, was that the latter should cover "only those printed materials which include instructions for ordering the product without personally visiting a seller's retail establishment."[228] Thus, the language suggested by Montgomery Ward, to wit "which includes instructions for ordering the product which do not require a personal visit to the seller's establishment"[229] was incorporated into the final Rule.

It was also suggested by MOAA that the final Rule clarify that catalog and mail order sellers do not have the same duties as sellers covered by Section 702.3(a).[230] Accordingly, the language suggested in the statement of the American Retail Federation,[231] to wit:

Duties of the seller. Except as provided in paragraphs (c)–(d) of this section, the seller of a consumer product with a written warranty shall . . .

was adopted.

The proposed Rules had required the disclosure, in close conjunction to the warranted products of:

(i) The warranty designation of each such product, and

(ii) That the written warranty is available free on request, and the address where such warranty can be obtained.

Beatrice Foods, NRMA and others recommended the deletion of the requirement that warranty designations be included in catalogs and mail order solicitations, as being impractical, unnecessary, or unduly burdensome.[232] NRMA stated that:

. . . (a) retailer may prefer not to discuss warranties at all, and the designation requirement therefore introduces an unwanted factor. Space and time are at a premium in all advertising, and the retailer should be free to use its time and space in what it considers the most effective method . . . Furthermore, requiring disclosure of warranty designation(s) will fall discriminately on interstate retailers, because designations may vary

---

[222] R–1–3–1, Howrey and Simon for Good Housekeeping; Tr. 396, Parents.

[223] R–1–3–1, 298, Howrey & Simon for Good Housekeeping; Tr. 398, Parents.

[224] R–1–3–1, 298, Howrey & Simon for Good Housekeeping.

[225] R–1–2–2, 402 (memorandum to file from Charles A. Taylor, III, Esq., May 13, 1975).

[226] See, e.g., R–1–3–2, 508, Montgomery Ward; R–1–3–2, 554, Law Firm of Nixon, Hargrave, Devans, & Doyle; R–1–3–2, 662, Sears; R–1–4–1, 62, NRMA.

[227] R–1–3–3, 733, Franklin Stores. See also, R–1–3–3, 853, General Electric ("This necessarily includes such traditional advertising formats as newspaper supplements or stuffers."); R–1–3–2, 508; R–1–3–2, 554, Nixon, Hargrave, Devans & Doyle; R–1–4–1, 647, MOAA; R–1–4–1, NRMA.

[228] R–1–4–1, 647, MOAA.

[229] R–1–3–2, 511, Montgomery Ward: "'Catalog or mail order' means an offer to sell or a solicitation for an order for a consumer product covered by a written warranty containing sufficient directions or instructions to order the merchandise *without personally visiting a seller's establishment.*" (emphasis added);

R–1–4–1, 650, MOAA: "'Catalog' means any multi-page solicitation, flier, or brochure distributed to consumers in which more than one consumer product is offered for sale and which includes instructions for ordering the product *without personally visiting a seller's retail establishment.*" (emphasis added).

[230] R–1–4–1, 647, MOAA.

[231] R–1–4–2, 683, ARF.

[232] R–1–3–1, 253, Giant Food, Inc.; R–1–3–1, 1070, Airstream & Argosy; R–1–3–2, 677, Beatrice Foods; R–1–4–1, 63, NRMA.

from one state to another, depending on the availability of certain remedies . . . For retailers which do business in more than one state, specifying such complexities in each advertisement or catalog would take up an undue amount of space . . . Moreover, a single product may be burdened with numerous disclosures, all of which must be 'clear and conspicuous.'"[232]

Nutone Division stated that "if a catalogue includes a copy of the complete warranty for the products which are described therein, it would not be necessary to show the warranty designation and the address which a free copy of the warranty can be obtained on each page. . . ."[233] Sears said: "The warranty statement could be provided on one page and references to it could be set forth where the products are displayed."[234] Direct Mail & Marketing Association ("DMMA"), National Association of Photographic Manufacturers and others suggested that a single location in the catalog or solicitation contain warranty information, and that catalog and mail order sellers be permitted to refer consumers to such page or pages.[235] Gambles and Eddie Bauer suggested that the catalog seller be given the option of either printing the entire warranty or warranties covering the merchandise being offered for sale, or mailing the disclosure as to the availability of warranties and responding to warranty requests from consumers.[237]

In view of these submissions, the final Rule has been changed to require that mail order or catalog sellers

clearly and conspicuously disclose in such catalog or solicitation in close conjunction to the description of 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) that the written warranty can be obtained free upon specific written request, and the address where such warranty can be obtained. If this option is selected, such seller shall promptly provide a copy of any written warranty requested by the consumer.

DMMA, MOAA, NRMA and Montgomery Ward stated that the warrantor should be required to supply the catalog or mail order sellers with copies of warranties, so as to enable such sellers to comply with the requirements set forth in this sub-paragraph.[238] Accordingly, section 702.3(b)(2) requires warrantors to "provide catalog, mail order. . . . sellers with copies of written warranties necessary for such sellers to comply with the requirements set forth in paragraph(s) (c) . . . of this section."

[232] R-1-4-1, 63-4, NRMA.
[233] R-1-3-2, Nutone Division.
[234] R-1-3-2, 662, Sears.
[235] R-1-3-2, 389, Nutone Division; R-1-3-2, 491, Montgomery Ward; R-1-4-1, 207, National Association of Photographic Manufacturers; R-1-4-1, 647, MOAA; R-1-4-1, 10, NRMA; Tr. 949-50, Daly, DMMA.
[237] R-1-3-2, 346, Gambles; R-1-3-2, 466, Eddie Bauer.
[238] R-1-3-2, 490, Montgomery Ward; R-1-4-1, 65, NRMA; R-1-4-1, 647, MOAA; Tr. 951, Daly, DMMA.

DOOR-TO-DOOR SALES

The proposed rule stated:

any seller who offers for sale to consumers a consumer product with a written warranty by means of door-to-door sales shall, prior to any sales transaction, present the consumer with a copy of the written warranty which the consumer may retain even if no purchase is made.

(2) Door-to-door-sale means a sale of consumer products in which the seller or his representatives 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.

Herschel Elkins and Harvey Freed suggested that the language "prior to any sales transaction" was unduly vague,[239] and Sears stated that it could be construed as "requiring the warranty to be provided to consumers before any sales presentation is made, regardless of whether there is any possibility of a sale being made."[240] Dutterer's of Manchester Corp. pointed out that a distinction needed to be drawn between "prospecting for an *appointment* at the door" and the actual commencement of the sale process in the home, when the representative has returned to comply with a preset appointment; only during the latter instance should the written warranty be presented.[241] Accordingly, the final Rule uses the langauge "prior to the consummation of the sale."

Some of the comments submitted by industry representatives also disclosed the need for a definition of the term "consumer" for purposes of this section. Field Enterprises ("Field") stated: ". . . (T)here are many circumstances in which either the insubstantial nature of the seller's contact, or the express or implied unwillingness or inability of the person contacted to enter into a sales transaction, would justify the sales representative's concluding that the person contacted is not a 'consumer' or 'prospective consumer' for purposes of the Act. Unfortunately, proposed Section 702(3)(e)(1) . . . offers no criteria . . . To resolve this ambiguity . . . the Commission should define 'consumer' for purposes of Section 702.3(e) to include only individuals solicited by a door-to-door seller who either indicates sufficient interest in the seller's product or maintain sufficient contact with the seller for the seller reasonably to conclude that the individual solicited is interested in purchasing the product."[242]

In light of these comments, the Commission has changed the word "consumer" to "prospective buyer", and has adopted the definition suggested by Field Enterprises, and endorsed by the Direct Selling Association ("DSA").

any 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.[243]

DSA and Field also argued in some of the comments that the proposed Rule discriminated against door-to-door sellers.[244] Fixed location sellers as opposed to door-to-door sellers, were not required under the proposed Rule to provide consumers with copies of warranties but merely to make copies available for the consumer's inspection. Also, fixed location sellers as well as catalog and mail order sellers were only required to make warranties available upon request under the proposed Rule.

The final Rule adopts portions of the language proposed by Field,[245] and endorsed by DSA,[246] and seeks to equalize the duties of the door-to-door seller with those imposed on other sellers.

The final Rule requires the door-to-door seller to "disclose the fact that the sales representative has copies of the warranties for the warranted products being offered for sale which may be in-

[239] Tr. 2025, Elkins; Tr 2524, Freed.
[240] R-1-3-2, Sears; See also, R-1-4-1, 290, DSA; R-1-4-1, 290, DSA.
[241] R-1-3-3, 756, Dutterer's of Manchester Corp.
[242] R-1-3-3, 802, Field; R-1-4-1, 290, DSA.
[243] R-1-3-3, 809, Field; Tr. 759, DSA.
[244] R-1-4-1, 287-89, DSA; R-1-3-3, 805-808 Field.
[245] R-1-3-3, 808-9, Field: "(e) *Door-to-door sales.*

(1) This subsection contains the rules applicable to door-to-door sellers under this Part.

(2) Any seller who offers for sale a consumer product with a written warranty by means of door-to-door sales to individuals shall, prior to the completion of any sales transaction:

(A) Disclose to consumers in a manner permitted by paragraph (3) of this subsection (e):

(i) The written warranty designation of each product;

(ii) The fact that the sales representative has in his possession copies of the warranties for the products, and that these copies may be inspected by the consumer at his request at any time during the course of a sales presentation; and

(iii) The fact that a copy of the written warranty may be obtained for the consumer to retain free on request, and the means by which such a copy may be obtained (including the address where such warranty may be obtained, if it is to be made available by mail);

(B) Ensure that each of its sales representatives carries with him a copy of each warranty for each product offered for sale, and cause such copies to be kept up-to-date in the manner required of other sellers with respect to binders under subsection (a);

(C) Provide a copy of any written warranty requested by the consumer, either by mailing or otherwise delivering to the consumer a separate document containing such warranty or by setting forth in a copy of any sales contract actually entered into with the consumer a clear and conspicuous statement of the warranty;

(3) The disclosure required by paragraph (2)(A) of this subsection (e) may be made either (A) orally or (B) clearly and conspicuously in writing, on the page containing the description of the warranted product, in any flier or brochure distributed to consumers which they are permitted by the seller to retain.

(4) For the purposes of this subsection (a): (A) "door-to-door sale" means [present definition in section 702.3(e)(2)]".
[246] Tr. 759, DSA.

spected 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."

The duty corresponds to that required of other sellers. Sales representatives need only disclose the fact that they have copies or the warranties for the warranted products being offered for sale, which may be inspected by the prospective buyer.

Finally, DSA recommended that the final Rule clarify that door-to-door sellers are to be governed by this section only, and not by other sections governing other sellers.[247] Section 702.3(a) of the final Rule accomplishes this purpose.[248]

VI. *Effective Date of the Rules.* Section 112(b) of the Act states:

> Section 102(a) shall take effect 6 months after the final publication of rules respecting such section; except that the Commission, for good cause shown, may postpone the applicability of such sections until one year after such final publication in order to permit any designated classes of suppliers to bring their written warranties into compliance with rules promulgated pursuant to this title.

The Commission has given careful consideration to requests by affected parties that a reasonable length of time be allowed to afford them opportunity to come into conformity with the provisions of the Rules.[249] Montgomery Ward submitted that:

> Catalog sellers will have to revise the media. Many catalog pages are 'locked in' six months before publication and changes after that date are extremely expensive. Since the sellers cannot 'set' their catalog until warrant(ors) of products listed in their catalogs have finalized the warranties, one year after publication is a minimum time for compliance by catalog sellers.[250]

The Commission recognizes the special problems concerning lead time for publications of catalog sellers. It is also aware that the revisions in warranties, packaging, and related materials necessitated by the final Rules may affect literally billions of pieces of paper. Furthermore, the Commission may promulgate other related Rules with respect to written warranties within the next six months. It is not the intent of the Commission to have warrantors incur unnecessary expenses in having to reprint their warranties multiple times in order to come into compliance with the successive promulgation of warranty rules.

For these reasons the Commission believes that a delay of the effective date of the Rule is necessary. Accordingly, Parts 701 and 702 will become effective one year after the date of promulgation.

---

[247] R-1-4-1, 291, DSA.

[248] "(a) *Duties of the seller.* The seller, *except as provided in paragraphs (c)-(d) of this Section,* of a consumer product with a written warranty shall": (emphasis supplied).

[249] R-1-3-2, 511-13, Montgomery Ward; Tr. 286, Friedman, National Association of Catalog Showroom Merchandisers; Tr. 951, Daly, Direct Mail/Marketing Association.

[250] R-1-3-2, 513, Montgomery Ward.

The Commission has now considered all matters of fact, law, policy and discretion, including the data, views, and arguments presented on the Record by interested parties in response to the Notices, as prescribed by law, and has determined that the adoption of the Trade Regulation Rule and its Statement of Basis and Purpose set forth herein is in the public interest.

Accordingly, the Commission hereby adopts the foregoing Statement of Basis and Purpose, and hereby amends Title 16 of CFR, Chapter 1, Subchapter G, Rules, Regulations, Statements and Interpretations under the Magnuson-Moss Warranty Act, by adding new parts 701 and 702 as follows:

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

Sec.
701.1 Definitions.
701.2 Scope.
701.3 Written warranty terms.
701.4 Owner registration cards.

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

§ 701.1 Definitions.

(a) "The Act" means the Magnuson-Moss Warranty Federal Trade Commission Improvement Act, 15 U.S.C. 2301, *et seq.*

(b) "Consumer product" means any tangible personal property which is distributed in commerce and which is normally used for personal, family, or household purposes (including any such property intended to be attached to or installed in any real property without regard to whether it is so attached or installed. Products which are purchased solely for commercial or industrial use are excluded solely for purposes of this Part.

(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.

(d) "Implied warranty" means an implied warranty arising under State law (as modified by secs. 104(a) and 108 of the Act) in connection with the sale by a supplier of a consumer product.

(e) "Remedy" means whichever of the following actions the warrantor elects:
(1) repair,
(2) replacement, or
(3) refund; except that the warrantor may not elect refund unless: (i) the warrantor is unable to provide replacement and repair is not commercially practicable or cannot be timely made, or
(ii) the consumer is willing to accept such refund.

(f) "Supplier" means any person engaged in the business of making a consumer product directly or indirectly available to consumers.

(g) "Warrantor" means any supplier or other person who gives or offers to give a written warranty.

(h) "Consumer" means a buyer (other than for purposes of resale or use in the ordinary course of the buyer's business) of any consumer product, any person to whom such product is transferred during the duration of an implied or written warranty applicable to the product, and any other such person who is entitled by the terms of such warranty or under applicable State law to enforce against the warrantor the obligations of the warranty.

(i) "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.

§ 701.2 Scope.

The regulations in this part establish requirements for warrantors for disclosing the terms and conditions of written warranties on consumer products actually costing the consumer more than $15.00.

§ 701.3 Written warranty terms.

(a) Any warrantor warranting to a consumer by means of a written warranty a consumer product actually costing the consumer more than $15.00 shall clearly and conspicuously disclose in a single document in simple and readily understood language, the following items of information: (1) The identity of the party or parties to whom the written warranty is extended, if the enforceability of the written warranty is limited to the original consumer purchaser or is otherwise limited to persons other than every consumer owner during the term of the warranty;
(2) A clear description and identification of products, or parts, or characteristics, or components or properties covered by and where necessary for clarification, excluded from the warranty;
(3) A statement of what the warrantor will do in the event of a defect, malfunction or failure to conform with the written warranty, including the items or services the warrantor will pay for or provide, and, where necessary for clarification, those which the warrantor will not pay for or provide;
(4) The point in time or event on which the warranty term commences, if different from the purchase date, and the time period or other measurement of warranty duration;

(5) A step-by-step explanation of the procedure which the consumer should follow in order to obtain performance of any warranty obligation, including the persons or class of persons authorized to perform warranty obligations. This includes the name(s) of the warrantor(s), together with: the mailing address(es) of the warrantor(s), and/or the name or title and the address of any employee or department of the warrantor responsible for the performance of warranty obligations, and/or a telephone number which consumers may use without charge to obtain information on warranty performance;

(6) Information respecting the availability of any informal dispute settlement mechanism elected by the warrantor in compliance with Part 703 of this subchapter;

(7) Any limitations on the duration of implied warranties, disclosed on the face of the warranty as provided in Section 108 of the Act, accompanied by the following statement:

Some states do not allow limitations on how long an implied warranty lasts, so the above limitation may not apply to you.

(8) Any exclusions of or limitations on relief such as incidental or consequential damages, accompanied by the following statement, which may be combined with the statement required in sub-paragraph (7) above:

Some states do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to you.

(9) A statement in the following language:

This warranty gives you specific legal rights, and you may also have other rights which vary from state to state.

(b) Paragraph (a)(1)—(9) 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 (1) the disclosures required by paragraph (a)(1)—(9) are published by such third parties in each issue of a publication with a general circulation, and (2) such disclosures are provided free of charge to any consumer upon written request.

§ 701.4 Owner registration cards.

When a warrantor employs any card such as an owner's registration card, a warranty registration card, or the like, and the return of such card is a condition precedent to warranty coverage and performance, the warrantor shall disclose this fact in the warranty. If the return of such card reasonably appears to be a condition precedent to warranty coverage and performance, but is not such a condition, that fact shall be disclosed in the warranty.

PART 702—PRE-SALE AVAILABILITY OF WRITTEN WARRANTY TERMS

Sec.
702.1 Definitions.
702.2 Scope.
702.3 Pre-sale availability of written warranty terms.

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

§ 702.1 Definitions.

(a) "The Act" means the Magnuson-Moss Warranty Federal Trade Commission Improvement Act, 15 U.S.C. 2301, *et seq.*

(b) "Consumer product" means any tangible personal property which is distributed in commerce and which is normally used for personal, family, or household purposes (including any such property intended to be attached to or installed in any real property without regard to whether it is so attached or installed). Products which are purchased solely for commercial or industrial use are excluded solely for purposes of this Part.

(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.

(d) "Warrantor" means any supplier or other person who gives or offers to give a written warranty.

(e) "Seller" means 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.

(f) "Supplier" means any person engaged in the business of making a consumer product directly or indirectly available to consumers.

(g) "Binder" means a locking binder, notebook, or similar system which will provide the consumer with convenient access to copies of product warranties.

§ 702.2 Scope.

The regulations in this part establish requirements for sellers and warrantors for making the terms of any written warranty on a consumer product available to the consumer prior to sale.

§ 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 the seller.* Except as provided in paragraphs (c)–(d) of this section, the seller of a consumer product with a written warranty shall:

(1) make available for the prospective buyer's review, prior to sale, the text of such written warranty by the use of one or more of the following means:

(i) clearly and conspicuously displaying the text of the written warranty in close conjunction to each warranted product; and/or

(ii) maintaining a binder or series of binders which contain(s) copies of the warranties for the products sold in each department in which any consumer product with a written warranty is offered for sale. Such binder(s) shall be maintained in each such department, or in a location which provides the prospective buyer with ready access to such binder(s), and shall be prominently entitled "Warranties" or other similar title which clearly identifies the binder(s). Such binder(s) shall be indexed according to product or warrantor and shall be maintained up to date when new warranted products or models or new warranties for existing products are introduced into the store or department by substituting superseding warranties and by adding new warranties as appropriate. The seller shall either:

(A) display such binder(s) in a manner reasonably calculated to elicit the prospective buyer's attention; or

(B) make the binders available to prospective buyers on request, and place 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 the binders, including instructions for obtaining access; and/or

(iii) displaying the package of any consumer product on which the text of the written warranty is disclosed, in a manner such that the warranty is clearly visible to prospective buyers at the point of sale; and/or

(iv) "placing in close proximity to the warranted consumer product a notice which discloses the text of the written warranty, in a manner which clearly identifies to prospective buyers the product to which the notice applies;

(2) Not remove or obscure any warranty disclosure materials provided by a warrantor, except:

(i) where such removal is necessary for store window displays, fashion shows, or picture taking; or

(ii) where the seller otherwise, through means provided for in subparagraph (1) above, makes the terms of the warranty information available to the consumer.

(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 by the following means:

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

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

(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; and/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) Sub-paragraph (1) of this paragraph (b) 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)–(9) 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 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) that the written warranty can be obtained free upon specific written request, and the address where such warranty can be obtained. If this option is elected, such seller shall promptly provide a copy of any written warranty requested by the consumer.

(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.

Effective: December 31, 1976.

Promulgated by the Federal Trade Commission December 31, 1975.

VIRGINIA M. HARDING,
Acting Secretary.

[FR Doc.75-34894 Filed 12-30-75;8:45 am]

PART 703—INFORMAL DISPUTE SETTLEMENT MECHANISMS

Promulgation of Rule

THE PROCEEDINGS

The Federal Trade Commission, pursuant to Title I, Sections 109 and 110 of the Magnuson-Moss Warranty—Federal Trade Commission Improvement Act, Pub. L. 93-637 (15 U.S.C. §§ 2309, 2310), hereafter referred to as the "Act", has conducted a proceeding for the promulgation of a Rule setting forth minimum requirements for the implementation and operation of any informal dispute settlement mechanism incorporated into the terms of a written warranty subject to the Act.

Notice of this proceeding, including a proposed Rule, was published in the FEDERAL REGISTER of July 16, 1975 (40 FR 29895). The Notice urged all interested persons to express their approval or disapproval of the proposed Rule, or to recommend revisions thereof, and to give a full statement of their views, supplemented by all appropriate documentation. In addition, the Notice highlighted certain issues or provisions of the proposed Rule that were believed to be important in the successful establishment or operation of informal dispute settlement mechanisms. The documents supporting the proposed Rule, and a report of the Commission staff discussing the proposed Rule and the supporting documentation, were placed on the public record and made available for examination and copying.

Interested parties were thereafter afforded opportunity to participate in the proceeding through the submission of written data, views and arguments, and to appear and express their views orally and to suggest amendments, revisions, and additions to the proposed Rule. A period of 60 days was allowed for submission of written comments on the proposed Rule. Public hearings, as announced in the Notice, were held in Washington, D.C., September 15–18, 1975, in Chicago, Illinois; September 22–25, 1975, in Los Angeles, California; September 29 through October 1, 1975; and in San Francisco, California, on October 2, 1975. Every person who had expressed a desire to present his or her views orally at these hearings was accorded an opportunity to do so. The public record remained open for thirty days following the hearings for receipt of any other written data, views or arguments.

Upon careful analysis and review of the written and oral comments, the Commission has made certain modifications to the proposed Rule published on July 16, 1975. The Rule, the rationale for the modifications, and the Record relating thereto, are discussed within the Statement of Basis and Purpose appearing below as part of this Notice. The modifications do not raise issues of law or fact which were not fully addressed in the Proceeding. Therefore with good cause the Commission is promulgating this Rule without further invitation for comment on the modifications. The full text of the Rule follows the Statement of Basis and Purpose.

STATEMENT OF BASIS AND PURPOSE

I. Overview of the Act. Section 110 (a)(2) of the Magnuson-Moss Warranty—Federal Trade Commission Improvement Act, P.L. 93-637 (15 U.S.C. 2310) directs the Federal Trade Commission to prescribe rules setting forth minimum standards for any informal dispute settlement mechanism which is incorporated into the terms of a written warranty subject to the Act.

Section 110 (a)(1) of the Act begins with a broad statement of Congressional policy:

> Congress hereby declares it to be its policy to encourage warrantors to establish procedures whereby consumer disputes are fairly and expeditiously settled through informal dispute settlement mechanisms.

Section 110(a)(2) provides:

> The Commission shall prescribe rules setting forth minimum requirements for any informal dispute settlement procedure which is incorporated into the terms of a written warranty to which any provision of this title applies. Such rules shall provide for participation in the procedure by independent or governmental entities.