their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Ohio River	Pomroy Mason Highway Bridge.	577

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974).)

Issued: May 3, 1977.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.77-19606 Filed 7-12-77;8:45 am]

federal register

WEDNESDAY, JULY 13, 1977

PART IV



FEDERAL TRADE COMMISSION

■

MAGNUSON-MOSS WARRANTY ACT

Interpretations and Explanatory Statement

Title 16—Commercial Practices

CHAPTER I—FEDERAL TRADE COMMISSION

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

PART 700—INTERPRETATIONS OF MAGNUSON-MOSS WARRANTY ACT

Adoption of Interpretations and Explanatory Statement

AGENCY: Federal Trade Commission.

ACTION: Final interpretations.

SUMMARY: These are interpretations of several provisions of the Magnuson-Moss Warranty Act. They represent the Commission's views on various aspects of the Act. The continued questions and requests for advisory opinions directed to the Commission make appropriate the issuance of the Interpretations at this time.

The Interpretations apply to consumer products distributed in commerce and sold with a written warranty. They are intended to clarify the requirements of the Act for consumers, manufacturers, importers, distributors, and retailers. They are not, however, substantive rules, and do not have the force or effect of statutory provisions; like industry guides they are advisory in nature. Failure to comply with them, however, may result in corrective action by the Commission under the applicable statutory provisions.

The explanatory statement which precedes the Interpretations details the changes made by the Commission from the "Proposed Interpretations" published in the FEDERAL REGISTER of August 16, 1976, 41 F.R. 34654.

EFFECTIVE DATE: July 13, 1977.

FOR FURTHER INFORMATION CONTACT:

Alan Rubin, Attorney, Division of Special Statutes, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580. (202–724–1100.)

SUPPLEMENTARY INFORMATION: From the time the Magnuson-Moss Warranty Act, Pub. L. 93–637, 15 U.S.C. 2301, was signed into law in January of 1975, many questions concerning the Act have been directed to the Commission. The Commission has determined that guidance should be provided in order that compliance with the terms of the Act be facilitated. For these same reasons the Commission published, on June 18, 1975, a policy statement in the FEDERAL REGISTER to provide interim guidance during the initial implementation of the statute.

As questions and requests for advisory opinions continue to be directed to the Commission, further guidance of a more permanent nature is appropriate. Therefore, the Commission, on August 16, 1976, proposed interpretations of the Magnuson-Moss Warranty Act to assist warrantors and suppliers of consumer products to comply with the Act, and called for comment on them.

Twenty-five comments were received by the Commission during the comment period. Some of the comments addressed only one proposed interpretation while others addressed several of them. In response to these comments the Commission has made several revisions in the "Proposed Interpretations" and now issues these final Interpretations of the Magnuson-Moss Warranty Act. The explanatory statement discusses these revisions and the reasons they were made.

The final Interpretations in many instances parallel the views the Commission expressed in its June 18, 1975, interim policy statement (40 FR 25721). In some instances the explanations in the earlier policy statement have been paraphrased or altered in these interpretations. The fact that some items from the earlier statement are omitted from these interpretations does not mean that the Commission no longer holds those views.

These interpretations apply to consumer products distributed in commerce and sold with a written warranty. They are intended to clarify the requirements of the Act for consumers, manufacturers, importers, distributors, and retailers. They are not, however, substantive rules, and do not have the force or effect of statutory provisions; like industry guides they are advisory in nature. Failure to comply with them, however, may result in corrective action by the Commission under the applicable statutory provisions.

EXPLANATION OF CHANGES FROM PROPOSED INTERPRETATIONS

After careful consideration of the comments submitted, the Commission has revised some of the proposed interpretations. The provisions set forth below are as they appear in the final interpretations. The text below each provision explains where and why the change(s) from the proposed version have been made.

PRODUCTS COVERED

Section 700.1(a) The Act applies to written warranties on tangible personal property which is normally used for personal, family, or household purposes. This definition includes property which is intended to be attached to or installed in any real property without regard to whether it is so attached or installed. This means that a product is a "consumer product" if the use of that type of product for such purposes is not uncommon. The percentage of sales, or the use to which a product is put by an individual buyer is not determinative. For example, products such as automobiles and typewriters which are used for both personal and commercial purposes come within the definition of consumer product. Where it is unclear whether a particular product is covered under the definition of consumer product, any ambiguity will be resolved in favor of coverage.

In adopting this final interpretation, the Commission has made two revisions from the proposed subsection. Additional text is added after the first sentence to eliminate the continued misunderstanding—evidenced by two of the comments—of the standard for determining whether a product is a "consumer product" under the Act. These comments indicated confusion as to whether a product used for both commercial and personal purposes, such as a passenger car used by a sales representative to make business calls, is covered by the Act. The additional text sets out the correct determining standard; namely, that it is the normal use of the category of products (e.g., sedans), not the use to which an individual product (e.g., a particular sales representative's sedan) is normally placed. Additionally, subsections (a) and (b) have been consolidated to improve the readability of the final interpretation.

Section 700.1(j) The Act covers written warranties on consumer products "distributed in commerce" as that term is defined in section 101(3). Thus, by its terms the Act arguably applies to products exported to foreign jurisdictions. However, the public interest would not be served by the use of Commission resources to enforce the Act with respect to such products. Moreover, the legislative intent to apply the requirements of the Act to such products is not sufficiently clear to justify such an extraordinary result. The Commission does not contemplate the enforcement of the Act with respect to consumer products exported to foreign jurisdictions. Products exported for sale at military post exchanges remain subject to the same enforcement standards as products sold within the United States, its territories, and possessions.

The proposed interpretation stated that the Commission does not contemplate enforcement of the Act for products "manufactured solely for export." Two comments note that this language in the proposed interpretation appears to make the manufacturer's intent to export the determining standard rather than the actual export of the product. Another comment noted that the word "solely" in the proposed interpretation could be read as subjecting a manufacturer to Commission enforcement unless all units of a single product are exported. The Commission did not intend either of these readings. Therefore, the Commission has substituted the word "exported" for the phrase "manufactured solely for export" in the final interpretation.

WRITTEN WARRANTY

Section 700.3(b) Certain terms, or conditions, of sale of a consumer product may not be "written warranties" as that term is defined in section 101(6), and should not be offered or described in a manner that may deceive consumers as to their enforceability under the Act. For example, a seller of consumer products may give consumers an unconditional right to revoke acceptance of goods within a certain number of days after delivery without regard to defects or failure to meet a specified level of performance. Or a seller may permit consumers to return products for any reason for credit toward purchase of another item. Such terms of sale taken alone are not written warranties under the Act. Therefore, suppliers should avoid any characterization of such terms of sale as warranties. The use of such terms as "free trial period" and "trade-in credit policy" in this regard would be appropriate. Furthermore, such terms of sale should be stated separately from any written warranty. Of course, the offering and performance of such

terms of sale remain subject to section 5 of the Federal Trade Commission Act, 15 U.S.C. 45.

The Commission has made some minor changes in these subsections. First, a textual change is made to make it clear that this subsection refers to unconditional rights of revocation of the consumer, and not to rights which may depend on the existence of some defect or other circumstances. Second, the first sentence of proposed subsection (c) which read "Such terms of sale should not be described as written warranties, as this may deceive consumers, leading them to believe that such terms may be enforced as warranties under the Act" has been deleted as it merely restates the first sentence of proposed subsection (b), yet adds nothing to the meaning of the interpretation. Finally, the two subsections have been consolidated into one to improve the readability of the interpretation.

PARTIES "ACTUALLY MAKING" A WRITTEN WARRANTY

Section 700.4 Section 110(f) of the Act provides that only the supplier "actually making" a written warranty is liable for purposes of FTC and private enforcement of the Act. A supplier who does no more than distribute or sell a consumer product covered by a written warranty offered by another person or business and which identifies that person or business as the warrantor is not liable for failure of the written warranty to comply with the Act or rules thereunder. However, other actions and written and oral representations of such a supplier in connection with the offer or sale of a warranted product may obligate that supplier under the Act. If under state law the supplier is deemed to have "adopted" the written affirmation of fact, promise, or undertaking, the supplier is also obligated under the Act. Suppliers are advised to consult state law to determine those actions and representations which may make them co-warrantors, and therefore obligated under the warranty of the other person or business.

The Commission has made two textual changes in this subsection. First, the next to last sentence of the paragraph has been added to clarify when a supplier may become obligated under the warranty of another person or business—i.e., when the supplier "adopts" the warranty. Second, the Commission has added the phrase "of the other person or business" to the end of the subsection to clarify to which written warranty the Commission is referring in the interpreation. These changes do not alter the meaning of the interpretation from the proposed version.

DESIGNATION OF WARRANTIES

Section 700.6(a) Section 103 of the Act provides that written warranties on consumer products manufactured after July 4, 1975, and actually costing the consumer more than $10 excluding tax, must be designated either "Full (statement of duration) Warranty" or "Limited Warranty." Warrantors may include a statement of duration in a limited warranty designation. The designation should appear clearly and conspicuously as a caption, or prominent title, clearly separated from the text of the warranty. The full (statement of duration) warranty and limited warranty are the exclusive designations permitted under the Act, unless a specific exception is created by rule.

The Commission has inserted an additional sentence after the first sentence in this subsection. The added text provides that "Warrantors may include a statement of duration in a limited warranty designation." This is a reiteration of the Commission's previously adopted interpretation set out in Part 3 of the Commission's "Implementation and Enforcement Policy," 40 FR 25721 (June 18, 1975). The added language indicates that the Commission has not changed its position on the question of duration statements in limited warranty designations.

Section 700.6(b) Section 104(b)(4) states that "the duties under subsection (a) (of section 104) extend from the warrantor to each person who is a consumer with respect to the consumer product." Section 101(3) defines a consumer as "a buyer (other than for purposes of resale) of any consumer product, any person to whom such product is transferred during the duration of an implied or written warranty (or service contract) applicable to the product * * *." Therefore, a full warranty may not expressly restrict the warranty rights of a transferee during its stated duration. However, where the duration of a full warranty is defined solely in terms of first purchaser ownership there can be no violation of section 104(b)(4), since the duration of the warranty expires, by definition, at the time of transfer. No rights of a subsequent transferee are cut off as there is no transfer of ownership "during the duration of (any) warranty." Thus, these provisions do not preclude the offering of a full warranty with its duration determined exclusively by the period during which the first purchaser owns the product, or uses it in conjunction with another product. For example, an automotive battery or muffler warranty may be designated as "full warranty for as long as you own your car." Because this type of warranty leads the consumer to believe that proof of purchase is not needed so long as he or she owns the product, a duty to furnish documentary proof may not be reasonably imposed on the consumer under this type of warranty. The burden is on the warrantor to prove that a particular claimant under this type of warranty is not the original purchaser or owner of the product. Warrantors or their designated agents may, however, ask consumers to state or affirm that they are the first purchaser of the product.

The Commission has made three changes in this interpretation. First, proposed subsections (b) and (c) have been consolidated into one to improve the readability of the interpretation. Second, the Commission has inserted two additional sentences between the third and fourth sentences of proposed interpretation § 700.6(b). These sentences are intended to clarify the rationale underlying the Commission's interpretation. Finally, the Commission has substituted the word "documentary" for the word "such" in the last sentence of the proposed interpretation and has added an additional sentence at the end of the interpretation. The purpose of these two changes is to make clear that the Commission does not intend this interpretation to prohibit a warrantor or seller from simply inquiring at the time a warranty claim is made whether the consumer was the first purchaser of the warranted product. The Commission intends this interpretation to only prohibit the warrantor from requiring written proof, such as sales slips, titles, etc. from the consumer as a condition of the warranty's validity.

USE OF WARRANTY REGISTRATION CARDS

Section 700.7(a) Under section 104(b)(1) of the Act, a warrantor offering a full warranty may not impose on consumers any duty other than notification of a defect as a condition of securing remedy of the defect or malfunction, unless such additional duty can be demonstrated by the warrantor to be reasonable. Warrantors have in the past stipulated the return of a "warranty registration" or similar card. By "warranty registration card" the Commission means a card which must be returned by the consumer shortly after purchase of the product and which is stipulated or implied in the warranty to be a condition precedent to warranty coverage and performance.

The Commission has added additional text to the end of the proposed interpretation to clarify the definition of "warranty registration card" as that term is used in the interpretation. The Commission has added this text to distinguish between the more common warranty registration card (as defined) and other types of cards or evidence of purchase or warranty coverage, return of which may be a stipulated condition for warranty coverage. The Commission intends only the former type of card to be covered by this interpretation.

Section 700.7(b) A requirement that the consumer return a warranty registration card or a similar notice as a condition of performance under a full warranty is an unreasonable duty. Thus, a provision such as "This warranty is void unless the warranty registration card is returned to the warrantor" is not permissible in a full warranty, nor is it permissible to imply such a condition in a full warranty.

The Commission has deleted the parenthetical phrase "other than a notice of a defect" from the proposed interpretation. The proposed interpretation could be read as Commission approval of a requirement in a full warranty that notification of a defect be in writing. This reading is not intended by the Commission since such a requirement may be an unreasonable duty under section 104(b)(1) of the Act.

Section 700.7(c) This does not prohibit the use of such registration cards where a warrantor suggests use of the card as one possible means of proof of the date the product was purchased. For example, it is permissible to provide in a full warranty that the consumer may fill out and return a card to place on file proof of the date the product was purchased. Any such suggestion to the consumer must include notice that failure to return the card will not affect rights under the warranty, so long as the consumer can show in a reasonable manner the date the product was purchased. Nor does this interpretation prohibit a seller from obtaining from purchasers at the time of sale information requested by the warrantor.

The Commission has added a sentence at the end of this subsection. This sentence was added to make clear that the

interpretation above does not prohibit warrantors from employing registration systems which do not impose on consumers a duty to return a warranty registration card shortly after purchase. This sentence was also added to expressly permit sellers to gather information at the point of sale for their warranty records, or for product safety recall or other purposes.

DUTY TO INSTALL UNDER A FULL WARRANTY

Section 700.9 Under section 104(a)(1) of the Act, the remedy under a full warranty must be provided to the consumer without charge. If the warranted product has utility only when installed, a full warranty must provide such installation without charge regardless of whether or not the consumer originally paid for installation by the warrantor or his agent. However, this does not preclude the warrantor from imposing on the consumer a duty to remove, return, or reinstall where such duty can be demonstrated by the warrantor to meet the standard of reasonableness under section 104(b)(1).

One comment noted that the proposed interpretation did not indicate, as the Commission had previously done in its advisory opinion to Armstrong Cork Co. of December 1, 1975, that the duty to reinstall under a warranty applies "regardless of whether or not the consumer originally paid for installation by the warrantor or his agent." This raises the question whether this omission indicates a partial retraction by the Commission of its advisory opinion in *Armstrong Cork*. The interpretation was intended by the Commission as a restatement of the previous advisory opinion; thus the addition of the phrase at the end of the second sentence in the final interpretation is made to eliminate any possible misinterpretation.

SECTION 102(C)

Section 700.10(a) Section 102(c) prohibits tying arrangements that condition coverage under a written warranty on the consumer's use of an article or service identified by brand, trade, or corporate name unless that article or service is provided without charge to the consumer.

There are two comments in this interpretation. Each mistakenly stated that the Commission has misstated the law by omitting the provision that allows "tie-ins" if the tied article or service is provided without charge to the consumer. The proposed interpretation did not omit this as it stated that section 102(c) prohibits tying arrangements where consumers must purchase the tied article or service. This rephrasing was done to shorten the proposed interpretation and to improve its readability. However, it appears that this rephrasing has caused some confusion. Therefore, the Commission has revised the wording of the interpretation to track more closely the language of the statute so as to avoid undue confusion.

Section 700.10(d). (This section has been deleted.)

There were many comments critical of the proposed interpretation. The commentators argued that the Commission's position was neither justified under the statute nor reflective of marketplace realities. The Commission has decided to delete the proposed interpretation from the final "Interpretations."

The Commission is persuaded that the proposed interpretation does not reflect the Congressional purpose or intent behind section 102(c). Section 102(c) prohibits tying arrangements in warranties that effectively restrict the consumer's ability to choose among competing brands of products or services that can be used in conjunction with the warranted product. The proposed interpretation was premised on the existence of a class of consumers whose choice would be restricted under such warranty provisions, i.e., those consumers who would elect to have the product installed by another commercial installer but for the fact that the warranty on the product conditions the remedy of reinstallation on the consumer's use of the warrantor's installation service. This premise, however, does not reflect marketplace realities.

It appears that there are only two groups of buyers of products carrying such warranties. (The products subject to these warranty terms are almost exclusively automotive replacement parts.) One group, the "do-it-yourselfers," buy the product at a lower price and install it themselves. The second group is composed of consumers who buy the product knowing that the seller will also install it for them at an additional charge. Under the Commission's proposed interpretation neither of these two groups would be aided. If the warrantor agrees to provide free re-installation regardless of whether the warrantor did the original installation, the costs of re-installation for consumers who originally purchased the product uninstalled will be reflected in a higher purchase price for the product. This would result in the "do-it-yourselfer" group paying for a reinstallation warranty, when his or her original reason for purchasing the product was to save the cost of installation. The warrantor's other alternative is to not provide reinstallation for anybody, resulting in a potential loss of warranty coverage for consumers who purchase the product installed. Thus, the proposed interpretation might result in harm to consumers without fulfilling the intent of the statutory provision on which it is based.

The deletion of this interpretation does not change the Commission's interpretation that under a full warranty, the warrantor must undertake to reinstall any product without charge as part of the remedy under section 104(a)(1). An exception is permitted where the warrantor can demonstrate that it is reasonable under section 104(b)(1) to impose the duty of reinstallation on the consumer, see the Commission's advisory opinion to Armstrong Cork Co. of December 1, 1975, and § 700.9 of these "Interpretations."

WRITTEN WARRANTY, SERVICE CONTRACT, AND INSURANCE DISTINGUISHED FOR PURPOSES OF COMPLIANCE UNDER THE ACT

Section 700.11(a) The Act recognizes two types of agreements which may provide similar coverage of consumer products, the written warranty, and the service contract. In addition, other agreements may meet the statutory definition of either "written warranty" or "service contract", but are sold and regulated under state law as contracts of insurance. One example is the automobile breakdown insurance policies sold in many jurisdictions and regulated by the state as a form of casualty insurance. The McCarran-Ferguson Act, 15 U.S.C. 1011 et seq. precludes jurisdiction under federal law over "the business of insurance" to the extent an agreement is regulated by state law as insurance. Thus, such agreements are subject to the Magnuson-Moss Warranty Act only to the extent they are not regulated in a particular state as the business of insurance.

There were no comments submitted on this interpretation. However, the Commission added on its own initiative, additional text at the end of the third sentence of the proposed interpretation to clarify that an agreement is only insurance, and not subject to the Commission's jurisdiction, if it is regulated as such by state law. This additional phrase reinforces the point that the party offering the contract cannot employ the name or title of "breakdown insurance" to escape jurisdiction of the Act via the provisions of the McCarran-Ferguson Act; rather the distinction rests on the active regulation by a state of a particular undertaking as the business of insurance.

Section 700.11(b) "Written warranty" and "service contract" are defined in sections 101(6) and 101(8) of the Act, respectively. A written warranty must be "part of the basis of the bargain." This means that it must be conveyed at the time of sale of the consumer product and the consumer must not give any consideration beyond the purchase price of the consumer product in order to benefit from the agreement. It is not a requirement of the Act than an agreement obligate a supplier of the consumer product to be a written warranty, but merely that it be part of the basis of the bargain between a supplier and a consumer. This contemplates written warranties by third-party non-suppliers.

One comment suggested that the word "price" be inserted after the word "purchase" in the second sentence to clarify the interpretation. The Commission has adopted this suggestion to avoid any misunderstanding.

Accordingly, the Commission hereby amends Title 16 of the Code of Federal Regulations (CFR), Chapter I, Subchapter G, Rules, Regulations, Statements, and Interpretations under the Magnuson-Moss Warranty Act, by adding a new Part 700, reading as follows:

Sec.

700.1 Products covered.
700.2 Date of manufacture.
700.3 Written warranty.
700.4 Parties "actually making" a written warranty.
700.5 Expressions of general policy.
700.6 Designation of warranties.
700.7 Use of Warranty Registration Cards.
700.8 Warrantor's decision as final.
700.9 Duty to install under a full warranty.
700.10 Section 102(c).
700.11 Written warranty, service contract, and insurance distinguished for purposes of compliance under the Act.

Sec.
700.12 Effective date of 16 CFR, Parts 701 and 702.

AUTHORITY: Magnuson-Moss Warranty Act, Pub. L. 93-637, 15 U.S.C. 2301.

§ 700.1 Products covered.

(a) The Act applies to written warranties on tangible personal property which is normally used for personal, family, or household purposes. This definition includes property which is intended to be attached to or installed in any real property without regard to whether it is so attached or installed. This means that a product is a "consumer product" if the use of that type of product is not uncommon. The percentage of sales or the use to which a product is put by any individual buyer is not determinative. For example, products such as automobiles and typewriters which are used for both personal and commercial purposes come within the definition of consumer product. Where it is unclear whether a particular product is covered under the definition of consumer product, any ambiguity will be resolved in favor of coverage.

(b) Agricultural products such as farm machinery, structures and implements used in the business or occupation of farming are not covered by the Act where their personal, family, or household use is uncommon. However, those agricultural products normally used for personal or household gardening (for example, to produce goods for personal consumption, and not for resale) are consumer products under the Act.

(c) The definition of "Consumer product" limits the applicability of the Act to personal property, "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." This provision brings under the Act separate items of equipment attached to real property, such as air conditioners, furnaces, and water heaters.

(d) The coverage of separate items of equipment attached to real property includes, but is not limited to, appliances and other thermal, mechanical, and electrical equipment. (It does not extend to the wiring, plumbing, ducts, and other items which are integral component parts of the structure.) State law would classify many such products as fixtures to, and therefore a part of, realty. The statutory definition is designed to bring such products under the Act regardless of whether they may be considered fixtures under state law.

(e) The coverage of building materials which are not separate items of equipment is based on the nature of the purchase transaction. An analysis of the transaction will determine whether the goods are real or personal property. The numerous products which go into the construction of a consumer dwelling are all consumer products when sold "over the counter," as by hardware and building supply retailers. This is also true where a consumer contracts for the purchase of such materials in connection with the improvement, repair, or modification of a home (for example, paneling, dropped ceilings, siding, roofing, storm windows, remodeling). However, where such products are at the time of sale integrated into the structure of a dwelling they are not consumer products as they cannot be practically distinguished from realty. Thus, for example, the beams, wallboard, wiring, plumbing, windows, roofing, and other structural components of a dwelling are not consumer products when they are sold as part of real estate covered by a written warranty.

(f) In the case where a consumer contracts with a builder to construct a home, a substantial addition to a home, or other realty (such as a garage or an in-ground swimming pool) the building materials to be used are not consumer products. Although the materials are separately identifiable at the time the contract is made, it is the intention of the parties to contract for the construction of realty which will intergrate the component materials. Of course, as noted above, any separate items of equipment to be attached to such realty are consumer products under the Act.

(g) Certain provisions of the Act apply only to products actually costing the consumer more than a specified amount. Section 103 applies to consumer products actually costing the consumer more than $10, excluding tax. The $10 minimum will be interpreted to include multiple-packaged items which may individually sell for less than $10, but which have been packaged in a manner that does not permit breaking the package to purchase an item or items at a price less than $10. Thus, a written warranty on a dozen items packaged and priced for sale at $12 must be designated, even though identical items may be offered in smaller quantities at under $10. This interpretation applies in the same manner to the minimum dollar limits in section 102 and rules promulgated under that section.

(h) Warranties on replacement parts and components used to repair consumer products are covered; warranties on services are not covered. Therefore, warranties which apply solely to a repairer's workmanship in performing repairs are not subject to the Act. Where a written agreement warrants both the parts provided to effect a repair and the workmanship in making that repair, the warranty must comply with the Act and the rules thereunder.

(i) The Act covers written warranties on consumer products "distributed in commerce" as that term is defined in section 101(3). Thus, by its terms the Act arguably applies to products exported to foreign jurisdictions. However, the public interest would not be served by the use of Commission resources to enforce the Act with respect to such products. Moreover, the legislative intent to apply the requirements of the Act to such products is not sufficiently clear to justify such an extraordinary result. The Commission does not contemplate the enforcement of the Act with respect to consumer products exported to foreign jurisdictions. Products exported for sale at military post exchanges remain subject to the same enforcement standards as products sold within the United States, its territories and possessions.

§ 700.2 Date of manufacture.

Section 112 of the Act provides that the Act shall apply only to those consumer products manufactured after July 4, 1975. When a consumer purchases repair of a consumer product the date of manufacture of any replacement parts used in the measuring date for determining coverage under the Act. The date of manufacture of the consumer product being repaired is in this instance not relevant. Where a consumer purchases or obtains on an exchange basis a rebuilt consumer product, the date that the rebuilding process is completed determines the Act's applicability.

§ 700.3 Written warranty.

(a) The Act imposes specific duties and liabilities on suppliers who offer written warranties on consumer products. Certain representations, such as energy efficiency ratings for electrical appliances, care labeling of wearing apparel, and other product information disclosures may be express warranties under the Uniform Commercial Code. However, these disclosures alone are not written warranties under this Act. Section 101(6) provides that a written affirmation of fact or a written promise of a specified level of performance must relate to a specified period of time in order to be considered a "written warranty."[1] A product information disclosure without a specified time period to which the disclosure relates is therefore not a written warranty. In addition, section 111(d) exempts from the Act (except section 102(c)) any written warranty the making or content of which is required by federal law. The Commission encourages the disclosure of product information which is not deceptive and which may benefit consumers, and will not construe the Act to impede information disclosure in product advertising or labeling.

(b) Certain terms, or conditions, of sale of a consumer product may not be "written warranties" as that term is defined in Section 101(6), and should not be offered or described in a manner that may deceive consumers as to their enforceability under the Act. For example, a seller of consumer products may give consumers an unconditional right to revoke acceptance of goods within a certain number of days after delivery without regard to defects or failure to meet a specified level of performance. Or a seller may permit consumers to return products for any reason for credit toward purchase of another item. Such terms of sale taken alone are not written warranties under the Act. Therefore, suppliers should avoid any characterization of such terms of sale as warranties. The use of such terms as "free trial period"

[1] A "written warranty" is also created by a written affirmation of fact or a written promise that the product is defect free, or by a written undertaking of remedial action within the meaning of § 101(6)(B).

and "trade-in credit policy" in this regard would be appropriate. Furthermore, such terms of sale should be stated separately from any written warranty. Of course, the offering and performance of such terms of sale remain subject to section 5 of the Federal Trade Commission Act, 15 U.S.C. 45.

(c) The Magnuson-Moss Warranty Act generally applies to written warranties covering consumer products. Many consumer products are covered by warranties which are neither intended for, nor enforceable by, consumers. A common example is a warranty given by a component supplier to a manufacturer of consumer products. (The manufacturer may, in turn, warrant these components to consumers.) The component supplier's warranty is generally given solely to the product manufacturer, and is neither intended to be conveyed to the consumer nor brought to the consumer's attention in connection with the sale. Such warranties are not subject to the Act, since a written warranty under section 101(6) of the Act must become "part of the basis of the bargain between a supplier and a buyer for purposes other than resale." However, the Act applies to a component supplier's warranty in writing which is given to the consumer. An example is a supplier's written warranty to the consumer covering a refrigerator that is sold installed in a boat or recreational vehicle. The supplier of the refrigerator relies on the boat or vehicle assembler to convey the written agreement to the consumer. In this case, the supplier's written warranty is to a consumer, and is covered by the Act.

§ 700.4 Parties "actually making" a written warranty.

Section 110(f) of the Act provides that only the supplier "actually making" a written warranty is liable for purposes of FTC and private enforcement of the Act. A supplier who does no more than distribute or sell a consumer product covered by a written warranty offered by another person or business and which identifies that person or business as the warrantor is not liable for failure of the written warranty to comply with the Act or rules thereunder. However, other actions and written and oral representations of such a supplier in connection with the offer or sale of a warranted product may obligate that supplier under the Act. If under state law the supplier is deemed to have "adopted" the written affirmation of fact, promise, or undertaking, the supplier is also obligated under the Act. Suppliers are advised to consult state law to determine those actions and representations which may make them co-warrantors, and therefore obligated under the warranty of the other person or business.

§ 700.5 Expressions of general policy.

(a) Under section 103(b), statements or representations of general policy concerning customer satisfaction which are not subject to any specific limitation need not be designated as full or limited warranties, and are exempt from the requirements of sections 102, 103, and 104 of the Act and rules thereunder. However, such statements remain subject to the enforcement provisions of section 110 of the Act, and to section 5 of the Federal Trade Commission Act, 15 U.S.C. 45.

(b) The section 103(b) exemption applies only to general policies, not to those which are limited to specific consumer products manufactured or sold by the supplier offering such a policy. In addition, to qualify for an exemption under section 103(b) such policies may not be subject to any specific limitations. For example, policies which have an express limitation of duration or a limitation of the amount to be refunded are not exempted. This does not preclude the imposition of reasonable limitations based on the circumstances in each instance a consumer seeks to invoke such an agreement. For instance, a warrantor may refuse to honor such an expression of policy where a consumer has used a product for 10 years without previously expressing any dissatisfaction with the product. Such a refusal would not be a specific limitation under this provision.

§ 700.6 Designation of warranties.

(a) Section 103 of the Act provides that written warranties on consumer products manufactured after July 4, 1975, and actually costing the consumer more than $10, excluding tax, must be designated either "Full (statement of duration) Warranty" or "Limited Warranty". Warrantors may include a statement of duration in a limited warranty designation. The designation or designations should appear clearly and conspicuously as a caption, or prominent title, clearly separated from the text of the warranty. The full (statement of duration) warranty and limited warranty are the exclusive designations permitted under the Act, unless a specific exception is created by rule.

(b) Section 104(b)(4) states that "the duties under subsection (a) (of section 104) extend from the warrantor to each person who is a consumer with respect to the consumer product." Section 101(3) defines a consumer as "a buyer (other than for purposes of resale) of any consumer product, any person to whom such product is transferred during the duration of an implied or written warranty (or service contract) applicable to the product * * *." Therefore, a full warranty may not expressly restrict the warranty rights of a transferee during its stated duration. However, where the duration of a full warranty is defined solely in terms of first purchaser ownership there can be no violation of section 104(b)(4), since the duration of the warranty expires, by definition, at the time of transfer. No rights of a subsequent transferee are cut off as there is no transfer of ownership "during the duration of (any) warranty." Thus, these provisions do not preclude the offering of a full warranty with its duration determined exclusively by the period during which the first purchaser owns the product, or uses it in conjunction with another product. For example, an automotive battery or muffler warranty may be designated as "full warranty for as long as you own your car." Because this type of warranty leads the consumer to believe that proof of purchase is not needed so long as he or she owns the product a duty to furnish documentary proof may not be reasonably imposed on the consumer under this type of warranty. The burden is on the warrantor to prove that a particular claimant under this type of warranty is not the original purchaser or owner of the product. Warrantors or their designated agents may, however, ask consumers to state or affirm that they are the first purchaser of the product.

§ 700.7 Use of warranty registration cards.

(a) Under section 104(b)(1) of the Act a warrantor offering a full warranty may not impose on consumers any duty other than notification of a defect as a condition of securing remedy of the defect or malfunction, unless such additional duty can be demonstrated by the warrantor to be reasonable. Warrantors have in the past stipulated the return of a "warranty registration" or similar card. By "warranty registration card" the Commission means a card which must be returned by the consumer shortly after purchase of the product and which is stipulated or implied in the warranty to be a condition precedent to warranty coverage and performance.

(b) A requirement that the consumer return a warranty registration card or a similar notice as a condition of performance under a full warranty is an unreasonable duty. Thus, a provision such as, "This warranty is void unless the warranty registration card is returned to the warrantor" is not permissible in a full warranty, nor is it permissible to imply such a condition in a full warranty.

(c) This does not prohibit the use of such registration cards where a warrantor suggests use of the card as one possible means of proof of the date the product was purchased. For example, it is permissible to provide in a full warranty that a consumer may fill out and return a card to place on file proof of the date the product was purchased. Any such suggestion to the consumer must include notice that failure to return the card will not affect rights under the warranty, so long as the consumer can show in a reasonable manner the date the product was purchased. Nor does this interpretation prohibit a seller from obtaining from purchasers at the time of sale information requested by the warrantor.

§ 700.8 Warrantor's decision as final.

A warrantor shall not indicate in any written warranty or service contract either directly or indirectly that the decision of the warrantor, service contractor, or any designated third party is final or binding in any dispute concerning the warranty or service contract. Nor shall a warrantor or service contractor state that it alone shall determine what is a defect under the agreement. Such state-

ments are deceptive since section 110(d) of the Act gives state and federal courts jurisdiction over suits for breach of warranty and service contract.

§ 700.9 Duty to install under a full warranty.

Under section 104(a)(1) of the Act, the remedy under a full warranty must be provided to the consumer without charge. If the warranted product has utility only when installed, a full warranty must provide such installation without charge regardless of whether or not the consumer originally paid for installation by the warrantor or his agent. However, this does not preclude the warrantor from imposing on the consumer a duty to remove, return, or reinstall where such duty can be demonstrated by the warrantor to meet the standard of reasonableness under section 104(b)(1).

§ 700.10 Section 102(c).

(a) Section 102(c) prohibits tying arrangements that condition coverage under a written warranty on the consumer's use of an article or service identified by brand, trade, or corporate name unless that article or service is provided without charge to the consumer.

(b) Under a limited warranty that provides only for replacement of defective parts and no portion of labor charges, section 102(c) prohibits a condition that the consumer use only service (labor) identified by the warrantor to install the replacement parts. A warrantor or his designated representative may not provide parts under the warranty in a manner which impedes or precludes the choice by the consumer of the person or business to perform necessary labor to install such parts.

(c) No warrantor may condition the continued validity of a warranty on the use of only authorized repair service and/or authorized replacement parts for non-warranty service and maintenance. For example, provisions such as, "This warranty is void if service is performed by anyone other than an authorized 'ABC' dealer and all replacement parts must be genuine 'ABC' parts," and the like, are prohibited where the service or parts are not covered by the warranty. These provisions violate the Act in two ways. First, they violate the section 102(c) ban against tying arrangements. Second, such provisions are deceptive under section 110 of the Act, because a warrantor cannot, as a matter of law, avoid liability under a written warranty where a defect is unrelated to the use by a consumer of "unauthorized" articles or service. This does not preclude a warrantor from expressly excluding liability for defects or damage caused by such "unauthorized" articles or service; nor does it preclude the warrantor from denying liability where the warrantor can demonstrate that the defect or damage was so caused.

§ 700.11 Written warranty, service contract, and insurance distinguished for purposes of compliance under the Act.

(a) The Act recognizes two types of agreements which may provide similar coverage of consumer products, the written warranty, and the service contract. In addition, other agreements may meet the statutory definitions of either "written warranty" or "service contract," but are sold and regulated under state law as contracts of insurance. One example is the automobile breakdown insurance policies sold in many jurisdictions and regulated by the state as a form of casualty insurance. The McCarran-Ferguson Act, 15 U.S.C. 1011 et seq., precludes jurisdiction under federal law over "the business of insurance" to the extent an agreement is regulated by state law as insurance. Thus, such agreements are subject to the Magnuson-Moss Warranty Act only to the extent they are not regulated in a particular state as the business of insurance.

(b) "Written warranty" and "service contract" are defined in sections 101(6) and 101(8) of the Act, respectively. A written warranty must be "part of the basis of the bargain." This means that it must be conveyed at the time of sale of the consumer product and the consumer must not give any consideration beyond the purchase price of the consumer product in order to benefit from the agreement. It is not a requirement of the Act that an agreement obligate a supplier of the consumer product to a written warranty, but merely that it be part of the basis of the bargain between a supplier and a consumer. This contemplates written warranties by third-party non-suppliers.

(c) A service contract under the Act must meet the definitions of section 101(8). An agreement which would meet the definition of written warranty in section 101(6) (A) or (B) but for its failure to satisfy the basis of the bargain test is a service contract. For example, an agreement which calls for some consideration in addition to the purchase price of the consumer product, or which is entered into at some date after the purchase of the consumer product to which it applies, is a service contract. An agreement which relates only to the performance of maintenance and/or inspection services and which is not an undertaking, promise, or affirmation with respect to a specified level of performance, or that the product is free of defects in materials or workmanship, is a service contract. An agreement to perform periodic cleaning and inspection of a product over a specified period of time, even when offered at the time of sale and without charge to the consumer, is an example of such a service contract.

§ 700.12 Effective date of 16 CFR, Parts 701 and 702.

The Statement of Basis and Purpose of the final rules promulgated on December 31, 1975, provides that Parts 701 and 702 will become effective one year after the date of promulgation, December 31, 1976. The Commission intends this to mean that these rules apply only to written warranties on products manufactured after December 31, 1976.

By direction of the Commission dated June 8, 1977.

JOHN F. DUGAN,
Acting Secretary.

[FR Doc.77-19901 Filed 7-12-77;8:45 am]