

FEDERAL TRADE COMMISSION**16 CFR Part 705****Reasonable Duties Under a Full Warranty****AGENCY:** Federal Trade Commission.**ACTION:** Publication of Recommended Final Rule and Notice of Opportunity to File Written Comments.

SUMMARY: On August 3, 1977, the Commission published a proposed rule applicable to "full" warranties to define certain duties which are not reasonable within the meaning of Section 104(b)(1) of the Magnuson-Moss Warranty Act. The proposal was intended to provide guidance to warrantors offering full warranties regarding unreasonable conditions which may not be imposed as a precondition to obtaining warranty performance after a consumer product malfunctions.

The following final rule proposal recommended to the Commission by the staff incorporate several substantive changes. The changes have been drafted in response to testimony and written comments received during the rulemaking proceeding.

The Commission has not considered or adopted staff's final rule proposal. The Commission has determined, in response to staff's recommendation, to seek written comment on staff's entire proposal before proceeding with further consideration of this matter. Staff also solicits comment on a separate series of additional questions regarding possible effects on manufacturers (warrantors), distributors, warranty service representatives and consumers in the event the staff's recommended final rule is adopted by the Commission.

DATES: Written comments on the substance of the recommended final rule as well as responses to the question posed herein will be accepted for a period of 60 days, until August 1, 1980.

ADDRESSES: Written comments should be addressed to James P. Greenan, Presiding Officer (GP), Federal Trade Commission, Washington, D.C. 20580, 202-724-1045.

FOR FURTHER INFORMATION CONTACT: Edwin F. Dosek, Attorney, Bureau of Consumer Protection (PR), Federal Trade Commission, Washington, D.C. 20580, 202-523-3510.

SUPPLEMENTARY INFORMATION: On August 3, 1977, the Commission published in the *Federal Register* (42 FR 39223) a Notice of Inquiry and Proposed Rule in accordance with the provisions of the Magnuson-Moss Warranty Act, Pub. L. 93-637 (15 U.S.C. 2304). Section

104(b)(1) of the Act authorizes the Federal Trade Commission to make rules defining what is an unreasonable duty when imposed by a warrantor on a consumer as a condition of securing a remedy under a full warranty of any consumer product which malfunctions, is defective, or does not conform to the written warranty.

The proposed rule covered the following issues: (1) The cost of returning consumer products for warranty service; (2) the safety of returning consumer products for warranty service; (3) warranty registration requirements; (4) service of built-in consumer products; (5) repackaging consumer products for return for warranty service; (6) return of consumer products to authorized dealers; (7) methods which consumers may use for notification of warrantors of defects; and (8) the time in which consumers must notify warrantors of defects.

Following publication of the Notice of Inquiry and Proposed Rule, written comments, including data, views or arguments on any issue of fact, law or policy, which may have some bearing upon the proposed rule were received until September 30, 1977. In addition, a total of 14 days of public hearings were held in Chicago, Illinois, Los Angeles, California, and Washington, D.C. At the close of public hearings on December 13, 1977, the Presiding Officer authorized the filing of written rebuttal submissions until January 31, 1978. All written comments, rebuttal statements and transcripts of testimony have been made a part of the public record of the proceeding. (public record No. 215-58).

A report, setting forth a summary of the record was prepared by the Presiding Officer assigned to the proceeding. In addition, a report containing an analysis of the record and setting forth recommendations has been prepared by the staff.

In order to assist interested persons in preparing comments on the staff's recommended final rule, the Commission has directed that the Report of the Presiding Officer, dated August 1, 1978 and the Staff Report, dated March, 1980, be placed on the public record and copies of these two documents made available for general distribution.

Because the staff has recommended several substantive changes in the proposed rule, the Commission has determined that additional written comment on the recommended final rule is appropriate prior to final consideration of this matter. In addition, the analysis of the public record in the proceeding to date has raised a series of questions regarding the possible effects

of any rule on manufacturers and others to which staff seeks public comment and response.

It is proposed to add a new Part 705 to 16 CFR as follows:

Section A. Recommended Final rule*Reasonable Duties Under a Full Warranty 16 CFR Part 705*

Sec.

- 705.1 General.
- 705.2 Return of products.
- 705.3 Built-in products.
- 705.4 Mailing and shipping.
- 705.5 Original packaging.
- 705.6 Return to selling dealer.
- 705.7 Proof of warranty eligibility.
- 705.8 Method and content notice.
- 705.9 Time for giving notice.

Appendix to the Rule.

1. Standard of Reasonableness Test.
2. Format for Substantiation by Research.

§ 705.1 General.

(a) *What this Rule Does.* This rule states what you may and may NOT require a consumer to do under a "full warranty." A "full warranty" is a warranty that meets the Federal Minimum Standards in Section 104 of the Warranty Act. You may NOT say or imply in the warranty document that consumers have to do anything described as unreasonable in this rule or lose their warranty rights under a full warranty. To do so would be a violation of Sections 104(b)(1) of the Warranty Act, and as provided in Section 110(b) of the Warranty Act, a violation of Section 5(a)(1) of the Federal Trade Commission Act.

(b) *Duties Covered by the Rule.* A "duty" means any condition that requires a consumer to do something to qualify for or obtain warranty service. The duties which are prohibited in this rule are unreasonable duties and may NOT be imposed upon consumers under a full warranty. The listed duties are only the most common ones in use. Other duties imposed on consumers under a full warranty would be illegal if unreasonable. You may use the analysis described in the appendix to this rule to decide if the duty or condition is reasonable and so allowed in a full warranty.

(c) *Who Must Comply with this Rule.* Any warrantor that gives or offers a full warranty covered by this rule is responsible for complying with it.

"You" when used in this rule, means the responsible warrantor.

(d) *Definitions.* The definitions given below are the same as those used in the Warranty Act. They are reprinted here for convenience. In this rule, "product" means "consumer-product" and "warranty" means "written warranty."

Other definitions appear in the section in which they are needed.

"Act" means the Magnuson-Moss Warranty Act, 15 U.S.C. 2301-2312.

"Consumer" means 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 applicable to the product, and any other 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.

"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).

"Remedy" means whichever of the following actions the warrantor elects:

- (A) Repair,
- (B) Replacement, or
- (C) 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.

"Warrantor" means any supplier or other person who gives or offers to give a written warranty or who is or may be obligated under an implied warranty.

"Written warranty" means—

(A) 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

(B) 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.

§ 705.2 Return of products.

(a) You may NOT require a consumer to return any product to a warranty service point for warranty service unless you are able to establish the reasonableness of your requirement.

Evidence to support the reasonableness of your requirement to return a warranted product for warranty service may be obtained by use of the substantiation by research format in the appendix to this rule.

(b) You may require a consumer to return a product without prior research, but you must be able to support the reasonableness of your requirement if it is challenged.

(c) You may rely on the research of another organization on the same or physically similar product. However, the research relied upon must be adequate as defined in the appendix to this rule.

(d) The research methodology and results must be retained by you for as long as you rely on them, and may be offered in any administrative, judicial or informal dispute settlement proceeding in which the reasonableness of your request is challenged.

(e) "Warranty service" means any repair, replacement, refund or other action that you or your agent must perform under your warranty.

(f) "Warranty service point" is the place of business of any service agent named to perform warranty service.

(g) You may NOT require a consumer to return a vehicle or boat for warranty service if it is inoperable due to the defect covered by the warranty and it cannot be returned to a warranty service point without unreasonable risk of additional damage or danger to persons.

§ 705.3 Built-in products.

(a) You may NOT require a consumer to remove, return for warranty service, or install a built-in product after warranty service unless you can show, if called upon to do so, that the requirement is reasonable following the substantiation by research format in the appendix to this rule. You may use the applicable provisions of § 705.2 of this rule to help you comply with this section.

(b) "Built-in product" means any product that is attached, fastened, or installed in or on real or personal property. For purposes of this rule, "built-in product" does not include any product attached by plug or hose or connected by screws, bolts, nails or other fasteners that can be easily removed and replaced without causing damage to surrounding areas; or any product made to be free standing but attached, fastened or installed in or on real or personal property by the consumer by choice.

§ 705.4 Mailing and shipping.

(a) You may NOT require a consumer to pay for mailing or shipping of a

product, including insurance, to or from a warranty service point. But you may ask consumers to pay for mailing or shipping and insurance first and reimburse them later. In this case, reimbursement must be made no later than the time the product is returned to the consumer. Refer to CFR 701.3 for terms that must be included in your written warranty.

(b) If you require the product to be mailed or shipped to a warranty service point, any risk of loss is yours, unless the consumer does not follow your instructions to obtain insurance.

(c) You do not have to pay consumer costs of travel to and from a post office or other shipping point.

(d) You may NOT require a consumer to carry back instead of mailing or shipping a warranted product to a warranty service point. But you may ask a consumer to use a specific available method of mailing or shipping a product to a warranty service point.

(e) You may NOT require a consumer to seek your permission before mailing or shipping a product to a warranty service point. But you may include a list of warranty service points in your warranty and require a consumer to mail or ship a product for warranty service to the closest warranty service point.

(f) You may NOT require a consumer to mail a product that is not mailable under U.S. Postal Service regulations, see, e.g., U.S. Postal Service Manual, Chapter 1, Part 123 and 124.

§ 705.5 Original packaging.

You may NOT require a consumer to return a product for warranty service in its original packaging. But you may provide packaging as needed or include instructions on how properly to package a product that is mailed or shipped to a warranty service point. The risk of loss from any damage caused by failure to follow packaging instructions is on the consumer.

§ 705.6 Return to selling dealer.

You may NOT require a consumer to obtain warranty service from the selling or the installing dealer only, unless you maintain no other warranty service point. You must permit a consumer to obtain warranty service from any warranty service point you maintain.

§ 705.7 Proof of warranty eligibility.

You may require a consumer to prove that a product is covered by a warranty. But you may NOT require a consumer to return a warranty registration card, warranty service card or any other card to make the warranty effective. You may suggest that one way a consumer can

prove warranty eligibility is by the return of an optional warranty registration card. See also 16 CFR 701.4

§ 705.8 Method and content of notice.

You may NOT require a consumer to give you notice of a defect in writing. A consumer can notify you of a defect by telephone, in person, or in any other reasonable way.

You may require a consumer to describe the way a product failed or is defective, but you may NOT require a consumer to explain specifically the nature or origin of the defect.

§ 705.9 Time for giving notice.

You may NOT require a consumer to give notice of a defect prior to the expiration of the warranty period.

Appendix to the Rule

1. Standard of Reasonableness.

To determine whether a duty not considered in this rule is reasonable to impose under a full warranty, use the following test which has several parts to be applied in sequence:

a. *Does the warrantor have a legitimate interest related to the warranty in imposing the duty?* If the answer is no, further inquiry is not required; the duty is unreasonable and cannot be imposed. If, however, the response is yes, i.e., there is a legitimate warrantor interest in imposing the duty in question, a second inquiry must be made.

b. *Does the duty tend to discourage warranty claims?* If the duty does not tend to discourage such claims, it is reasonable and may be imposed. If the answer is yes, a third inquiry must be made.

c. *Is there a less burdensome alternative duty which is at least as efficient for the warrantor yet does not tend to discourage warranty claims?* If the answer is yes, then the less burdensome alternative is reasonable. If the answer is still no, the final step in the sequence must be taken.

d. Where reasonableness is not resolved by one of the previous steps, i.e., where there is almost an equilibrium of interest, warrantor to consumer, reasonableness is to be decided by examining the effect imposition of the duty would have on warranty system efficiency, and on the legislative intent of the Warranty Act; and by balancing the degree of inefficiency that would occur if the duty is prohibited against any impediment caused by imposition of the duty under a full warranty.

2. Substantiation by Research.

Sections 705.2 and 705.3 provide that you must be able to establish the reasonableness of any requirement to

return a product to a warranty service point for warranty service. Section 705.3 provides further that you must be able to establish the reasonableness of a requirement to remove and re-install a built-in product. Such evidence may be obtained by use of some or all of the following: consumer research, scientific tests, company sales and service records, or any other method or source generally accepted in the field of marketing research as reliable and valid for the purpose of this rule.

a. Consumer research or scientific tests, to be considered adequate to establish the reasonableness of a duty to return a product to a warranty service point for warranty service, should meet the following criteria:

(1) The product or object of the research should be the product concerned, or some object physically similar in weight and handling characteristics.

(2) The consumers included in the research should be reasonably representative of the consumers of the product concerned. Depending on the product, an appropriate population may be the warrantor's customers for that product or type of product, customers generally for the type of product, or the general public.

(3) The research should be designed and conducted in a competent, reliable and unbiased manner which would be judged technically correct by professional marketing researchers.

b. In general, evidence of either one of the following facts will be sufficient to establish a presumption of reasonableness; however, other facts may be used to preclude a finding of reasonableness in particular cases.

(1) You may show that the product's weight and handling characteristics are such that 75% of an appropriate population would consider it reasonable to return the product. (If the product is a built-in, the establishment of this fact alone will not be sufficient). The methodology of the NBS Study may be used to determine whether subjects consider it reasonable to return the product. If your product is similar in handling characteristics to a box used in that study, or is easier to carry than that box, if the population used in that study is reasonably appropriate for your product, and if the conditions of return assumed in that study are appropriate, then you may rely on the results of that study. (For example, a return duty would probably be reasonable for a product that could be readily held in two hands, that would likely be returned by an average group of females, and that weighed less than 28.3 pounds. On the other hand, if the product were to be

returned by an average group of males, it could weigh up to 40.4 pounds.)

(2) Alternatively, you may show that 75% of an appropriate population actually carries the product away from the point of purchase; or carries the product to a service point when non-warranty service or repair is needed; or carries the product in normal use; or installs a built-in product; or removes a built-in product and carries it to a service point when service or repair is needed.

c. You may rely on the research of another organization on the same or physically similar product so long as the research relied upon is adequate, and meets the criteria outlined in 2.a above.

Section B. Additional Questions

While interested persons are invited to address any issues of fact, law or policy which they feel may have bearing upon the recommended final rule, listed below is a series of questions relating to the possible effects on warrantors and others that may result as a consequence of the Commission acting to adopt the staff's recommended final rule. These questions are intended to supplement information already contained in the public record of this proceeding and to assist the Commission in its consideration of the staff's recommended final rule:

1. What will be the additional costs of compliance with this rule, if any, for warrantors who give a full warranty?

2. The proposed rule provided for a specified weight limit of 35 pounds to guide warrantors and consumers on the question of "reasonableness" in relation to the matter of portability of consumer products. The recommended final rule (§ 705.2) proposes, instead, that a warrantor may not require a consumer to return any product to a warranty service point for service unless the warrantor is able to establish the reasonableness of the return requirement. A warrantor, if challenged, may substantiate by research the reasonableness of an return requirement. Does the recommended final rule give warrantors sufficient guidance relating to the establishment of any return requirement in a full warranty?

3. Is the proposed standard of reasonableness set forth in § 705.2 of the recommended final rule stated in a clear and understandable manner? Can the proposed standard be applied to all situations which may be expected to arise involving the return of products under a full warranty?

4. Is the proposal to permit substantiation by research (set forth in Appendix 2) stated in language which is

sufficiently clear, understandable and unambiguous? What difficulties, if any, may arise in the application of the substantiation by research method of establishing the reasonableness of a consumer duty?

5. Section 705.3(b) of the recommended final rule sets forth a definition of built-in products. What problems, if any, may arise for manufacturers (warrantors), distributors, warranty service representatives and consumer if the proposed definition for built-in products is adopted by the Commission?

6. Are consumers frequently refused warranty service when they move to a new area of the country and attempt to obtain repairs from a local dealer for a product under full warranty?

7. Will § 705.6 of the recommended final rule encourage consumers to buy from the least expensive dealer in their shopping area in the expectation that other dealers, charging more expensive prices for the product under warranty, will have superior service departments and will provide warranty repairs?

8. Will dealers who have not originally sold a product, but from whom warranty service is requested by consumers, be reimbursed by manufacturers for the full costs of performing such warranty service? If not, will the proposed rule discourage reimbursed by manufacturers for the full costs of performing such warranty service? If not, will the proposed rule discourage such dealers from providing high quality warranty service?

9. Are there alternatives to the proposal set forth in § 705.6 that would provide consumers with an adequate choice of warranty service points but would not require every authorized dealer to honor warranty requests from consumers who bought from a competing retailer?

10. What are the anticipated economic effects on small businesses and consumers if the recommended final rule is adopted by the Commission?

11. Some manufacturers have expressed interest in offering full warranties, but hesitated to do so until the Commission specified unreasonable or prohibited duties. How would the rule affect the decision by warrantors to offer a full warranty?

12. Which duties addressed by the rule are now widely imposed by warrantors? Are these duties widely enforced when consumers seek warranty service?

Section C. Written Comments

All interested persons are notified that they may submit written data.

views or arguments on any issue of fact, law, or policy which may have some bearing upon the final rule being recommended by the staff. Responses to the questions set forth herein are also invited. Staff particularly welcomes receipt of any evidence reflecting specific experience which you presently have available, in support of your views, arguments or responses. Washington, D.C. 20580 on or before August 1, 1980. To assure consideration comments should be identified as "Full Warranty Duties Comments" and submitted, when possible and not burdensome, in three copies.

Issued: April 25, 1980.

By the Commission.

James A. Tobin,

Acting Secretary.

[FR Doc. 80-16674 Filed 5-30-80; 8:45 am]

BILLING CODE 6750-01-M