

under annual license. In order to authorize the continued operation and maintenance of the Project pursuant to section 15 of the Act, pending Commission action on Licensee's application, it is appropriate and in the public interest to issue an annual license to Utah Power and Light Co. for continued operation and maintenance of Project No. 597.

Take notice that an annual license is issued to Utah Power and Light Co. (Licensee) under section 15 of the Federal Power Act for the period July 1, 1975, to June 30, 1976, or until Federal takeover, or the issuance of a new license for the project, whichever comes first, for the continued operation and maintenance of the Stairs Project No. 597, sub-

County, Wisconsin, on the Wisconsin River, filed an application for a new license under section 15 of the Federal Power Act and Commission regulations thereunder (§§ 16.1-16.6).

The License for Project No. 1968 was issued effective January 1, 1938, for a period ending June 30, 1970. Since the original date of expiration, the Project has been under annual license. In order to authorize the continued operation and maintenance of the Project pursuant to section 15 of the Act, pending Commission action on Licensee's application, it is appropriate and in the public interest to issue an annual license to Wisconsin Public Service Corp. for continued operation and maintenance of Project No. 1968.

**FEDERAL TRADE COMMISSION  
MAGNUSON-MOSS WARRANTY ACT  
Implementation and Enforcement Policy**

The Federal Trade Commission hereby announces an Implementation and Enforcement Policy to assist warrantors and suppliers of consumer products to comply with the Magnuson-Moss Warranty Act (Pub. L. 93-637, 15 U.S.C. 2301-2310). The Act applies to all consumer product distributed in interstate commerce and sold with a written warranty. These guidelines are intended to clarify the requirements of the Act for consumers, manufacturers, importers, distributors and retailers.

The following statement by the Commission offers general guidance and information concerning the force and effect of the Act, and the Commission's goals and schedule for its implementation. These guidelines are not statutory rules and do not replace or modify the Act or its legislative history. While the guidelines reflect the Commission's present understanding of the Act, they may be amended or superseded; the only authoritative source for interpretation of the provisions discussed herein is the statute itself.

1. *Effective date.* The Act becomes effective six months after its enactment, which falls on July 4, 1975. It applies to consumer products manufactured after that date. Consumer products manufactured before July 4, 1975 may be sold after that date without change to existing warranties.

2. *Products covered.* The Act applies to written warranties on tangible personal property which is normally used for personal, family or household purposes. This definition includes products which are normally intended to be, or which are at the time of sale, fixtures to real property.

Section 102 applies to consumer products actually costing the consumer more than \$5.00, excluding tax. The \$5.00 minimum will be interpreted to include multiple packaged items which may individually sell for less than \$5.00, 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 \$5.00. Thus, a dozen items packaged and priced for sale at \$6.00 would be covered, even though identical items may be offered in smaller quantities at under \$5.00. This interpretation also applies to the \$10.00 minimum provision discussed in Part 3 below.

Consumer product as defined in the Act includes the following items, and any other items that are tangible personal property and are normally used for personal, family, or household purposes: boats, photographic film and chemicals, clothing, appliances, jewelry, furniture, typewriters, motor homes, automobiles, mobile homes, vehicle parts and accessories, stereos, carpeting, small aircraft, toys, and food. An appliance or other product which may be or become a fixture to real property, such as a central air conditioner or water heater, is considered a consumer product whether it is sold separately or installed in a dwelling. Products such as automobiles and typewriters which may be used for both personal and commercial purposes come within the statutory definition of consumer product. This means that where an appreciable portion of a product category is normally sold to consumers for personal, family, or household purposes, that all warranties and services contracts applicable to such products must conform with the Act. (However, nothing in the Act prohibits a limitation or elimination of coverage where the product is put to commercial, rental, or other use not described in section 101 (1).)

3. *Designation of warranties.* Section 103 of the Act provides that written warranties on consumer products manufactured after July 4, 1975 and actually costing the consumer more than \$10.00, excluding tax, must be designated either full (statement of duration) warranty or limited warranty. The designation or designations should appear clearly and conspicuously as a caption, or prominent title, clearly separated from the text of the warranty.

A written warranty designated as a full warranty must meet the Federal minimum standards for warranty set forth in section 104 of the Act. (See Part 6, below, for a discussion of these standards.) Any written warranty bearing the full warranty designation will be deemed to incorporate the Federal minimum standards for warranty; this will also apply even though the product covered may cost the consumer less than \$10.00.

Any written warranty not satisfying the Federal minimum standards for warranty must be designated as a limited warranty. Warrantors may include a statement of duration in a limited warranty designation.

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 under section 103(c).

Section 105 of the Act provides that nothing in the Act prohibits the sale of a consumer product which has both full and limited warranties, if such warranties are clearly and conspicuously differentiated. Each such warranty must be separately designated in conformity with section 103.

4. *Exemption of certain expressions of general policy from sections 102, 103 and 104.* Statements or representations which are similar to expressions of general policy concerning customer satisfaction and which are not subject to any specific limitation need not be designated as full or limited warranties, and will be exempt from any disclosure requirements created by rule under section 102. However, such statements remain subject to section 5 of the Federal Trade Commission Act, 15 U.S.C. section 45, and the enforcement provisions of section 110 of the Magnuson-Moss Warranty Act.

The exemption of section 103(b) will permit use of the word guarantee or similar words in that respect; however, the term warranty would be inappropriate to describe such general policies, and the Commission discourages its use.

The section 103(b) exemption applies only to a general policy, and not one which is limited to specific consumer products manufactured or sold by the supplier offering such policy. In addition, to qualify for an exemption under 103(b), such policies may not be subject to any specific limitations. It is a well-accepted principle of statutory interpretation that provisions creating exemptions from statutory duties are to be given a narrow, literal interpretation. The Commission will follow this principle in applying the provision exempting from sections 102,

103 and 104 only general statements of policy without specific limitations.

5. *General use of the word guaranty or guarantee.* The word guaranty, guaranteed, or similar words may be used in the text of a written warranty. However, since these words may tend to confuse consumers as to the relationship of such representations with the term warranty which is required for all designations under section 103, warrantors are encouraged to discontinue the use of term guarantee and the like in or in connection with written warranties printed in the future.

6. *Federal minimum standards for a written warranty designated as a full warranty.* A warrantor wishing to use the designation full (statement of duration) warranty on a consumer product manufactured after July 4, 1975, must satisfy the minimum standards for warranty established in section 104 of the Act.

The warrantor must remedy the consumer product within a reasonable time after notice of a defect or malfunction. A remedy is defined in section 101 as repair, or replacement with a new consumer product which is identical or reasonably equivalent to the warranted consumer product. A warrantor may also refund in full the actual purchase price of the product, regardless of its age or prior use, but only if repair is not commercially practicable or possible within a reasonable time and the warrantor is unable to provide replacement. A refund is also permitted if the consumer is willing to accept a refund in lieu of repair or replacement. A reduction of the refund to reflect reasonable depreciation based on actual use will be permitted only after the Commission has promulgated a rule so providing.

The remedy under a full warranty must be provided to the consumer without charge. If the warranted product is a consumer product which is functional only when attached to some other product, such as an accessory part for an automobile or storm windows for a dwelling, a full warranty must provide 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 a duty to remove, return, or reinstall where such duty meets the test of reasonableness under section 104(b)(1).

If, after a reasonable number of attempts by the warrantor to remedy a defect or malfunction, the product or component still contains a defect or malfunction, the warrantor must permit the consumer to elect a refund or replacement for the product or part, as those terms are defined in section 101.

A warrantor providing a full warranty may not impose on a consumer any duty other than notification as a condition of securing remedy of the defect or malfunction, unless such additional duty is reasonable. A warrantor may require, however, as a condition of replacement or refund of a consumer product, that

consumer product be made available to the warrantor free and clear of any liens and other encumbrances which may attach to it.

As noted below in Part 7 of this Enforcement Policy, warrantors offering a written warranty designated as a full warranty may not impose any limitation whatsoever on the duration of any implied warranties created by operation of State law. Furthermore, exclusions or limitations of consequential damages for breach of the written or implied warranties are not permitted, unless such exclusions or limitations appear conspicuously on the face of the warranty.

The rights and remedies provided in the written warranty and under the Act applicable to a full warranty extend to each person who is a consumer under the Act. A consumer is defined in paragraph (3) of section 101 as the buyer (other than for purposes of resale) of the consumer product, any subsequent transferee during the duration of an implied or written warranty, and any other person who is entitled by the terms of the warranty or by State law to enforce the obligations of the warranty against the warrantor.

7. *Disclaimer and limitation of duration of implied warranties; exclusion or limitation of consequential damages.* For products manufactured after July 4, 1975, suppliers may not disclaim or modify an implied warranty created by operation of State law, except as provided in sections 104(a) and 108 of the Act. A supplier is defined as any person engaged in the business of making a consumer product directly or indirectly available to consumers.

Section 108(a) provides that no supplier making a written warranty, or entering into a service contract applicable to the consumer product within 90 days of sale of such product, may modify an implied warranty. Section 108(b) permits the limitation of only the duration of an implied warranty, under the following circumstances:

(a) Where the written warranty is designated as a limited warranty; and

(b) Where the duration of an implied warranty is at least equal to the duration of the written warranty of reasonable duration; and

(c) Where the limitation of duration is conscionable; and

(d) Where the limitation of duration is set forth in clear and unmistakable language and is prominently displayed on the face of the warranty.

Section 104(a)(2) prohibits any limitation whatsoever on the duration of an implied warranty where the written warranty on the consumer product is designated as a full warranty.

Section 104(a)(3) permits the exclusion or limitation of consequential damages in a full warranty only if such exclusion or limitation appears conspicuously on the face of the warranty. This disclosure requirement applies, for example, to a limitation on the obligation of a warrantor to provide reimbursement for food loss resulting from a defective

freezer. It follows that any exclusion or limitation of consequential damages in connection with a limited warranty must also appear conspicuously on the face of the warranty. This requirement, although not explicit in section 104 or 108, is considered by the Commission to apply to a limited warranty under the prohibition against deceptive warranties in section 110.

Section 104(a)(3) does not authorize the exclusion of consequential damages where State law or other Federal law does not so permit. This limitation on the operation of section 104(a)(3) is a result of the operation of section 111(b)(1) of the Act, which preserves any right or remedy of any consumer under State law or any other Federal law. Use of express limitations of exclusions which are unenforceable will be viewed by the Commission as deceptive under section 110(c) of the Act or under section 5 of the Federal Trade Commission Act. The foregoing should not be construed as limiting the effect of section 104(d) with respect to incidental expenses.

8. *Designation of representatives to perform written warranty duties on behalf of the warrantor.* Section 107 of the Act permits the designation of representatives, or agents, for performance of warranty duties on behalf of the warrantor. To do so, the warrantor must make reasonable arrangements for compensation of such designated representatives. The Conference Committee report that accompanied the Act notes that compensation need not be in the form of cash payment; however, such payment in any form must be equitable. The designation of representatives does not relieve the warrantor of the duties and liabilities imposed on warrantors by the Act.

9. *Service contract disclosures.* Section 106(b) requires that the terms and conditions of service contracts on consumer products, regardless of price, be disclosed clearly and conspicuously, and in simple and readily understood language. This provision is effective on July 4, 1975.

10. *Procedures for application to the Commission for waiver under Section 102(c).* Section 102(c) prohibits, as of July 4, 1975, the use of a tie-in in a warranty; that is, a warrantor may not condition warranty performance on the use by the consumer of any article or service identified by brand, trade, or corporate name which is not provided without charge under the warranty. The provision applies to any such conditions expressed in the written warranty or enforced by the warrantor or his designated representatives in performing duties pursuant to the warranty.

The Act provides that the prohibition in section 102(c) may be waived by the Commission upon application of a warrantor. To grant a waiver, the Commission must determine the warranted product will function properly only if the identified article or service is used in connection therewith, and that the waiver is in the public interest.

Warrantors who wish to apply to the Commission for a waiver under section 102(c) of the Act may do so at any time by directing to the Secretary of the Commission an application in the form of a letter or memorandum. The application shall identify the article or service for which the application is made and shall provide data and views as may be necessary to aid the Commission in making a ruling. Such supporting materials should include the following items: diagrams, manuals, or other documents which identify and describe the function and characteristics of the warranted product and the article or service; exhibits or data which demonstrate that the warranted product will function properly only if the article or service is used; the performance specifications (or, if such specifications can be demonstrated not to be susceptible of objective measurement, the design specifications) of the article, and a statement whether such specifications are readily available to persons and businesses on request; and the identity of any government or other testing agency which, in the opinion of the applicant, is qualified to determine whether the article of a competitor may meet such specifications. The Commission may, in addition, call upon the applicant to submit such additional materials as it may deem necessary to carry out its duties under section 102(c).

The applicant may include in any submission a request for confidential treatment of any documents submitted.

The Commission may, in connection with its consideration of any such application, invite other parties to submit their views and comments.

Notice of the application and the Commission's ruling will be published in the FEDERAL REGISTER as required by the Act.

11. *Use of current stock of written warranty instruments after July 4, 1975.* Warrantors wishing to use current stocks of written warranty instruments for products manufactured after July 4, 1975 may employ such methods as overprinting, stick-on labels, and the like to make these instruments conform with the Act. This will be permitted, provided that: (a) The designation appears as required; and (b) no disclaimer, modification or limitation on an implied warranty appears on the written warranty, except as permitted under sections 104 and 108 of the Act.

Warrantors may wish to comply with the Act by inserting a revised written warranty in addition to the warranty currently included with the product, such as one found in a parts and instruction manual or elsewhere in connection with the sale of the product. This option will be permitted only where: (a) The superseded warranty contains no legible disclaimer modification, or limitation on an implied warranty, except as permitted under sections 104 and 108 of the Act; and (b) the superseding warranty provides coverage which is, in every material respect, at least as great as that provided under the superseded warranty;

and (c) the superseding warranty includes or is attached to a conspicuous notice which explains to the consumer in readily understood language the following information regarding the superseding warranty:

(i) It has been drafted to comply with the provisions of the new Federal law pertaining to warranties;

(ii) It replaces the superseded warranty; and

(iii) It provides coverage at least as great, in all material respects, as that provided under the superseded warranty.

A sample notice which includes all of the suggested elements is provided as guidance for warrantors who may wish to follow this practice:

The attached warranty has been drafted to comply with the new Federal law applicable to products manufactured after July 4, 1975. It replaces the warranty included elsewhere in this package. This warranty in no manner reduces the coverage provided to you under the warranty it replaces.

12. *Current effectiveness of FTC's 1960 Guides Against Deceptive Advertising of Guarantees.* The 1960 Guides shall continue in effect until such time as rules permitted under section 102(b)(1)(B) are promulgated by the Commission and become effective, and thereafter to the extent not superseded by the new rules.

13. *Commission and private enforcement pending promulgation of rules under the Act.* To the extent noted elsewhere in this Enforcement Policy, the requirements of at least parts of sections 102(c), 103, 104, 105, 106(b), 107 and 108 of the Act are effective immediately on July 4, 1975. It is the intent of the Commission to enforce these provisions to the full extent provided by section 110(c) of the Act commencing on July 4, 1975, as well as to continue to enforce section 5 of the Federal Trade Commission Act as it applies to all warranties (whether or not falling under the Magnuson-Moss Warranty Act) in or affecting commerce.

Section 110(d) gives consumers the right as of July 4, 1975 to bring in Federal and State courts private actions for damages for breach of a written warranty, implied warranty, or service contract covered by the Act. A consumer may proceed either as an individual plaintiff or, under certain circumstances, as a member of a class of consumers. The consumer in such an action may seek damages and other legal and equitable relief for the failure of a supplier or warrantor to comply with any obligation under the Act, or under a written or implied warranty. In certain cases, where rules are permitted but not required to be promulgated by the Commission, the Act establishes standards for the courts to interpret. For example, a court could be called on to determine under Section 104 what constitutes a reasonable time; what constitutes a reasonable number of attempts to effectuate a remedy; and what reasonable duties, other than notification, a warrantor may impose on a consumer as a condition of securing a remedy. These issues may also be sub-

jects for determination by informal dispute settlement procedures permitted under rules promulgated pursuant to section 110(a). Warrantors should be aware that their determinations of reasonableness in the instances noted above and elsewhere in the Act could be subject to consumer challenge. In addition, the Commission may challenge such determinations in an enforcement proceeding, or as part of any rulemaking proceeding the Commission may in its discretion initiate.

Congress has set specific deadlines for some of the rules to be promulgated under the Act. Section 112(c) states that the Commission shall promulgate final rules needed to implement the Act within one year of enactment, or by January 4, 1976. The rules which are governed by this one-year deadline—the mandatory rules under the Act—are those provided for in: Section 102(a), disclosure of the terms and conditions of written warranties; section 102(b)(1)(A), pre-sale availability of warranty terms; and section 110(a), minimum requirements for informal dispute settlement procedures incorporated into written warranties. Notice of proposed rulemaking for these three provisions will be published for comment by all interested parties in the FEDERAL REGISTER. Public hearings will be scheduled to begin approximately 60 days after publication.

In addition, the Commission considers rulemaking under section 101(12) regarding depreciation for purposes of refunds under the Act a priority matter. Although this rule is not mandatory, the Commission has directed the staff to prepare such a rule for publication at the earliest possible date.

The Commission has directed the staff to conduct initial rulemaking proceedings in the most expeditious manner consistent with a full and fair opportunity for all interested parties to present their views on the proposed rules. However, because of the time and procedural constraints of rulemaking, these rules will not be effective until at least several months after the effective date of the Act. Therefore, warrantors currently revising their warranties to conform with the provisions of the Act which become effective on July 4, 1975 are advised that further changes in warranty content may be required by the rules.

The Commission may in the future publish proposals for the remaining discretionary rules provided under the Act. Among these discretionary rules—neither required nor subject to any specific deadline—are the following: Section 102(b)(1)(B), advertising, labeling, and point-of-sale disclosure of warranty information; section 103(c), exemptions from the statutory options of designation; section 106(a), disclosure of terms and conditions of service contracts; section 102(b)(3), rules to extend the term of warranties and service contracts where consumers are deprived of a product for an excessive period of time while the warrantor or service contractor effectuates a remedy; the three reasonable-

ness standards in section 104(a)(1), (a)(4), and (b)(1); exceptions to the section 104(b)(2) requirement regarding liens and encumbrances on consumer products; detailed definition of warrantors' duties under section 104(a) as provided in section 104(b)(3); and section 102(d), regarding warranty provisions for incorporation into warranties.

A separate deadline for rulemaking under section 109(b) sets January 4, 1976 as the final date for publication of proposed rules relating to warranties on used motor vehicles.

The three rules noted above which are scheduled for early proposal must be made final by January 4, 1976. The date such rules become effective will be determined by the Commission. Section 112(b) provides that rules pursuant to section 102(a), one of the mandatory rules, shall take effect six months after final rule publication. An allowance is provided for possible extension of time by the Commission for all or part of the rule, but in no case may the effective date be set later than one year after final publication. All rules pursuant to the Act will have prospective application only.

Issued: June 12, 1975.

By direction of the Commission.

[SEAL]

CHARLES A. TOBIN,  
Secretary.

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