Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with 311a, FAA Order 1050.1E, “Environmental Impacts: Policies and Procedures.” This airspace action is an editorial change only and is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71


Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:


§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9Y, Airspace Designations and Reporting Points, dated August 6, 2014, and effective September 15, 2014, is amended as follows:

Paragraph 3000 Subpart B—Class B Airspace.

* * * * *

ASW LA B New Orleans, LA

Louis Armstrong New Orleans International Airport (Primary Airport)

(Lat. 29°59′36″ N., long. 90°15′33″ W.) New Orleans Naval Air Station Joint Reserve Base (Alvin Callender Field, LA)

(Lat. 29°49′38″ N., long. 90°01′36″ W.)

Ama, St. Charles Airport, LA (pvt)

(Lat. 29°57′07″ N., long. 90°17′10″ W.)

New Orleans, Lakefront Airport, LA

(Lat. 30°02′53″ N., long. 90°01′42″ W.) Harvey VORTAC

(Lat. 30°1′0″ N., long. 90°00′11″ W.) Boundaries.

Area A. That airspace extending upward from the surface to and including 7,000 feet MSL within a 7-mile radius of the Louis Armstrong New Orleans International Airport and within a 1.5-mile radius of a point located at lat. 30°01′31″ N., long. 90°24′00″ W., excluding that airspace north of the south shore of Lake Pontchartrain, that airspace within and underlying Area C described hereinafter, and that airspace 0.5 mile either side of a line extending from lat. 30°01′10″ N., long. 90°03′47″ W. to lat. 29°59′31″ N., long. 90°15′37″ W. to lat. 30°03′37″ N., long. 90°22′10″ W.

Area B. That airspace extending upward from 600 feet MSL to and including 7,000 feet MSL north of the south shore of Lake Pontchartrain within a 7-mile radius of the Louis Armstrong New Orleans International Airport, excluding that airspace 0.5 mile either side of a line extending from lat. 30°01′10″ N., long. 90°07′47″ W. to lat. 29°59′31″ N., long. 90°15′37″ W. to lat. 30°03′37″ N., long. 90°22′10″ W.

Area C. That airspace extending upward from 1,000 feet MSL to and including 7,000 feet MSL within an area bounded by a line beginning 7 miles southwest of the Louis Armstrong New Orleans International Airport on the north shore of the Mississippi River; thence east along the Mississippi River north shore to a point 0.5 mile east of and parallel to the St. Charles Airport runway 17/35 extended centerline; thence southeast along a line 0.5 mile east of and parallel to the St. Charles Airport runway 17/35 extended centerline to the Southern Pacific Railroad track; thence southwest along the Southern Pacific Railroad track to a point 4 miles southwest of the Louis Armstrong New Orleans International Airport; thence counterclockwise along a 4-mile radius of the Louis Armstrong New Orleans International Airport to the north shore of the Mississippi River; thence east along the north shore of the Mississippi River to the Harvey VORTAC 300° radial; thence southeast along the Harvey VORTAC 300° radial to a point 7 miles southeast of the Louis Armstrong New Orleans International Airport; thence clockwise along the 7-mile radius of the Louis Armstrong New Orleans International Airport to the point of beginning.

Area D. That airspace extending upward from 2,000 feet MSL to and including 7,000 feet MSL within a 15-mile radius of the Louis Armstrong New Orleans International Airport, excluding that airspace within Areas A, B, and C previously described, that airspace within Area F described hereinafter, that airspace within the Lakefront Airport Class D airspace area, and that airspace within a 4.4-mile radius of New Orleans Naval Air Station Joint Reserve Base (Alvin Callender Field).

Area E. That airspace extending upward from 4,000 feet MSL to and including 7,000 feet MSL within a 20-mile radius of the Louis Armstrong New Orleans International Airport, excluding that airspace within Areas A, B, C, and D previously described, and that airspace within Area F described hereinafter.

Area F. That airspace extending upward from the surface to 1,000 feet MSL and from 2,000 feet MSL to 7,000 feet MSL 0.5 mile either side of a line extending from lat. 30°01′10″ N., long. 90°07′47″ W. to lat. 29°59′31″ N., long. 90°15′37″ W. to lat. 30°03′37″ N., long. 90°22′10″ W., excluding that airspace below 600 feet MSL north of the south shore of Lake Pontchartrain.

Issued in Washington, DC, on July 7, 2015.

Gary A. Norek,
Manager, Airspace Policy and Regulations Group.

[FR Doc. 2015–17709 Filed 7–17–15; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Parts 700, 701, and 703

RIN 3084–AB24; 3084–AB25; 3084–AB26

Final Action Concerning Review of Interpretations of Magnuson-Moss Warranty Act; Rule Governing Disclosure of Written Consumer Product Warranty Terms and Conditions; Rule Governing Pre-Sale Availability of Written Warranty Terms; Rule Governing Informal Dispute Settlement Procedures; and Guides for the Advertising of Warranties and Guarantees

AGENCY: Federal Trade Commission.

ACTION: Final revised Interpretations; Final clerical changes to Rules; and Conclusion of review proceedings.

SUMMARY: The Federal Trade Commission ("the Commission") is announcing its final action in connection with the review of a set of warranty-related Rules and Guides: The Interpretations of the Magnuson-Moss Warranty Act ("Interpretations" or "part 700"); the Rule Governing Disclosure of Written Consumer Product Warranty Terms and Conditions ("Rule 701"); the Rule Governing Pre-Sale Availability of Written Warranty Terms ("Rule 702"); the Rule Governing Informal Dispute Settlement Procedures ("Rule 703"); and the Guides for the Advertising of Warranties and Guarantees ("the Guides" or "part 239"). The Interpretations represent the Commission’s views on various aspects of the Magnuson-Moss Warranty Act ("the Act" or "MMWA"), and are intended to clarify the Act’s requirements. Rule 701 specifies the information that must appear in a written warranty on a consumer product. Rule 702 details the obligations of sellers and warrantors to make warranty information available to consumers prior to purchase. Rule 703 specifies the minimum standards required for any informal dispute settlement mechanism that is incorporated into a written consumer product warranty, and that the consumer must use prior to pursuing any legal remedies in court. The Guides are intended to help advertisers avoid unfair or deceptive practices in the advertising of warranties or guarantees.
DATES: The changes to the Interpretations and Rules will take effect on July 20, 2015.


SUPPLEMENTARY INFORMATION: The MMWA, 15 U.S.C. 2301–2312, is the federal law that governs consumer product warranties. Passed by Congress in 1975, the Act requires manufacturers and sellers of consumer products to provide consumers with detailed information about warranty coverage before and after the sale of a warranted product. When consumers believe they are the victim of an MMWA violation, the statute provides them the ability to proceed through a warrantor’s informal dispute resolution process or sue in court. On August 23, 2011, the Commission published a Federal Register request for public comment, soliciting written public comments concerning five warranty Rules and Guides: (1) The Commission’s Interpretations of the Magnuson-Moss Warranty Act, 16 CFR part 700; (2) the Rule Governing Disclosure of Written Consumer Product Warranty Terms and Conditions, 16 CFR part 701; (3) the Rule Governing Pre-Sale Availability of Written Warranty Terms, 16 CFR part 702; (4) the Rule Governing Informal Dispute Settlement Procedures, 16 CFR part 703; and (5) the Guides for the Advertising of Warranties and Guarantees, 16 CFR part 239.1 The Commission requested comments on these Rules and Guides as part of its regulatory review program, under which it reviews rules and guides periodically in order to obtain information about the costs and benefits of the rules and guides under review, as well as their regulatory and economic impact. The information obtained assists the Commission in identifying rules and guides that warrant modification or rescission. After careful review of the comments received in response to the request, the Commission has determined to retain Rules 701, 702, and 703, and the Guides without change, and to modify the Interpretations in §§ 700.10 and 700.11(a). The Commission is also updating the citation format in the Interpretations and Rules.2

In addition, Commission staff has recently issued a number of guidance documents to better educate consumers and businesses concerning their rights and obligations under the MMWA. For example, in order to cure perceived misconceptions in the marketplace, staff issued and recently updated a consumer alert stating that the MMWA prohibits warrantors from voiding an automotive warranty merely because a consumer uses an aftermarket or recycled part or third-party services to repair one’s vehicle (subject to certain exceptions).3 Staff also updated the .Com Disclosures to provide additional guidance concerning online warranty disclosure obligations4 and issued letters to various online sellers concerning their obligations under the pre-sale availability rule.5 Staff will continue to evaluate whether additional guidance is necessary to better inform both consumers and business concerning their rights and responsibilities under the MMWA.

A. Background

1. 16 CFR Part 700: Interpretations of the Magnuson-Moss Warranty Act (“Interpretations”)

The MMWA, 15 U.S.C. 2301–2312, which governs written warranties on consumer products, was signed into law on January 4, 1975. After the Act was passed, the Commission received many questions concerning the Act’s requirements. In responding to these inquiries, the Commission initially published, on June 18, 1975, a policy statement in the Federal Register (40 FR 25721) providing interim guidance during the initial implementation of the Act. As the Commission continued to publication in the Federal Register unless an agency finds good cause that the rule should become effective sooner. 5 U.S.C. 553(d). However, this is purely a clerical change and is not a substantive rule change. Therefore, the Commission finds good cause to dispense with a delayed effective date.

1 FTC, Auto Warranties & Routine Maintenance (July 2011, updated May 2015) (“Consumer Alert on Auto Warranties”), available at http://www.consumer.ftc.gov/articles/0138-auto-warranties-routine-maintenance. A warrantor may condition the warranty on the use of certain parts or service if it provides these parts and services without charge to the consumer under the warranty, or alternatively, if the warrantor receives a waiver from the Commission. See 15 U.S.C. 2302(c).


4 These clerical changes do not involve any substantive changes in the Rules’ requirements for entities subject to the Rules. Accordingly, the Commission finds that public comment is unnecessary. See 5 U.S.C. 553(b)(3)(B).

5 In addition, under the APA, a substantive final rule is required to take effect at least 30 days after

For further information, contact Svetlana S. Gans, Staff Attorney, Division of Marketing Practices, Federal Trade Commission, Washington, DC 20580, (202) 326-3708.
be disclosed. In addition to specifying the information that must appear in a written warranty, Rule 701 also requires that, if the warrantor of a limited warranty uses a warranty registration or owner registration card, the warranty must disclose whether return of the registration card is a condition precedent to warranty coverage.7

3. 16 CFR Part 702: Pre-Sale Availability of Written Warranty Terms

Section 2302(b)(1)(A) of the MMWA directs the Commission to prescribe rules requiring that the terms of any written warranty on a consumer product be made available to the prospective purchaser prior to the sale of the product. Accordingly, on December 31, 1975, the Commission published Rule 702. Rule 702 establishes requirements for sellers and warrantors to make the text of any warranty on a consumer product available to the consumer prior to sale. Among other things, Rule 702 requires sellers to make warranties readily available either by: (1) Displaying the warranty document in close proximity to the product or (2) furnishing the warranty document on request and posting signs in prominent locations advising consumers that warranties are available. The Rule requires warrantors to provide materials to enable sellers to comply with the Rule’s requirements, and also sets out the methods by which warranty information can be made available prior to the sale if the product is sold through catalogs, mail order, or door-to-door sales. As discussed further below, Rule 702 also applies to online sales.

4. 16 CFR Part 703: Informal Dispute Settlement Procedures

Section 2310(a)(2) of the MMWA directs the Commission to prescribe the minimum standards for any informal dispute settlement mechanism (“IDSM” or “Mechanism”) that a warrantor, by including a “prior resort” clause in its written warranty, requires consumers to use before they may file suit under the Act to obtain a remedy for warranty non-performance. Accordingly, on December 31, 1975, the Commission published Rule 703. Rule 703 contains extensive procedural safeguards for consumers that a warrantor must incorporate in any IDSM. These standards include, but are not limited to, requirements concerning the IDSM’s structure (e.g., funding, staffing, and neutrality), the qualifications of staff or decision makers, and the IDSM’s procedures for resolving disputes, recordkeeping, and annual audits.

5. 16 CFR Part 239: Guides for the Advertising of Warranties and Guarantees

The Guidelines for the Disclosure of Warranties and Guarantees, codified in part 239, provide guidance concerning warranty and guarantee disclosures. Part 239 intends to help advertisers avoid unfair and deceptive practices when advertising warranties and guarantees. The 1985 Guidelines advise that advertisements mentioning warranties or guarantees should contain a disclosure that the actual warranty document is available for consumers to read before they buy the advertised product. In addition, the Guidelines set forth advice for using the terms “satisfaction guarantee,” “lifetime,” and similar representations. Finally, the Guidelines advise that sellers or manufacturers should not advertise that a product is warranted or guaranteed unless they promptly and fully perform their warranty obligations. The Guidelines are advisory in nature.

B. Analysis of the Comments on the Interpretations, Rules 701, Rule 702, Rule 703, and the Guidelines

Twenty-nine entities and individuals submitted public comments in response to the August 23, 2011 Federal Register request for public comment.8 Comments generally reflect a strong level of support for the view that the Interpretations, Rules, and Guidelines are achieving the objectives they were fashioned to achieve—i.e., to facilitate the consumer’s ability to obtain clear, accurate warranty information. A majority of the commenters, though endorsing retention of the present regulatory scheme, suggested modifications to the Interpretations, Rules, and Guidelines, which they believe would provide greater consumer protections and minimize burdens on firms subject to the regulations.

1. 16 CFR Part 700: Interpretations

a. Amend § 700.10 To Provide Further Guidance on Prohibited Tying

Generally, the MMWA prohibits warrantors from conditioning warranties on the consumer’s use of a replacement product or repair service identified by brand or name, unless the article or service is provided without charge to the consumer or the warrantor has received a waiver.9 The Commission’s Interpretations illustrate this concept by stating that phrases such as “ABC” 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 unless the service or parts are provided free of charge. Such provisions violate the MMWA’s ban on tying arrangements and are deceptive under Section 5 of the FTC Act, because a warrantor cannot avoid liability under a warranty where the defect or damage is unrelated to the consumer’s use of “unauthorized” parts or service. This does not, however, preclude the warrantor from denying warranty coverage for repairs associated with defects or damage caused by the use of the “unauthorized” parts or service.10

Several commenters11 assert that the Commission’s Interpretations do not address the market realities of manufacturers’ statements about the use of branded products. These commenters state that automotive and other consumer product manufacturers have employed language in consumer materials “to suggest that warranty coverage directly or impliedly ‘requires’ the use of a branded product or service”12 leading reasonable consumers to believe that coverage under a written warranty will be void if

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6 See 40 FR 60168, 60169 (Dec. 31, 1975) (“The items required for disclosure by this Rule are material facts about warranties, the non-disclosure of which constitutes a deceptive practice.”).

7 Notably, section 204(b)(1) of the MMWA prohibits warrantors offering a full warranty from imposing duties other than the notification of a defect as a condition of securing warranty remedies. 15 U.S.C. 2304(b)(1).

8 See 15 U.S.C. 2302(c). The Commission may waive this prohibition if the warrantor demonstrates to the Commission that the warranted product will function properly only if the article or service so identified is used in connection with the warranted product, and the waiver is in the public interest. 15 U.S.C. 2302(c).

9 16 CFR 700.10.

10 16 CFR 700.10.

11 Ashland; Automotive Oil Change Association; Automotive Recyclers Association; BP Lubricants; Certified Auto Parts Association; Hunton & Williams: International Imaging Technology Council; LKQ Corporation; Motor & Equipment Manufacturers Association; Monro Muffler Brake; Property Casualty Insurers Association of America; and the Uniform Standards in Automotive Products Coalition (“USAP Coalition”). One commenter, the American Insurance Association, urges the Commission not to change § 700.10. The Coalition for Auto Repair Equality urges the Commission to uphold MMWA’s tying prohibitions. Grandpa’s Garage comments that GM’s recommendation that consumers use its branded oil is helpful because GM explains the right products to use for repair and the prevention of premature failure. Consumer J. McKee generally supports the tying prohibitions.

12 USAP Coalition at 6.
non-original parts or non-dealer services are utilized. Commenters suggest that these statements lead consumers to doubt the viability of non-original (or recycled) parts. "Faced with such a choice a consumer is likely to use the 'required' product in order to avoid the risk that they may later face potentially expensive repairs that may not be covered under their warranty, resulting in a 'tie' created via warranty." Accordingly, these commenters request that the Commission “make clear that warranty language that creates the impression that the use of a branded product or service is required in order to maintain warranty coverage is . . . impermissible.”

The MMWA incorporates principles under Section 5 of the FTC Act that prohibit warrantors from disseminating deceptive statements concerning warranty coverage. The MMWA gives the Commission the authority to restrain warrantors from making a deceptive warranty, which is defined as a warranty that "fails to contain information which is necessary in light of all of the circumstances, to make the warranty not misleading to a reasonable individual exercising due care." Thus, a warrantor would violate the MMWA if its warranty led a reasonable consumer exercising due care to believe that the warranty conditioned coverage "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." Moreover, misstatements leading a consumer to believe that the consumer's warranty is void because a consumer used "unauthorized" parts or service may also be deceptive under Section 5 of the FTC Act. Specifically, claims by a warrantor that create a false impression that a warranty would be void due to the use of "unauthorized" parts or service may constitute a deceptive practice as outlined in the FTC Policy Statement on Deception: "The deception theory is based on the fact that most ads making objective claims imply, and many expressly state, that an advertiser has certain specific grounds for the claims. If the advertiser does not, the consumer is acting under a false impression. The consumer might have perceived the advertising differently had he or she known the advertiser had no basis for the claim." A warrantor claiming or suggesting that a warranty is void simply because a consumer used "unauthorized" parts or service would have no basis for such a claim (absent a Commission waiver pursuant to Section 2302(c) of the Act). This is consistent with staff's view, as expressed in recent opinion letters, that misinformation and misleading statements in conjunction with warranty coverage may be actionable. Therefore, to clarify the meaning of "unauthorized" parts or service, unless the warrantor can demonstrate that the defect or damage was caused by the use of unauthorized articles or services, Commenters base their recommendation, in part, on the language mandated by the Clean Air Act for use in user manuals, namely, that "maintenance, replacement, or repair of the emissions control devices and systems may be performed by any automotive repair establishment or individual using any automotive part." The Commission declines to make this change. As an initial matter, the MMWA, unlike the Clean Air Act, does not require a mandatory disclaimer on all warranties. Further, the current record lacks sufficient evidence to justify the imposition of a mandatory warranty disclosure requirement for a subset of warrantors.

The Commission incorporates principles under Section 5 of the FTC Act that prohibit warrantors from disseminating deceptive statements concerning warranty coverage. The MMWA gives the Commission the authority to restrain warrantors from making a deceptive warranty, which is defined as a warranty that "fails to contain information which is necessary in light of all of the circumstances, to make the warranty not misleading to a reasonable individual exercising due care." Thus, a warrantor would violate the MMWA if its warranty led a reasonable consumer exercising due care to believe that the warranty conditioned coverage "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." Moreover, misstatements leading a consumer to believe that the consumer's warranty is void because a consumer used "unauthorized" parts or service may also be deceptive under Section 5 of the FTC Act. Specifically, claims by a warrantor that create a false impression that a warranty would be void due to the use of "unauthorized" parts or service may constitute a deceptive practice as outlined in the FTC Policy Statement on Deception: "The deception theory is based on the fact that most ads making objective claims imply, and many expressly state, that an advertiser has certain specific grounds for the claims. If the advertiser does not, the consumer is acting under a false impression. The consumer might have perceived the advertising differently had he or she known the advertiser had no basis for the claim." A warrantor claiming or suggesting that a warranty is void simply because a consumer used "unauthorized" parts or service would have no basis for such a claim (absent a Commission waiver pursuant to Section 2302(c) of the Act). This is consistent with staff's view, as expressed in recent opinion letters, that misinformation and misleading statements in conjunction with warranty coverage may be actionable. Therefore, to clarify the meaning of "unauthorized" parts or service, unless the warrantor can demonstrate that the defect or damage was caused by the use of unauthorized articles or services, Commenters base their recommendation, in part, on the language mandated by the Clean Air Act for use in user manuals, namely, that "maintenance, replacement, or repair of the emissions control devices and systems may be performed by any automotive repair establishment or individual using any automotive part." The Commission declines to make this change. As an initial matter, the MMWA, unlike the Clean Air Act, does not require a mandatory disclaimer on all warranties. Further, the current record lacks sufficient evidence to justify the imposition of a mandatory warranty disclosure requirement for a subset of warrantors.
issued a consumer alert highlighting MMWA’s tying prohibitions. The alert explained: “Simply using an aftermarket or recycled part does not void your warranty. The Magnuson-Moss Warranty Act makes it illegal for companies to void your warranty or deny coverage under the warranty simply because you used an aftermarket or recycled part.”

30 See Consumer Alert on Auto Warranties, supra note 3. As stated in the updated consumer alert, the manufacturer or dealer can, however, require consumers to use select parts if those parts are provided to consumers free of charge under the warranty.

31 Ashland at 6–7; LKQ Corporation at 8; USAP Coalition at 15–16.


33 16 CFR 700.10(c).

34 Ashland at 3; Automotive Oil Change Association at 6–7; BP Lubricants at 3; Certified Auto Parts Association at 4–5; SEMA at 3; USAP Coalition at 15–16.

35 Commenters therefore ask the Commission to require, in its Interpretations, that warrantors provide consumers with a written statement to support any warranty denial claim. The Commission does not believe a change is warranted because the current record lacks sufficient evidence showing that warrantors routinely deny warranty coverage orally without demonstrating to the consumer that the “unauthorized” part or service caused damage to the vehicle. At this time, the Commission believes the existing Interpretations adequately address this issue.


37 Center for Auto Safety at 2; NCLC at 10.

38 The MMWA defines “supplier” as “any person engaged in the business of making a consumer product directly or indirectly available to consumers.” 15 U.S.C. 2301(4).

39 First, the National Consumer Law Center (“NCLC”) asks the Commission to add an interpretation stating that a supplier enters into a service contract with a consumer whenever the supplier offers a service contract to the consumer, irrespective of whether the supplier is obligated to perform under the service contract.

40 The Commission declines to add the requested interpretation.


43 16 CFR 700.4. Section 700.4 further provides, however, that 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.
prohibited under the Act from disclosing or limiting implied warranties. However, sellers of consumer products that merely sell service contracts as agents of service contract companies and do not themselves extend written warranties can disclaim implied warranties on the products they sell.”

The Commission does not believe any discrepancy exists. The confusion may stem from the usage of the word “supplier,” defined in the MMWA as: “any person engaged in the business of making a consumer product directly or indirectly available to consumers.”

Thus, “supplier” can mean either the entity that “enters into a service contract with the consumer” or the entity that “merely sells” a third-party’s service without more. The latter, as explained previously, has not entered into a service contract with the consumer, and therefore Section 2308(a)(2) would not apply.

Suppliers, however, are not immune from liability. If a supplier sells a service contract that obligates it to perform under the contract, it will be deemed to have entered into the service contract within the meaning of the statute. In addition, suppliers who extend service contracts utilizing misrepresentations or material omissions may be subject to liability under the MMWA and Section 5 of the FTC Act.

Enforce the Act

Commenters encourage the Commission to enforce the MMWA. The Commission enforces the Act by monitoring consumer complaints, reviewing audit reports, advising warrantors of their obligations, educating consumers and businesses, and taking enforcement action where appropriate.

g. Apply Rules to Leases And Define “Lease”

NCLC urges the Commission to amend § 700.10 to clarify that the MMWA covers consumer leases.

The majority of courts have held that a lessee meets the definition of “consumer” in the MMWA because warranty rights are transferred to lessees or the lessees are permitted to enforce the contract under state law, among other reasons. As NCLC notes, however, some courts have held that a lessee does not meet the definition of “consumer.” These courts have generally found that the definition of “consumer” presupposes a transaction that qualifies as a sale under the Act, and that the lease transaction at issue was not a qualifying sale.

NCLC therefore asks the Commission to add a new Interpretation, as § 700.13, titled, “consumer leases,” to provide explicitly that the Act applies to consumer leases.

The Commission does not agree with the view held by a minority of courts that lessees cannot be a “consumer” under the MMWA because each prong of the “consumer” definition presupposes a sale to the end-consumer (which in this case is a lessee). Rather, as the majority of courts have held, lessees meet the definition of a “consumer” because warranty rights are either transferred to lessees or the lessees are permitted to enforce the contract under state law. Given that a majority of courts hold that the MMWA applies to certain leases, consistent with past agency guidance, a new Interpretation is not necessary.

h. Certain 50/50 Warranties Should Be Interpreted To Violate the Act’s Anti-Tying Prohibition

NCLC urges the Commission to reconsider its 2002 opinion letter finding “50/50 warranties” permissible under the Act. Fifty/fifty warranties are those where the dealer promises to pay 50% of the labor costs and 50% of the parts cost, and the consumer pays the remainder. NCLC argues that allowing the warrantor to choose the repairs or parts is contrary to the goals of the MMWA, and leads to monopolistic pricing practices and a decrease in competition.

Although the Commission found that 50/50 warranties may violate the Act in certain circumstances in its 1999 rule review, in 2002, the Commission clarified its position on 50/50 warranties. The Commission stated that the Act prohibits warrantors from conditioning their warranties on the use of branded parts or service where the warranted articles or services are “severable from the dealer’s responsibilities under the warranty.” Therefore, when a warranty covers only replacement parts, and the consumer pays the labor charges, the warrantor cannot mandate specific service or labor to install those parts. Conversely, when a warranty covers only labor charges, and the consumer pays for parts, the warrantor cannot mandate the use of specific parts. With 50/50 warranties, however, “the warrantor has a direct interest in providing the warranty service for which it is financially responsible. . . . Rather than conditioning the warranty on the purchase of a separate product or service not covered by the warranty, a 50/50 warranty shares the cost of a single product or service.” For that reason, the warrantor needs some control over the repair needed and quality of repair. The Commission has decided to retain its 2002 position on 50/50 warranties. The Commission has reviewed the issue and believes that its 2002 interpretation continues to be correct.
The Commission agrees that the McCarran-Ferguson Act’s “invalidate, impair, or supersede” standard is applicable to the MMWA. The Commission will revise the Interpretation as described in amendatory instruction 12.

The Commission received six comments on this issue: four commenters urge the Commission not to add specific service-contract disclosure requirements, while two commenters take the opposite view. The four proponents of disclosure rules for service contracts state that service contracts are different from warranties in that they do not form the basis of the bargain. They argue that no federal regulation is needed because states already regulate service contracts and adding federal regulation to the mix would create unnecessary burdens to both the industry and to federal and state governments. On the other hand, two commenters, Mr. Evan Johnson and NCLC, argue that the Commission should amend the Rules to prescribe the manner and form in which service-contract terms are disclosed. Mr. Johnson argues that service contracts have been a “huge source” of consumer complaints. “Many of these complaints concern marketing but many also arise from the unclear wording and structure of the contracts.” NCLC provides two reasons why the Commission should specifically regulate service contracts. First, the reasons for mandatory disclosure requirements for warranties apply equally to service contracts; regulating one and not the other makes little sense. Second, service contracts or re-fillers of consumables, such as ink and toner, must include a marking prominently displayed on the consumable that clearly directs the end user to contact the party that remanufactured the consumable (or its designee) for warranty claims and information. Steinborn at 2. However, Rule 701 already requires that warranty terms include a step-by-step explanation of the procedure which the consumer should follow in order to obtain performance of any warranty obligation. 16 CFR 701.3(a)(5). For this reason, the Commission has chosen not to incorporate the specific change advocated by Mr. Steinborn.

Opponents of federal service-contract disclosure regulations are the AHAM, Florida Service Agreement Association, Service Contract Industry Council, and Property Casualty Insurers Association of America. Mr. Johnson and NCLC support the Commission’s promulgation of service-contract disclosure regulations.

The Commission’s Interpretation is incorrect. The McCarran-Ferguson Act in § 700.11(a) provides that “[n]o Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance, or which imposes a fee or tax upon such business, unless such Act specifically relates to the business of insurance: Provided, That . . . the Sherman Act, . . . the Clayton Act, and . . . the Federal Trade Commission Act . . . shall be applicable to the business of insurance to the extent that such business is not regulated by State Law.” Section 700.11 states that agreements regulated by state law as insurance are subject to the Sherman Act, the Clayton Act or the FTC Act, but does not specifically relate to the business of insurance so long as it does not “invalidate, impair, or supersede” state law.

First, NCLC argues that because the MMWA is not one of the three enumerated statutes (the Sherman Act, Clayton Act or the FTC Act), the correct standard is the standard applicable to all other federal statutes. In other words, the MMWA can regulate the business of insurance so long as it does not “invalidate, impair, or supersede” state law. Therefore, even if a state regulates a service agreement as the business of insurance, the MMWA may still apply.

Second, NCLC asserts the Commission’s Interpretation is inconsistent with both the McCarran-Ferguson Act and Supreme Court precedent. First, NCLC argues that because the MMWA is not one of the three enumerated statutes the Commission has incorrectly interpreted the meaning of the McCarran-Ferguson Act in § 700.11(a). The McCarran-Ferguson Act provides that “[n]o Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance, or which imposes a fee or tax upon such business, unless such Act specifically relates to the business of insurance: Provided, That . . . the Sherman Act, . . . the Clayton Act, and . . . the Federal Trade Commission Act . . . shall be applicable to the business of insurance: Provided, That . . . the Sherman Act, . . . the Clayton Act, and . . . the Federal Trade Commission Act . . . shall be applicable to the business of insurance”.

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The identification of this product is not necessary. - End.
are widely sold and expensive, and consumer have little information concerning costs, coverage, and claims process.76 The Commission does not believe such a rule amendment is needed because the MMWA and Section 5 already require that warrantors, suppliers, and service contract providers clearly and conspicuously disclose service contract terms and conditions. Section 2306(b) of the Act provides: “[n]othing in this chapter shall be construed to prevent a supplier or warrantor from entering into a service contract with the consumer in addition to or in lieu of a written warranty if such contract fully, clearly, and conspicuously discloses its terms and conditions in simple and readily understood language.” 77 In addition, Section 5 prohibits service contract providers from failing to clearly and conspicuously disclose material terms and conditions or otherwise deceiving consumers with respect to the scope and nature of service contracts. This is in accord with the Businessperson’s Guidance to the MMWA: “If you offer a service contract, the Act requires you to list conspicuously all terms and conditions in simple and readily understood language.” 80 The Commission has issued a number of consumer education pieces on service contracts and extended warranties and will take action where warranted.81

3. 16 CFR Part 702: Pre-Sale Availability Rule (Rule 702)

Generally, under Rule 702, sellers who offer written warranties on consumer products must include certain information in their warranties and make them available for review at the point of purchase. The Commission’s request for public comment asked whether the Commission should amend Rule 702 to specifically address making warranty documents accessible online.

The Commission received seven comments on this specific question.82 One commenter noted at the outset that Rule 702 “continues to be very important to consumers. Consumers are very aware of warranties and use warranty differences as a basis for choosing a product. The current rule is a reasonable and cost-effective approach to providing the information.” 83

Three commenters ask the Commission to specifically reference Internet sales in Rule 702 and provide additional guidance on how retailers can comply with the Rule by referring consumers to warrantors’ Web sites.84 Although Rule 702 does not explicitly mention online commerce, it applies to the sale of warranted consumer products online. Staff recently updated the .Com Disclosures to provide additional guidance on disclosure obligations in the online context. As stated in the updated .Com Disclosures, warranties communicated through visual text online are no different than paper versions and the same rules apply.85 Online sellers of consumer products can easily comply with the pre-sale availability rule in a number of ways. Online sellers can, for example, use “a clearly-labeled hyperlink, in close conjunction to the description of the warranted product, such as ‘get warranty information here’ to lead to the full text of the warranty.” 86

As with other online disclosures, warranty information should be displayed clearly and conspicuously. Therefore, for example, warranty terms buried within voluminous “terms and conditions” do not satisfy the Rule’s requirement that warranty terms be in close proximity to the warranted product. Further, general references to warranty coverage, such as “one year warranty applies,” are also not sufficient.87

The Commission however, does not agree with the view endorsed by commenters88 that offline sellers can comply with the pre-sale availability rule by advising buyers of the availability of warranties on the warrantor’s Web site. The intent of the Rule is to make warranty information available at the point of sale. For brick and mortar transactions, the point of sale is in the store; for online transactions, the point of sale is where consumers purchase the product online.

The Commission agrees with the commenter who notes: “Internet availability, however, is not a substitute for availability specified in Rule 702 because many consumers make little or no use of the Internet, while those who do still need the information at the point of sale as a fallback for when they haven’t obtained the information online or when they want to verify that their online information is accurate.” 89

In sum, because Rule 702 already covers the sale of consumer products online, and because staff has updated its .Com Guidance concerning compliance with pre-sale obligations online, the Commission has chosen not to engage in additional rulemaking as to Rule 702 at this time.

4. Rule 703—Informal Dispute Settlement Procedures

The Commission’s request for public comment specifically asked whether it should change Rule 703, and if so, how. Six commenters submitted responses to this question.90 At the outset, commenters highlighted the importance of the Rule in serving as a standard for IDSMSs in general, and more specifically, in providing a benchmark for state lemon law IDSMSs and certification programs for IDSMSs. Many states’ criteria focus on the IDSMS’s compliance with Rule 703’s provisions. Therefore, commenters stressed that any repeal or change to Rule 703 will also affect state lemon law and certification programs.91

Notwithstanding this fact, some commenters ask the Commission to change certain elements of the Rule, to inform them of their obligations. http://www.ftc.gov/opa/2013/12/warningletters.shtm

88 AHAM at 6; see also Steinborn at 2 (“Where manufacturers and resellers have Internet presences, click-through access to and/or a conspicuous reference to the manufacturer’s Web site containing the applicable warranty should be recognized as sufficient means for sellers to meet the requirements of 702.”).89

90 Johnson at 2.

91 See International Association of Lemon Law Administrators at 1.
including the Mechanism’s procedure, record-keeping, and audit requirements, and also reassess the Commission’s position on binding arbitration clauses in warranty contracts. These comments are discussed below. Overall, the Commission leaves Rule 703 unchanged.

a. Modify the IDSM Procedures

AHAM claims that the procedures prescribed in Rule 703 are difficult to follow and implement. It urges the Commission to simplify the procedures so they would be “more easily and widely implemented by warrantors.” AHAM does not proffer any specific changes that should be made, or provide examples of why the procedures described in Rule 703 are difficult to follow. As the Commission stated in 1975 when adopting the Rule, “[t]he intent is to avoid creating artificial or unnecessary procedural burdens so long as the basic goals of speed, fairness, and independent participation are met.” Further, staff’s review of IDSM audits have not indicated any significant concern with IDSM procedures. The Commission therefore retains the Rule 703 procedures.

b. Change Rules on Mechanism and Auditor Impartiality

Two commenters state that Rule 703.4 should be amended because neither the Mechanism nor the auditor, who is selected by the Mechanism, is impartial. Mr. Nowicki asks the Commission to require the Mechanism to be completely independent of any warrantor or trade association. Further, both the Center for Auto Safety and Mr. Nowicki assert that a Mechanism should not select an auditor because doing so creates a conflict of interest. The Center for Auto Safety recommends that the Commission select an auditor for a fee, and determine whether the Mechanism are fair and expeditious. No changes are warranted because Rule 703 already imposes specific requirements concerning the impartiality of both the Mechanism and the auditor that the Mechanism selects. For example, Rule 703.3(b) requires the warrantors and sponsors of IDSMs to take all necessary steps to ensure that the Mechanism, and its members and staff, are sufficiently insulated from the warrantor and the sponsor, so that the members’ and staff’s decisions and performance are not influenced by either the warrantor or the sponsor.

The Rule imposes minimum criteria in this regard: (1) Committing funds in advance; (2) basing personnel decisions solely on merit; and (3) not assigning conflicting responsibilities to an auditor that the Mechanism selects. Additional safeguards for impartiality are set forth in Rule 703.4 governing qualification of members. As to auditors’ impartiality, although the Mechanism may select its own auditor, Rule 703.7(d) provides that “[n]o auditor may be involved with the Mechanism as a warrantor, sponsor or member, or employee or agent thereof, other than for purposes of the audit.” Further, IDSM audits have found “no situation of conflict or circumstance which might give rise to an impression that [a conflict of interest] exists.” Therefore, the Rule contains sufficient safeguards against partiality.

c. Modify the Information To Be Submitted to the Mechanism

Rule 703.5(d) requires the Mechanism to render a decision “at least within 40 days of notification of the dispute.” The Center for Auto Safety asks the Commission to amend Section 703.5 to provide that the “40 day deadline begins upon the consumer filing a substantially complete application regardless of whether the VIN is provided or not.” The Center for Auto Safety claims that the Better Business Bureau is evading the 40-day deadline, because the BBB does not request Vehicle Identification Number (“VIN”) information on its consumer intake form but the BBB will only begin to consider the dispute after it receives the VIN number.

Section 703.5 requires the Mechanism to “investigate, gather and organize all information necessary for a fair and expeditious decision in each dispute.” This provision “implicitly permits Mechanisms to require consumers to provide the Mechanism with information ‘reasonably necessary’ to decide the dispute.” When adopting the final Rule in 1975, the Commission noted the Rule’s “intent is to avoid creating artificial or unnecessary procedural burdens so long as the basic goals of speed, fairness and independent participation are met.” Therefore, because the Mechanism must have some flexibility in deciding the information necessary for it to make a determination, the Commission will retain Rule 703.5 unchanged. The Commission encourages, however, open dialogue between industry groups and the BBB to address any remaining concerns.

d. Mechanism’s Decisions as Non-Binding

The Commission received three comments concerning Rule 703.5(j)’s provision prohibiting binding arbitration provisions in warranty contracts. AHAM urges the Commission to delete this provision because “it creates disincentives for manufacturers or sellers to create a Mechanism in the first instance and leads to wasted and duplicative efforts in cases between the consumers and manufacturers or sellers.” NCLC and Mr. Johnson ask the Commission to retain Rule 703.5(j).

When the Commission first promulgated Rule 703.5(j) in 1975, it did so based on the MMWA’s language, legislative history, and purpose: to ensure that consumer protections were in place in warranty disputes. The Commission explained that “reference within the written warranty to any binding, non-judicial remedy is prohibited by the Rule and the Act.” The Commission’s underlying premise was that its authority over Mechanisms encompassed all nondisputable dispute resolution procedures referenced within a written warranty, including arbitration.

During the 1996–97 rule review, some commenters asked the Commission to deviate from its position that Rule 703

103 16 CFR 703.5(c).
104 See Staff Advisory Opinion to Mr. Dean Determan, at 6 & n6 (Aug. 28, 1985).
106 According to the BBB Autoline program, a claim is initiated only after a consumer provides the VIN and signs the application. A claim cannot be initiated online without this information.
107 See NCLC at 13–14; Johnson at 3; AHAM at 6.
108 AHAM at 6–7.
109 NCLC at 13–18; Johnson at 3.
110 40 FR 60168, 60210 (Dec. 31, 1975).
bans mandatory binding arbitration in warranties. The Commission, however, relying on its previous analysis and the MMWA’s statutory language, reaffirmed its view that the MMWA and Rule 703 prohibit mandatory binding arbitration. As the Commission noted, Section 2310(a)(3) of the MMWA states that, if a warrantor incorporates an IDSM provision in its warranty, “the consumer may not commence a civil action (other than a class action) . . . unless he initially resorts to such procedure.” The Commission concluded “Rules intended to prohibit warrantors from including binding arbitration clauses in their contracts with consumers that would require consumers to submit warranty disputes to binding arbitration.”

Since the issuance of the 1999 FRN, courts have reached different conclusions as to whether the MMWA gives the Commission authority to ban mandatory binding arbitration in warranties. In particular, two appellate courts have questioned whether Congress intended binding arbitration to be considered a type of IDSM, which would potentially place binding arbitration outside the scope of the MMWA. Nonetheless, the Commission reaffirms its long-held view that the MMWA disfavors, and authorizes the Commission to prohibit, mandatory binding arbitration in warranties.

First, as the Commission observed during the 1999 rule review, the text of section 2310(a)(3)(C)(i) contemplates that consumers “initially resort” to binding arbitration outside the scope of the MMWA. Nonetheless, the Commission reaffirms its long-held view that the MMWA disfavors, and authorizes the Commission to prohibit, mandatory binding arbitration in warranties.

As the Commission has previously noted, the legislative history provides additional evidence that Congress intended binding arbitration to be prohibited in any informal dispute settlement proceeding. As many legislators, policymakers, and courts understood at the time of the MMWA’s enactment, any arbitration proceeding is, by comparison to judicial proceedings, an “informal” “mechanism” for “dispute settlement,” and it thus falls squarely within the plain meaning of the term “informal dispute settlement mechanism.”

Similarly, the MMWA’s conference report indicates that “arbiters”—i.e., the decisionmakers in any arbitration proceeding—are responsible for making determinations in IDSMs, and thus further confirms that arbitration is a form of IDSM.

Just as important, any argument that an “arbitration” can somehow evade classification as an IDSM would subvert the purposes of the MMWA’s IDSM provisions. To effectuate its declared policy of encouraging IDSMs that “fairly and expeditiously” settle consumer disputes, Congress: (1) Created incentives for warrantors to develop IDSMs and (2) directed the Commission to issue and enforce baseline rules for IDSMs. Congress would not have created this elaborate structure for warrantor incentives and agency supervision of warrantors who want to mandate use of certain contractual procedures in their warranties, while simultaneously permitting warrantors to evade that structure simply by using another contractual procedure and calling it something else (e.g., “binding arbitration”) and thereby immunizing it from all agency oversight. Other courts have upheld binding arbitration in this context on the ground that the rationale of Rule 703 demonstrates an impermissible hostility toward arbitration in general and binding arbitration in particular. The Commission does not believe this is correct. Like the statutory text, the Commission’s rules encourage arbitration proceedings when they comply with IDSM procedural safeguards and are not both mandatory and binding. Moreover, the Commission’s rules permit “post-dispute” binding arbitration, where the parties agree—after a warranty dispute has arisen—to resolve their disagreement through arbitration. The Commission has also recognized that post-Mechanism binding arbitration is allowed. The Commission’s prohibition is limited only to instances where binding arbitration is incorporated into the terms of a written warranty governed by the MMWA. AHAM also argues that eliminating the prohibition on binding arbitration would remove disincentives for warrantors to create a Mechanism and reduce judicial costs spent dealing with duplicative warranty cases. However, the duty has been found reasonable in “an administrative or judicial enforcement proceeding” or “an informal dispute settlement proceeding.” 15 U.S.C. 2304(b)(1). The conference report indicates that the reasonableness of the additional duty is to be determined by “the Commission, an arbiter, or a court.” S. Rep. No. 93–1408, at 25, S. Rep. No. 93–1606, at 25 (1974) (Conf. Rep.) (emphasis added).

Section 2304(b)(1) prohibits warrantors from imposing any additional duty on consumers unless

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112 Id. (quoting 15 U.S.C. 2310(a)(3)(C)(i)).
113 64 FR 19700, 19708 (Apr. 22, 1999).
114 Id. (quoting 15 U.S.C. 2310(a)(3)(C)(i)).
115 64 FR 19700, 19708 (Apr. 22, 1999).
116 See, e.g., Kolev v. Euronotors West/The Auto Gallery, 658 F.3d 1024 (9th Cir. 2011), withdrawn, 676 F.3d 867 (9th Cir. 2012) (withdrawn pending the issuance of a decision on a separate issue by the California Supreme Court in Sanchez v. Valencia Holding Co., S199119); Davis v. Southern Energy Homes, Inc., 305 F.3d 1268 (11th Cir. 2002); Walton v. Rose Mobile Homes, LLC, 298 F.3d 470 (5th Cir. 2002); see also Seney v. Rent-A-Center, Inc., 738 F.3d 631 (4th Cir. 2013).
117 64 FR 19700, 19708 (Apr. 22, 1999).
118 Davis v. Southern Energy Homes, Inc., 305 F.3d 1268 (11th Cir. 2002); Walton v. Rose Mobile Homes, LLC, 298 F.3d 470 (5th Cir. 2002).
119 See 40 FR 60168, 60210 (Dec. 31, 1975) and 64 FR 19700 and 19708 (Apr. 22, 1999).
120 Id. (quoting 15 U.S.C. 2310(a)(3)(C)(i)).
Congress already considered the issues of warrantor incentives and availability of judicial remedies. To encourage warrantors to create Mechanisms, Section 2310(a)(3) allows warrantors to specify that use of a Mechanism is a prerequisite to filing a MMWA suit.\footnote{130} The Commission believes that the current Rule appropriately implements the incentive structure that Congress established in the MMWA.\footnote{131}

e. Change the Statistical Requirements

Rule 703.6 requires the Mechanism to prepare indices and statistical compilations on a variety of issues, including warrantor performance, brands at issue, all disputes delayed beyond 40 days, and the number and percentage of disputes that were resolved, decided, or pending.\footnote{132} The Commission requires the compilation of indices and statistics in part so any person can review a Mechanism’s files. On the basis of the statistically reported performance, an interested person could determine to file a complaint with the Federal Trade Commission . . . and thereby cause the Commission to review the bona fide operation of the dispute resolution mechanism.”\footnote{133}

Two commenters, the Center for Auto Safety and Mr. Nowicki, ask the Commission to repeal the Mechanism’s record-keeping requirements contained in Rule 703.6.\footnote{134} The Center for Auto Safety claims that most of the categories for statistical analysis “are ambiguous, misleading or deceptive. Unfavorable consumer outcomes can be reported as favorable; untimely resolutions can be reported as timely.”\footnote{135}

Similar comments were received during the previous rule review. Then, commenters urged the Commission to abolish Rule 703.6 because the categories of statistical compilation were “either moot, nebulous, or even worse, misleading or deceptive.”\footnote{136} The Commission then stated that it appreciated that Rule 703.6(e)’s statistical compilations cannot provide an in-depth picture of the workings of the Mechanism. “However, the statistics were not intended to serve that function. The statistical compilations attempt to provide a basis for minimal review by the interested parties to determine whether the IDSM program is working fairly and expeditiously. Based on that review, a more detailed investigation could then be prompted.”\footnote{137} In addition, the Commission was mindful of the costs associated with substantial record-keeping requirements, so as not to discourage the establishment of IDSMs. “Therefore, the Commission sought to minimize the costs of the recordkeeping burden on the IDSM while ensuring that sufficient information was available to the public to provide a minimal review.”\footnote{138} The Commission has reviewed the index and believes that its previous position continues to be correct.

f. Audits and Recordkeeping Availability

Rule 703.7 contains the audit requirements for the Mechanism. The Rule requires that an audit be performed annually evaluating: (1) Warrantors’ efforts to make consumers aware of the Mechanism and (2) a random sample of disputes to determine the adequacy of the Mechanism’s complaint intake-process and investigation and accuracy of the Mechanism’s statistical compilations.\footnote{139} Each audit should be submitted to the Commission and made available to the public at a reasonable cost. For the last several years, the Commission has published the audits on its Web site, making them available to the public free of charge.

One commenter asks the Commission to change Rule 703.8 to “mak[e] all IDSM documents available online, and require[ ] the Commission to review samples of disputes to determine whether the mechanism fairly and expeditiously resolves disputes.”\footnote{140} Another commenter recommends that the Commission repeal the audit requirements for the same reasons as the statistical compilation requirements.\footnote{141} Similar to the Commission’s reasoning in upholding the statistical compilation requirements, the Commission has decided to retain the audit requirements without change for two reasons. First, like the statistical compilation requirements, the audit function attempts to provide a general basis for interested parties to determine whether the IDSM program is working fairly and expeditiously. Second, the IDSM must make available the statistical summaries to interested parties upon request, and hold open meetings to hear and decide disputes.\footnote{142} Given that Rule 703 already contemplates public access to Mechanism information, and that the Commission was mindful that substantial recordkeeping costs may discourage the establishment of IDSMs, the Commission will not impose at this time a mandatory electronic access requirement. Further, the Commission staff reviews the audits annually and confirms they are Rule 703 compliant. For these reasons, the Commission retains Rule 703.8 unchanged.

5. 16 CFR Part 239: Warranty Guides

Several commenters ask the Commission to revise its Warranty Guides. First, three commenters \footnote{143} ask the Commission to modify § 239.2 to allow for the advertising of warranties online. The Commission’s Guides are not specific to any medium, and already are applicable to all media. Second, commenters recommend that the Guides provide explicit, detailed guidance explaining how retailers and warrantors can comply with the MMWA. As stated previously, the .Com Disclosures and the Businesperson’s Guide to Federal Warranty Law both provide additional guidance concerning online disclosure obligations. Therefore, part 239 will remain unchanged.\footnote{144}

List of Subjects

16 CFR Part 700
Trade practices, Warranties.

16 CFR Part 701
Trade practices, Warranties.

16 CFR Part 703
Trade practices, Warranties.

For the reasons set forth above, the Federal Trade Commission amends 16 CFR parts 700, 701, and 703 as follows:

\footnote{145} 16 CFR 703.8.

\footnote{146} AHAM at 3; National Automobile Dealers Association at 2; Steinborn at 3.

\footnote{147} AHAM and Steinborn ask the Commission to amend part 239 to recognize that “referral of consumers to manufacturer Internet sites which make available warranty information satisfies the requirement to disclose the actual product warranty information prior to purchase by consumer.” AHAM at 3; Steinborn at 3–4. Such reference is already contemplated for online retailers. Such reference, however, would be contrary to the requirements imposed for offline retailers, as discussed above. Second, AHAM recommends that the Guides be amended to require advertisers “to clearly and conspicuouslly disclose what component/system is warranted and for what duration and if the balance of the product is not covered or covered for a different duration disclose that as well to prevent the consumer from believing that the terms of the warranty apply to the entire product.” AHAM at 3–4. These requirements, however, are already encompassed in Rule 701.3(a)(2) and therefore not needed in the Guides.

16 CFR Part 703.8.

16 CFR Part 239: Warranty Guides

16 CFR Part 700
Trade practices, Warranties.

16 CFR Part 701
Trade practices, Warranties.

16 CFR Part 703
Trade practices, Warranties.

16 CFR Part 703.8
Trade practices, Warranties.

16 CFR Part 239: Warranty Guides

16 CFR Part 700
Trade practices, Warranties.

16 CFR Part 701
Trade practices, Warranties.

16 CFR Part 703
Trade practices, Warranties.

16 CFR Part 703.8
Trade practices, Warranties.
PART 700—INTERPRETATIONS OF MAGNUSON-MOSS WARRANTY ACT

§ 700.1 Products covered.

1. The authority citation for part 700 continues to read as follows:


2. Amend § 700.1 by revising the second and fifth sentences of paragraph (g) and the first sentence of paragraph (l) to read as follows:

§ 700.1 Products covered.

(g) * * * * Section 103, 15 U.S.C. 2303, applies to consumer products actually costing the consumer more than $10, excluding tax.* * * This interpretation applies in the same manner to the minimum dollar limits in section 102, 15 U.S.C. 2302, and rules promulgated under that section.

(i) The Act covers written warranties on consumer products “distributed in commerce” as that term is defined in section 101(13), 15 U.S.C. 2301(13).

§ 700.2 Date of manufacture.

Section 112 of the Act, 15 U.S.C. 2312, provides that the Act shall apply only to those consumer products manufactured after July 4, 1975.* * * * *

§ 700.3 Written warranty.

(a) * * * * Section 101(6), 15 U.S.C. 2301(6), provides that 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 section 101(6)(B), 15 U.S.C. 2301(6)(B), (c) * * * * Such warranties are not subject to the Act, since a written warranty under section 101(6) of the Act, 15 U.S.C. 2301(6), must become “part of the basis of the bargain between a supplier and a buyer for purposes other than resale.” * * *

5. Amend § 700.4 by revising the first sentence to read as follows:

§ 700.4 Parties “actually making” a written warranty.

Section 110(f) of the Act, 15 U.S.C. 2310(f), provides that only the supplier “actually making” a written warranty is liable for purposes of FTC and private enforcement of the Act.* * *

§ 700.5 Expressions of general policy.

(a) Under section 103(b), 15 U.S.C. 2303(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, 15 U.S.C. 2302–2304, and rules thereunder. However, such statements remain subject to the enforcement provisions of section 110 of the Act, 15 U.S.C. 2310, and to section 5 of the Federal Trade Commission Act, 15 U.S.C. 45.

(b) The section 103(b), 15 U.S.C. 2303(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), 15 U.S.C. 2303(b), such policies may not be subject to any specific limitations.* * *

§ 700.6 Designation of warranties.

(a) Section 103 of the Act, 15 U.S.C. 2303, 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”.* * *

(b) Based on section 104(b)(4), 15 U.S.C. 2304(b)(4), the duties under subsection (a) of section 104, 15 U.S.C. 2304, extend from the warrantor to each person who is a consumer with respect to the consumer product. Section 101(3), 15 U.S.C. 2301(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.* * * 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), 15 U.S.C. 2304(b)(4), since the duration of the warranty expires, by definition, at the time of transfer.* * *

8. Amend § 700.7 by revising the first sentence of paragraph (a) to read as follows:

§ 700.7 Use of warranty registration cards.

(a) Under section 104(b)(1) of the Act, 15 U.S.C. 2304(b)(1), 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.* * *

9. Amend § 700.8 by revising the third sentence to read as follows:

§ 700.8 Warrantor’s decision as final.

* * * Such statements are deceptive since section 110(d) of the Act, 15 U.S.C. 2310(d), gives state and federal courts jurisdiction over suits for breach of warranty and service contract.* * *

10. Amend § 700.9 by revising the first and third sentences to read as follows:

§ 700.9 Duty to install under a full warranty.

Under section 104(a)(1) of the Act, 15 U.S.C. 2304(a)(1), the remedy under a full warranty must be provided to the consumer without charge.* * * 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), 15 U.S.C. 2304(b)(1).

11. Amend § 700.10 by revising the section heading, paragraph (a), the first sentence in paragraph (b), and paragraph (c) to read as follows:

§ 700.10 Prohibited tying.

(a) Section 102(c), 15 U.S.C. 2302(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), 15 U.S.C. 2302(c), prohibits a condition that the consumer use only service (labor) identified by the warrantor to install the replacement 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 (other than an article of service provided without charge under the warranty or unless the warrantor has obtained a waiver pursuant to section 102(c) of the Act, 15 U.S.C. 2302(c)). 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), 15 U.S.C. 2302(c), ban against tying arrangements. Second, such provisions are deceptive under section 110 of the Act, 15 U.S.C. 2310, 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. In addition, warranty language that implies to a consumer acting reasonably in the circumstances that warranty coverage requires the consumer’s purchase of an article or service identified by brand, trade or corporate name is similarly deceptive. For example, a provision in the warranty such as, “use only an authorized ‘ABC’ dealer” or "use only ‘ABC’ replacement parts,” is prohibited where the service or parts are not provided free of charge pursuant to section 102(c), 15 U.S.C. 2302(c), ban against tying arrangements. Second, such provisions are deceptive under section 110 of the Act, 15 U.S.C. 2310, 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. In addition, warranty language that implies to a consumer acting reasonably in the circumstances that warranty coverage requires the consumer’s purchase of an article or service identified by brand, trade or corporate name is similarly deceptive.

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

(a) * * * The McCarran-Ferguson Act, 15 U.S.C. 1011 et seq., provides that most federal laws (including the Magnuson-Moss Warranty Act) shall not be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance. While three specific laws are subject to a separate proviso, the Magnuson-Moss Warranty Act is not one of them. Thus, to the extent the Magnuson-Moss Warranty Act’s service contract provisions apply to the business of insurance, they are effective so long as they do not invalidate, impair, or supersede a State law enacted for the purpose of regulating the business of insurance.

(b) “Written warranty” and “service contract” are defined in sections 101(6) and 101(8) of the Act, 15 U.S.C. 2301(6) and 15 U.S.C. 2301(8), respectively.* * *

c) A service contract under the Act must meet the definitions of section 101(8), 15 U.S.C. 2301(8). An agreement which would meet the definition of written warranty in section 101(6)(A) or (B), 15 U.S.C. 2301(6)(A) or (B), but for its failure to satisfy the basis of the bargain text is a service contract.* * *

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

13. The authority citation for part 701 continues to read as follows:


14. Amend § 701.1 by revising paragraph (d) to read as follows:

§ 701.1 Definitions.

* * * * *

(d) ** Implied warranty means an implied warranty arising under State law (as modified by sections 104(a) and 108 of the Act, 15 U.S.C. 2304(a) and 2308), in connection with the sale by a supplier of a consumer product.

* * * * *

15. Amend § 701.3 by revising paragraph (a)(7) to read as follows:

§ 701.3 Written warranty terms.

(a) * * *

(7) Any limitations on the duration of implied warranties, disclosed on the face of the warranty as provided in section 108 of the Act, 15 U.S.C. 2308, accompanied by the following statement:

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

* * * * *

PART 703—INFORMAL DISPUTE SETTLEMENT PROCEDURES

16. The authority citation for part 703 continues to read as follows:


17. Amend § 703.1 by revising paragraph (e) to read as follows:

§ 703.1 Definitions.

* * * * *

(e) ** Mechanism means an informal dispute settlement procedure which is incorporated into the terms of a written warranty to which any provision of Title I of the Act applies, as provided in section 110 of the Act, 15 U.S.C. 2310.

* * * * *

18. Amend § 703.2 by revising the second sentence of paragraph (a) to read as follows:

§ 703.2 Duties of warrantor.

(a) * * * This paragraph (a) shall not prohibit a warrantor from incorporating into the terms of a written warranty the step-by-step procedure which the consumer should take in order to obtain performance of any obligation under the warranty as described in section 102(a)(7) of the Act, 15 U.S.C. 2302(a)(7), and required by part 701 of this subchapter.

* * * * *

19. Amend § 703.5 by revising paragraph (g)(2), the first sentence in paragraph (i), and the third sentence in paragraph (j) to read as follows:

§ 703.5 Operation of the Mechanism.

* * * * *

(g) ** (2) The Mechanism’s decision is admissible in evidence as provided in section 110(a)(3) of the Act, 15 U.S.C. 2310(a)(3); and

* * * * *

(i) A requirement that a consumer resort to the Mechanism prior to commencement of an action under section 110(d) of the Act, 15 U.S.C. 2310(d), shall be satisfied 40 days after notification to the Mechanism of the dispute or when the Mechanism completes all of its duties under paragraph (d) of this section, whichever occurs sooner. * * *

(j) * * * In any civil action arising out of a warranty obligation and relating to a matter considered by the Mechanism, any decision of the Mechanism shall be admissible in evidence, as provided in section 110(a)(3) of the Act, 15 U.S.C. 2310(a)(3).
By direction of the Commission, Commissioner Ohlhausen dissenting.

Donald S. Clark, Secretary.

Note: The following dissent will not appear in the Code of Federal Regulations.

Dissenting Statement of Commissioner Maureen K. Ohlhausen

I voted against the Commission’s Final Revised Interpretations of the Magnuson-Moss Warranty Act (MMWA) Rule because it retains Rule 703.5(j)’s prohibition on pre-dispute mandatory binding arbitration.1

Since the last Rule review in 1997, two federal appellate courts have held that the MMWA does not prohibit binding arbitration.2 Noting the federal policy favoring arbitration expressed in the Federal Arbitration Act (FAA),3 these courts concluded that the MMWA’s statutory language and legislative history did not overcome the presumption in favor of arbitration and that the purposes of the MMWA and the FAA were not in inherent conflict. The courts also declined to give the Commission’s contrary interpretation Chevron deference.4 Although some lower courts have reached a different conclusion, there is no circuit court precedent upholding the Commission’s interpretation of the MMWA in Rule 703.5(j). Additionally, in several recent cases, the Supreme Court has indicated a strong preference for arbitration.5

The courts have sent a clear signal that the Commission’s position that MMWA prohibits binding arbitration is no longer supportable.6 When faced with such a signal, the Commission should not reaffirm the rule in question. I therefore respectfully dissent.

[FR Doc. 2015–14065 Filed 7–17–15; 8:45 am]
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I do not object to the other final actions taken in this review.

5 See Walton v. Rose Mobile Homes, LLC, 298 F.3d 470 (5th Cir. 2002); Davis v. Southern Energy Homes, Inc., 305 F.3d 1268 (11th Cir. 2002).


7 See Davis, 305 F.3d at 1290 (“[T]he FTC’s interpretation of the MMWA is unreasonable, and we decline to defer to the FTC regulations of the MMWA regarding binding arbitration in written warranties.”).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 16


Regulatory Hearing Before the Food and Drug Administration; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is updating an authority citation for the Code of Federal Regulations. This action is technical in nature and is intended to provide accuracy of the Agency’s regulations.

DATES: This rule is effective July 20, 2015.

FOR FURTHER INFORMATION CONTACT: Mary E. Kennelly, Office of Regulatory Affairs, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 4338, Silver Spring, MD 20993–0002, 240–402–9577, FDASIAImplementationORA@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: In a previous rulemaking, the authority citation for 21 CFR part 16 was inadvertently altered to omit 28 U.S.C. 2112 and changed 21 U.S.C. 467f to 21 U.S.C. 467F. FDA is reversing those changes such that 28 U.S.C. 2112 and 21 U.S.C. 467f are included in the list of authority citations for 21 CFR part 16.

List of Subjects in 21 CFR Part 16

Administrative practice and procedure.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 16 is amended as follows:

PART 16—REGULATORY HEARING BEFORE THE FOOD AND DRUG ADMINISTRATION

1. The authority citation for 21 CFR part 16 is revised to read as follows:


Dated: July 15, 2015.

Leslie Kux,
Associate Commissioner for Policy.

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POSTAL REGULATORY COMMISSION

39 CFR Part 3020


Update to Product Lists

AGENCY: Postal Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is updating the product lists. This action reflects a publication policy adopted by Commission order. The referenced policy assumes periodic updates. The updates are identified in the body of this document. The product lists, which is re-published in its entirety, includes these updates.

DATES: Effective date: July 20, 2015.


FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6800.

SUPPLEMENTARY INFORMATION: This document identifies updates to the product lists, which appear as 39 CFR Appendix A to Subpart A of Part 3020—Mail Classification Schedule. Publication of the updated product lists in the Federal Register is addressed in the Postal Accountability and Enhancement Act (PAEA) of 2006.


BILLING CODE 4164–01–P