

# Center for Auto Safety

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COMMENTS OF THE CENTER FOR AUTO  
SAFETY ON THE FEDERAL TRADE  
COMMISSION'S PROPOSED RULES TO  
IMPLEMENT TITLE I OF THE MOSS -  
MAGNUSON WARRANTY -- FEDERAL  
TRADE COMMISSION IMPROVEMENT ACT  
(40 Fed. Reg. 29892-99)

The Center for Auto Safety (Center) submits the following comments on the Federal Trade Commission's (FTC) proposed rules implementing Title I of the Moss-Magnuson Warranty -- Federal Trade Commission Improvement Act, P.L. 93-937, 15 U.S.C. 2301 et seq. (hereinafter "Act"), to supplement the oral testimony Center representatives have given on the subject.

The Center is a public interest research and advocacy group which protects and represents the interests of those people owning or using motor vehicles, mobile homes, and highways whose interests are not otherwise represented. In pursuing these activities, the Center has learned from complaint letters that warranty disputes oftentimes present the largest problem motor vehicle and mobile home owners encounter with their products. Thus, the Center has a good deal of knowledge of what consumer warranty problems presently exist and what changes or improvements should be made in

the proposed rule to remedy these problems.

The following comments detail the changes and improvements the Center recommends be adopted in the final promulgation of 16 CFR Parts 701-03.

#### Part 701

##### §701.3 Written warranty terms.

This section is fairly comprehensive but contains a number of provisions the Center feels are contrary to the intent of the Act which should be deleted. A number of additions are also necessary to offer consumers the quality of information and protection Congress contemplated.

First of all, the Center believes the Act demonstrates Congress' clear intent that warranty repairs be made at no charge to the consumer. Once the warrantor makes the decision to warrant certain parts of a consumer product for a specified period of time, he cannot charge a fee in any form to perform the repair, replacement or refund. The function of a warranty is to make the consumer whole at no additional charge, a viewpoint clearly upheld by the Act. The Act defines "written warranty" as a promise that the consumer product is defect-free or that the warrantor will remedy (by repair, replacement, or refund of purchase price)

products which do not meet their promised specifications. The terms "remedy," "replacement" and "refund" all are defined in terms of no additional expenditures to the consumer. Thus, it is evident that a written warranty cannot require the consumer to pay any additional fees to be made whole under a written warranty.

To bring the FTC's proposed rules into compliance with the Act's requirement that the consumer pay no additional fee to obtain warranty repairs, all of section 701.3(g) after the word "performance" in line four should be deleted and replaced by a period and the following sentence:

No written warranty may require the consumer to incur any additional expenses beyond the original purchase price as a precondition to obtaining warranty performance.

Such a provision would forbid many present warranty provisions requiring consumers to pay mailing or other costs to obtain warranty repairs, and would protect the consumer in the manner Congress intended in passing the legislation.

This provision also makes section 701.3(g) consistent with section 441.6(a) of the FTC's proposed Trade Regulation Rule (TRR) on Mobile Home Sales and Service (40 Fed. Reg. 23334, 23337) which makes it a deceptive act or practice



within the meaning of section 5 of the Federal Trade Commission Act to disseminate a written warranty requiring the return of any defective part to the location of its manufacture for warranty work. Section 701.3(g), as presently drafted, implicitly contradicts that rule and must be brought into conformity with section 441.6(a) of the FTC's proposed mobile home TRR as proposed above.

As the Center noted in its testimony, section 102 of the Act authorizes the FTC to promulgate warranty rules to "prevent deception." However, section 701.3(k)(1) and (3) appear to encourage deceptive practices rather than prevent them by permitting a warrantor to state warranty modifications, limitations and exclusions which are "unenforceable under applicable state law." This provision of 701.3 (k)(1) and (3) is clearly improper and contrary to the intent of Congress in passing the Act. To remedy this major problem, subsections (1) and (3) of section 701.3(k) should be stricken and replaced as follows:

(1) Where any such modification, limitation, or exclusion is unenforceable under applicable state law, it shall be an unfair or deceptive act or practice within the meaning of Section 5 of the Federal Trade Commission Act for a warrantor to include such modification, limitation or exclusion in the warranty.

(3) Any limitation in the duration of an implied warranty shall be disclosed on the face of the warranty as provided in section 108 of the Act. Where any modification, limitation, or exclusion, or any statement that

such modification, limitation, or exclusion is unenforceable under applicable state law, it shall be an unfair or deceptive act or practice within the meaning of Section 5 of the Federal Trade Commission Act for the warrantor to include such modification, limitation, or exclusion in the warranty.

The Center agrees that written warranties should include a statement about express and implied warranties as section 701.3(1) requires, but we see no reason for permitting warrantors to choose from two options, one of which is less informative than the other. The goal of the Act is "to improve the adequacy of information available to consumers" and to "prevent deception," 15 U.S.C. 2302(a), and section 102(a)(9) of the Act directs the FTC to require warranties to include a "brief, general description of the legal remedies available to the consumer," 15 U.S.C. 2302(a)(9). In light of this statutory language it is beyond dispute that the most informative of the two proposed statements should be uniformly required on all written warranties. Thus, the Center urges that the first fine print, six-line statement and the "or" directly following it be stricken from section 701.3(1).

Proposed additions.

In addition to these deletions, the Center urges that the FTC include a number of new requirements in

section 701.3 in which to make the information provided in written warranties more valuable and comprehensible to the consumer. As presently drafted, the proposed rule requires the provision of a large amount of information to the consumer, which is a healthy requirement. However, this information will not help the consumer unless it is in a readable and digestible form.

Since most consumers will find a long, fine print warranty a formidable document to read, many may never read it or may at best barely skim over it. In such a case, they will not be informed as to the coverage of their warranty or any of its specific terms. To counter this unfortunate possibility the Center urges the FTC to require warrantors to append a double-spaced, bold-print cover sheet to their warranty form which summarizes in simple and readily understood language the most important, operative terms of the warranty.

The Center feels the most crucial information contained in written warranties is the data required by subsections (c), (f), (g), (i), and (k) of section 701.3. Thus, the cover sheet to the warranty should specifically state either what is or is not covered under the warranty, the beginning period and the duration of the warranty, any



requirements the consumer must fulfill to activate the warranty, the existence of a dispute settling Mechanism (if any), and all enforceable modifications, limitations, or exclusions contained in the warranty. This information will inform those consumers who do not read the entire document of their basic rights and duties under the warranty and enable them to protect those rights in the event they later have need for warranty service.

Thus a new subsection (n) should be added to section 701.3 requiring such a cover sheet as follows:

(n) There shall be attached to the front of every written warranty a cover sheet (8½ x 11 inches) containing a clear, concise summary of the following warranty provisions: (1) what specific parts, characteristics, components and properties are covered by the warranty, (2) the exact time the warranty commences and its exact duration (if the duration is different for different parts, only the shortest duration should appear), (3) any requirement the consumer must fulfill to activate the warranty, (4) the existence of a dispute settling Mechanism (if any), and (5) all enforceable modifications, limitations, or exclusions included in the warranty. This cover sheet shall be double-spaced in a bold print layout.

In a similar vein, in order to ensure that every warrantor makes the best effort to draw the consumer's attention to the information contained in the warranty, the following subsection (o) should be added to section 701.3:

(o) Each warranty on its first page (or cover if in booklet form) shall include the following statement in capital letters and bold print at least as large as capital letters on a pica typewriter: **IMPORTANT: DO NOT USE WITHOUT READING THIS WARRANTY.**

Many consumers who have written to the Center detailing their warranty problems with motor vehicles and mobile homes complain that their warranties are so vague as to what specific parts are covered that neither they, nor often-times their dealers, know whether certain repairs are covered or excluded by the terms of the warranty. Such confusion raises the very distinct opportunity for unscrupulous sellers to charge consumers for repair work even though the repair is covered by the warranty. In order to eliminate this possibility, the phrase "the specific" should be inserted into section 701.3(c) between the words "of" and "parts." This will require the warrantor to list exactly either what is included, what is excluded, or both, by the terms of the warranty.

Additionally, the information section 701.3(e) requires be included in warranties should be printed in a bold face type so consumers will have a greater awareness of their right to rapid repair. Thus, a second sentence should be added to 701.3(e) as follows:



This information shall appear in bold type as large as the type above or below it on the face of the warranty.

§701.4 Owner registration cards.

The Center has two basic objections to section 701.4(a). The first is the same objection noted in the discussion of 701.3(g). Section 701.4(a) is inconsistent with section 441.6(b) of the FTC's proposed rules regulating mobile home warranties (40 Fed. Reg. 23334-37). There, the FTC proposed to ban the use of warranty cards which contain information about the consumer or the purchase transaction as an unfair or deceptive act or practice within the meaning of the Federal Trade Commission Act. However, the FTC now proposes section 701.4(a) which authorizes the use of owner registration cards. This conflict of regulations cannot stand.

The Center strongly believes that the mobile home regulation forbidding warranty registration cards is the better rule. It avoids any possible invasion of the consumer's privacy and prevents the consumer from being denied warranty protection because he inadvertently neglected to mail the warranty card to the warrantor. Therefore, the Center urges the FTC to strike section 701.4(a) from its final regulation.

The Center's second objection to 701.4(a) is its affect

on the consumer's rights pursuant to the Uniform Commercial Code ("UCC," effective in all jurisdictions save Louisiana). Under Article 2 of the UCC, a seller may, by appropriate and conspicuous language, exclude or modify all warranties (UCC 2-316(3)). Typically, warrantors of such consumer goods as televisions, radios, toasters, etc. provide warranty registration cards with their products. These cards exclude the UCC's implied warranties of merchantability and fitness for a particular purpose (UCC §§ 2-314, 2-315) and the UCC's express warranty provision (UCC § 2-313). The consumer who completes and sends in such a card often receives only the warrantor's agreement to repair the product or replace defective parts for a short period of time -- say 90 days -- in exchange for assent to the exculsion of the above-mentioned warranties. To the consumer, the warranty registration card appears a thoughtful measure taken by the warrantor to protect customers from defective goods; in fact, this card is used to rob the consumer of warranty protection afforded him under the UCC, in short, to deceive him.

To prevent such deception, the FTC should require warrantors who utilize this warranty registration card scheme to disclose that if he completes and sends in the card, the consumer, though he gains a repair/replacement agreement, may lose the implied warranties of merchantability

and fitness for a particular purpose and the express warranty: to disclose, in other words, that "you don't get something for nothing."

Therefore, the Center urges that if the FTC should decide to retain the provision of section 701.4(a) that a bold print warning be added to subsection (a) as follows:

If in exchange for the return of such card the consumer, though he secures the warrantor's agreement to repair the product or replace defective parts, gives up any warranty under applicable state law, the warrantor shall, in simple, readily understood language, disclose that fact.

## Part 702

### §702.3 Pre-sale availability of written warranty terms.

The goal underlying this regulation is an admirable one, viz., to make warranty information available to consumers prior to purchase to aid them in their market place decision making. However, the Center fears that mere availability of such materials is insufficient to further the purposes of the Act, for the consumer, not the seller, must act first. Most customers don't now ask for such material as they know it is usually unavailable. To alert customers of the ready availability of such information, the Center urges that the FTC adopt a regulation which puts



an affirmative duty on sellers to notify consumers of its availability.

It is a simple task for sellers to post signs in their showrooms, department stores, etc. informing the consumer that copies of the warranty for every warranted product are available for his perusal if he requests it. Then, the burden is on the consumer to decide whether he will take advantage of this data or not, but he must be notified of his options before he can make an informed choice of whether or not to read the warranty. To achieve this goal, section 702.3(a)(3) should be deleted and replaced by the following subsection:

(3) Inform the consumer of the existence and availability of the warranty binder and make said binder available to the consumer upon request.

Additionally, for the reasons already stated in the previous discussion of proposed new subsection 701.3(n), the binder copy of the warranty should have appended to its front the cover sheet proposed in 701.3(n). A separate regulation should not be necessary to accomplish this if 701.3(n) is adopted since the cover sheet will then be part of the warranty and required to be exhibited in the binder.

Part 703

§703.2 Duties of Warrantor.

The Center feels that a number of changes are necessary in Part 703 in order to make the dispute settling "Mechanism" more responsive to consumer needs. First of all, as presently written, section 703.2(b)(3) will result in consumer confusion, rather than edification. The idea behind this subsection -- to detail the consumer's legal options -- is an admirable one. However, the subsection is subject to a literal reading that all the warrantor need do is explain legal rights in terms of "Title I" or "non-Title I" legal rights rather than in terms of class actions or consequential damage versus small claims court etc. Such nomenclature will be pure gibberish to any consumer who is not a lawyer familiar with the Act. Therefore, the Center urges that a second sentence be added to section 701.2(b)(3) which will require the warrantor to specifically list the legal rights and remedies available which were created by Title I or are available regardless of Title I. Such a provision should read as follows:

This statement shall specifically list all rights available which were not created by Title I.

§703.5 Operation of the Mechanism.

Perhaps the greatest problem the consumer will face

during the operation of the Mechanism is that his consumer product will be, in many cases, out of service until it is determined whether the warrantor is responsible for repairing it. Thus, time is of the essence in resolving these disputes. To expedite the operation of the Mechanism a number of changes need to be made in the proposed regulation.

First of all, the word "promptly" in line five of section 703.5(b) should be replaced by the word "immediately." Although this may seem to be an exercise in nitpicking, the difference between "promptly" and "immediately" could easily be two additional days of lost use of the consumer's product. Since there is no reason the Mechanism would not have descriptions of its procedures readily available to mail out, use of the word "immediately" places no increased burden on the Mechanism, and no reason, therefore, exists not to require immediate mailing of this data.

The 40 day time limit for the determination of a dispute before the Mechanism is much too long. When you balance the equities of the consumer being burdened for 40 days with a totally useless, non-performing consumer product such as a motor vehicle or mobile home on one hand against the burden on both the warrantor and consumer to



expeditiously produce documentary evidence on the other, it is apparent that the former burden, shared by only one party to the dispute, is much greater than the latter which is shared equally by the parties.

To remedy this major flaw in the regulations, the Center urges the FTC to replace the figure "40" in sections 703.5(d) and (e) with the figure "20." Twenty days appears to be the most expeditious time limit in which a dispute would reasonably be settled and still place the least burden on the consumer with the defective product. (The hypothetical on pages 10 - 11 of the Center's oral testimony demonstrates that 20 days is a workable time limit.) It seems axiomatic that warrantors with their organized, frequently computerized, filing systems can, at a minimum, respond to Mechanism requests as promptly as the consumer can. Furthermore, the warrantor will not suffer if the consumer does not respond to Mechanism requests as quickly as expected because the last sentence in subsection (e) authorizes the Mechanism to extend the prescribed time limits if the consumer fails to provide promptly the necessary information.

To facilitate the 20 day limit and to generally expedite the operation of the Mechanism, the FTC should require that any communication the Mechanism has with warrantors or consumers for the purpose of obtaining

information concerning the dispute must be made by certified or registered, special delivery mail. This will speed the communication process and notify the Mechanism when the consumer received the information request. To effectuate this proposal a last sentence should be added to section 703.5(c) as follows:

All information requests made by the Mechanism of warrantors or consumers shall be made by certified or registered, special delivery mail.

If, after a decision is arrived at, the warrantor notifies the Mechanism, pursuant to §703.2(f)(2), that it will not abide by the decision, the Mechanism should immediately notify the consumer of the warrantor's intent. Presently no provision exists which ensures that the consumer will receive such notification after the Mechanism has decided the dispute. Fairness requires that the consumer be notified of such a decision by the warrantor. Therefore, a new subsection (5) should be added to section 703.5(e) requiring such notification as follows:

(5) notify the consumer of the warrantor's intent not to abide by the decision if the warrantor has so stated its intent to the Mechanism.

#### §703.8 Openness of Records and Proceedings.

Section 703.8 permits only the parties to the dispute

to have access to all records relating to the dispute. This is an unnecessarily restrictive policy and must be relaxed considerably.

The Mechanism has every appearance of a quasi-judicial proceeding without counsel and direct or cross-examination. As in any judicial or quasi-judicial proceeding, past records and decisions in similar disputes are helpful to both warrantor and consumer, and to forbid them access to such precedent-making records is grossly unfair and serves to protract the dispute rather than encourage settlements since neither party has any feel for what the decision might be.

This secretive, no access policy also gives an unfair advantage to one warrantor defending many similar cases before the Mechanism. The warrantor can hope to wear down and discourage some consumers from fully and finally pursuing their remedies before the Mechanism even though the warrantor knows that he has lost every previous case decided by the Mechanism. If the consumer was privy to the same facts it is likely that he would pursue his case to its conclusion and not be discouraged by the time delay interposed by the warrantor insisting on a full proceeding before the Mechanism.



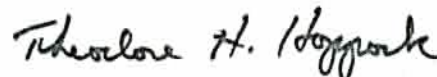
Since the Mechanism's decision-making process is a quasi-judicial process, it should be treated like one and all records of each dispute should be public information. The regulations should require that the warranty provision explaining the Mechanism should inform consumers that anyone using the Mechanism waives the right to have any part of the record remain confidential so no consumer who objects to such procedures is misled.

To effectuate this change, the phrase "either party to a dispute" in line 2 of subsection (e) should be stricken and replaced by the phrase "any interested person."

#### Conclusion

The Center urges the FTC to adopt all its proposed modifications to these proposed regulations to enable the consumer to make efficient use of the rights and remedies provided in the Act.

Respectfully submitted,



Theodore H. Hoppock  
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