

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

**In the Matter of**

**HARLEY-DAVIDSON MOTOR COMPANY  
GROUP, LLC, a limited liability company.**

**FILE NO.**

**AGREEMENT CONTAINING  
CONSENT ORDER**

The Federal Trade Commission (“Commission”) has conducted an investigation of certain acts and practices of Harley-Davidson Motor Company Group, LLC (“Proposed Respondent”). The Commission’s Bureau of Consumer Protection (“BCP”) has prepared a draft of an administrative Complaint (“draft Complaint”). BCP and Proposed Respondent, through its duly authorized officer, enter into this Agreement Containing Consent Order (“Consent Agreement”) to resolve the allegations in the attached draft Complaint through a proposed Decision and Order to present to the Commission, which is also attached and made a part of this Consent Agreement.

**IT IS HEREBY AGREED** by and between Proposed Respondent and BCP, that:

1. Proposed Respondent is a Wisconsin limited liability company with its principal office or place of business at 3700 W. Juneau Ave., Milwaukee, Wisconsin 53208.
2. Only for purposes of this action, Proposed Respondent admits the facts necessary to establish jurisdiction.
3. Proposed Respondent waives:
  - a. Any further procedural steps;
  - b. The requirement that the Commission’s Decision contain a statement of findings of fact and conclusions of law; and
  - c. All rights to seek judicial review or otherwise to challenge or contest the validity of the Decision and Order issued pursuant to this Consent Agreement.
4. This Consent Agreement will not become part of the public record of the proceeding unless and until it is accepted by the Commission. If the Commission accepts this Consent Agreement, it, together with the draft Complaint, will be placed on the public record for 30 days and information about them publicly released. Acceptance does not constitute final approval, but it

serves as the basis for further actions leading to final disposition of the matter. Thereafter, the Commission may either withdraw its acceptance of this Consent Agreement and so notify Proposed Respondent, in which event the Commission will take such action as it may consider appropriate, or issue and serve its Complaint (in such form as the circumstances may require) and decision in disposition of the proceeding, which may include an Order. *See* Section 2.34 of the Commission's Rules, 16 C.F.R. § 2.34 ("Rule 2.34").

5. If this agreement is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to Rule 2.34, the Commission may, without further notice to Proposed Respondent: (1) issue its Complaint corresponding in form and substance with the attached draft Complaint and its Decision and Order; and (2) make information about them public. Proposed Respondent agrees that service of the Order may be effected by its publication on the Commission's website ([ftc.gov](http://ftc.gov)), at which time the Order will become final. *See* Rule 2.32(d). Proposed Respondent waives any rights they may have to any other manner of service. *See* Rule 4.4.

6. When final, the Decision and Order will have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other Commission orders.

7. The Complaint may be used in construing the terms of the Decision and Order. No agreement, understanding, representation, or interpretation not contained in the Decision and Order or in this Consent Agreement may be used to vary or contradict the terms of the Decision and Order.

8. Proposed Respondent agrees to comply with the terms of the proposed Decision and Order, Proposed Respondent understands that it may be liable for civil penalties and other relief for each violation of the Decision and Order after it becomes final.

**HARLEY-DAVIDSON MOTOR  
COMPANY GROUP, LLC**

**FEDERAL TRADE COMMISSION**

By: \_\_\_\_\_  
Paul Krause  
Vice President, Chief Legal Officer,  
Chief Compliance Office, and Secretary  
Harley-Davidson Motor Company  
Group, LLC

By: \_\_\_\_\_  
Melissa Dickey  
Josh Doan  
Christopher E. Brown  
Attorneys, Bureau of Consumer Protection

Date: \_\_\_\_\_

**APPROVED:**

\_\_\_\_\_  
Lois C. Greisman  
Associate Director  
Division of Marketing Practices

By: \_\_\_\_\_  
Duane C. Pozza  
Stephen J. Conley  
Attorneys for Harley-Davidson Motor  
Company Group, LLC

Date: \_\_\_\_\_

\_\_\_\_\_  
Samuel Levine  
Director  
Bureau of Consumer Protection

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

**COMMISSIONERS:**      **Lina M. Khan, Chair**  
                                  **Noah Joshua Phillips**  
                                  **Rebecca Kelly Slaughter**  
                                  **Christine S. Wilson**  
                                  **Alvaro M. Bedoya**

**In the Matter of**

**HARLEY-DAVIDSON MOTOR COMPANY  
GROUP, LLC, a limited liability company.**

**DECISION AND ORDER**

**DOCKET NO. C-**

**DECISION**

The Federal Trade Commission (“Commission”) initiated an investigation of certain acts and practices of the Respondent named in the caption. The Commission’s Bureau of Consumer Protection (“BCP”) prepared and furnished to Respondent a draft Complaint. BCP proposed to present the draft Complaint to the Commission for its consideration. If issued by the Commission, the draft Complaint would charge Respondent with violations of the Federal Trade Commission Act and the Magnuson-Moss Warranty Act.

Respondent and BCP thereafter executed an Agreement Containing Consent Order (“Consent Agreement”). The Consent Agreement includes: 1) statements by Respondent that, only for the purposes of this action, it admits the facts necessary to establish jurisdiction; and 2) waivers and other provisions as required by the Commission’s Rules.

The Commission considered the matter and determined that it had reason to believe that Respondent has violated the Federal Trade Commission Act and the Magnuson-Moss Warranty Act, and that a Complaint should issue stating its charges in that respect. The Commission accepted the executed Consent Agreement and placed it on the public record for a period of 30 days for the receipt and consideration of public comments. The Commission duly considered any comments received from interested persons pursuant to Section 2.34 of its Rules, 16 C.F.R. § 2.34. Now, in further conformity with the procedure prescribed in Rule 2.34, the Commission issues its Complaint, makes the following Findings, and issues the following Order:

**Findings**

1. Respondent is Harley-Davidson Motor Company Group, LLC, a Wisconsin company with its principal office or place of business at 3700 W. Juneau Ave., Milwaukee, Wisconsin 53208.

2. The Commission has jurisdiction over the subject matter of this proceeding and over Respondent, and the proceeding is in the public interest.

## **ORDER**

### **Definitions**

For purposes of this Order, the following definitions apply:

- A. **“Clearly and Conspicuously”** means that a required disclosure is difficult to miss (i.e., easily noticeable) and easily understandable by ordinary consumers, including in all of the following ways:
  1. A visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.
  2. An audible disclosure, including by streaming video, must be delivered in a volume, speed, and cadence sufficient for ordinary consumers to easily hear and understand it.
  3. In any communication using an interactive electronic medium, such as the Internet or software, the disclosure must be unavoidable.
  4. The disclosure must use diction and syntax understandable to ordinary consumers and must appear in each language in which the triggering representation appears.
  5. The disclosure must not be contradicted or mitigated by, or inconsistent with, anything else in the communication.
  6. When the representation or sales practice targets a specific audience, such as children, the elderly, or the terminally ill, “ordinary consumers” includes reasonable members of that group.
- B. **“Consumer Products”** means any tangible personal product which is distributed in commerce and which is normally used for personal, family, or household purposes (including any such property intended to be attached to or installed in any real property without regard to whether it is so attached or installed).
- C. **“Implied Warranty”** means an implied warranty arising under State law (as modified by 15 U.S.C. §§ 2308 and 2304(a)) in connection with the sale by a supplier of a consumer product.
- D. **“Respondent”** means Harley-Davidson Motor Company Group, LLC and its successors and assigns.

- E. **“Supplier”** means any person engaged in the business of making a Consumer Product directly or indirectly available to consumers.
- F. **“Warrantor”** means any Supplier or other person who gives or offers to give a Written Warranty or who is or may be obligated under an Implied Warranty.
- G. **“Written Warranty”** means—
  - (a) any written affirmation of fact or written promise made in connection with the sale of a Consumer Product by a Supplier to a buyer which relates to the nature of the material or workmanship and affirms or promises that such material or workmanship is defect free or will meet a specified level of performance over a specified period of time; or
  - (b) any undertaking in writing in connection with the sale by a Supplier of Consumer Products to refund, repair, replace, or take other remedial action with respect to such product in the event that such product fails to meet the specifications set forth in the undertaking, which written affirmation, promise, or undertaking becomes part of the basis of the bargain between a Supplier and a buyer for purposes other than resale of such product.

## **Provisions**

### **I. Prohibitions Concerning Written Warranties**

**IT IS ORDERED** that Respondent, and Respondent’s officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, are permanently restrained and enjoined from:

- A. Expressly or by implication conditioning a warranty for a Consumer Product that costs more than five dollars, on a consumer’s using, in connection with such product, any article or service which is identified by brand, trade, or corporate name, unless the article or service is provided to the consumer without charge under the terms of the warranty or the Warrantor has been granted a waiver by the Commission under 15 U.S.C. § 2303(c);
- B. Issuing, making, or distributing a Written Warranty for a Consumer Product that costs more than fifteen dollars that fails to disclose, Clearly and Conspicuously in a single document, in simple and readily understood language, a clear description and identification of products, or parts, or characteristics, or components or properties covered by the warranty and where necessary for clarification, excluded from the warranty; and
- C. Violating any provision of the Magnuson-Moss Warranty Act (15 U.S.C. §§ 2301-2312) or the rules promulgated by the Commission under the Magnuson-Moss Warranty Act (16 C.F.R. §§ 701, 702, 703), copies of which are attached hereto as Attachment C.

Provided further that nothing in this Order will require Respondent to modify any calendar year 2022 warranty documents, as long as (1) all purchasers of its calendar year 2022 vehicles receive at the time of purchase a copy of the customer notice attached hereto as Attachment A and the revised warranty, along with an additional written statement that the revised warranty replaces the warranty contained in the model year 2022 Owner's Manual (together, "the 2022 Purchase Documents")' and (2) Respondent requires its authorized dealers to maintain records sufficient to show each such purchaser received the 2022 Purchase Documents.

## **II. Prohibited Claims and Conduct**

**IT IS FURTHER ORDERED** that Respondent, and Respondent's officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting, directly or indirectly, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of Consumer Products that cost more than five dollars shall not:

1. Subject to Section II.2., make any representation, or assist others in making any representation, expressly or by implication, excluding representations regarding parts or services for Consumer Products that are offered free of charge under the warranty or for which the Commission has provided a waiver under 15 U.S.C. § 2302(c), that:
  - a. A warranty will or may be void due to a consumer using unauthorized or third-party parts or services in connection with the Consumer Product;
  - b. A warranty will or may be void due to a consumer making a modification to the Consumer Product, without Respondent's authorization or approval;
  - c. As a condition of warranty coverage, or within the Written Warranty, that consumers must use only genuine Harley-Davidson parts or services provided by authorized service providers.
  
2. Provided, however, that Respondent may represent, both in its warranty documents or otherwise, that it will:
  - a. exclude warranty coverage for defects or damage caused by unauthorized parts, service, or use of the vehicle, including defects or damage caused by use of aftermarket parts or use of the vehicle for racing or competition, and denial of coverage may be based on installation of parts designed for unauthorized uses of the vehicle, such as a trailer hitch; and
  - b. consistent with Harley-Davidson's July 2017 Consent Decree with the Environmental Protection Agency, attached hereto, exclude warranty coverage and deny all warranty claims for functional defects of powertrain components for any Harley-Davidson motorcycle registered in the United States if the vehicle was tuned using a tuning product not covered by a California Air and Resources Board Executive Order or that was otherwise

approved by the Environmental Protection Agency, or if Harley-Davidson or any authorized Harley-Davidson dealer has any information to show that the vehicle was tuned using a tuning product not covered by a California Air and Resources Board Executive Order or that was otherwise approved by the Environmental Protection Agency. Respondent shall deny such warranty claims consistent with that Consent Decree.

3. Fail to disclose, Clearly and Conspicuously, in any warranty a statement that is substantially similar to the following (“Required Disclosure”): “Except as described in \_\_\_\_\_, taking your product to be serviced by a repair shop that is not an authorized Harley-Davidson dealer will not void this warranty, and using third-party parts alone will not void this warranty.” *Provided that*, Respondent may state in a section in close proximity to such Required Disclosure and corresponding to the placeholder in the preceding sentence that it excludes warranty coverage under the circumstances described in Section II.2 above.

Provided further that, if Respondent offers any product or service for free under the warranty or Respondent obtains a waiver from the Commission with respect to any product or service, the warranty may also state that consumers must use that product or service to maintain the warranty, and that may be described in the section corresponding to the placeholder in the Required Disclosure.

4. Misrepresent, expressly or by implication, any fact material to consumers concerning any warranty or maintenance requirement of any good or service.

Provided that nothing in this Order will require Respondent to modify any calendar year 2022 warranty documents, as long as (1) all purchasers of its calendar year 2022 vehicles receive at the time of purchase a copy of the 2022 Purchase Documents; and (2) Respondent requires its authorized dealers to maintain records sufficient to show that each such purchaser received the 2022 Purchase Documents.

### **III. Notice to Customers**

**IT IS FURTHER ORDERED** that Respondent must notify customers as follows:

- A. Respondent must identify all consumers who purchased new or used motorcycles still under warranty from Respondent or from an authorized Harley-Davidson dealer in the United States as of the effective date of this Order (“Eligible Customers”).
  1. Such Eligible Customers, and their contact information, must be identified to the extent such information is in Respondent’s possession, custody or control, including from information obtained from any authorized Harley-Davidson dealer at or around the time of sale;
  2. Eligible Customers include those identified at any time, including after Respondent’s execution of the Agreement.



- B. Respondent must notify all identified Eligible Customers by mailing or emailing each a notice in the form shown in Attachment A (“Notice”). The communication containing the notification letter may contain a copy of this Order and the revised warranty, but no other document or enclosure.
- C. Respondent must notify all Eligible Customers within 30 days after the issuance date of this Order and any Eligible Customers identified thereafter within 30 days of their identification by Respondent.
- D. Respondent must post Clearly and Conspicuously on a page accessible through Respondent’s website, harley-davidson.com, an exact copy of the notice attached hereto as Attachment A, as well as the terms of the revised warranty. To satisfy this provision, Respondent may post the notice and terms of the revised warranty within its Service Information Portal (or similar page in the future) which permits consumers to access their vehicle’s owner’s manual, receive recall alerts distributed in accordance with National Highway Traffic Safety Administration rules, and access other service-related information.
- E. Respondent shall ensure that the exact copy of the notice attached hereto as Attachment A and the terms of its current warranty remain posted Clearly and Conspicuously as described in Section III.D above, for at least 5 years after the effective date of this Order.
- F. Respondent must report on its notification program under penalty of perjury:
  - 1. For three years following the effective date of this Order, Respondent must submit a report annually that summarizes its compliance to date, including the total number of Eligible Customers identified.
  - 2. If a representative of the Commission requests information regarding notices distributed under the notification program, including customer data sufficient to identify any Eligible Customer, Respondent must submit it to the Commission within 20 days of the request.
  - 3. Failure to provide required notices or any requested information will be treated as a continuing failure to obey this Order.

#### **IV. Notice to Authorized Dealers and Authorized Service Providers**

**IT IS FURTHER ORDERED** that within 30 days of the effective date of this Order, Respondent must notify all of its Harley-Davidson authorized dealers and authorized service providers, by sending the notification letter attached as Attachment B, and an Owner’s Manual Addendum containing a copy of the revised warranty. Respondent must attach a copy of this Order to the letter, but no other documents or enclosures other than those described in the notification letter. Respondent may send the notice by delivering it electronically through its authorized dealer communication network H-D Net.

## V. Acknowledgments of the Order

**IT IS FURTHER ORDERED** that Respondent obtain acknowledgments of receipt of this Order:

- A. Respondent, within 10 days after the effective date of this Order, must submit to the Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.
- B. For 5 years, Respondent must deliver a copy of this Order to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees with managerial responsibilities related to Respondent's warranty coverage requests for United States consumers, and all employees having managerial responsibilities for drafting or approving claims under said warranties; and (3) any business entity resulting from any change in structure as set forth in the Provision titled Compliance Reports and Notices. Delivery must occur within 10 days after the effective date of this Order for current personnel. For all others, delivery must occur 10 days following the assumption of their responsibilities.
- C. From each individual or entity to which a Respondent delivered a copy of this Order, that Respondent must obtain, within 30 days, a signed and dated acknowledgment of receipt of this Order.

## VI. Compliance Reports and Notices

**IT IS FURTHER ORDERED** that Respondent make timely submissions to the Commission:

- A. One year after the issuance date of this Order, Respondent must submit a compliance report, sworn under penalty of perjury, in which Respondent must: (a) identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the Commission may use to communicate with Respondent; (b) identify all of Respondent's business by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (c) describe the activities of each business; (d) describe in detail whether and how Respondent is in compliance with each Provision of this Order, including a discussion of all of the changes Respondent made to comply with the Order; and (e) provide a copy of each Acknowledgment of the Order obtained pursuant to this Order, unless previously submitted to the Commission.
- B. Respondent must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in (a) any designated point of contact; or (b) the structure of Respondent or any entity that Respondent has any ownership interest in or controls directly or indirectly that may affect compliance obligations arising under this Order, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.

- C. Respondent must submit notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against such Respondent within 14 days of its filing.
- D. Any submission to the Commission required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: “I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: \_\_\_\_\_” and supplying the date, signatory’s full name, title (if applicable), and signature.
- E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: In re Harley-Davidson Motor Company Group, LLC, Docket No. \_\_\_\_\_.

## **VII. Recordkeeping**

**IT IS FURTHER ORDERED** that Respondent must create certain records for 5 years after the issuance date of the Order and retain each such record for 5 years. Specifically, Respondent must create and retain the following records:

- A. accounting records showing the revenues from all goods or services sold;
- B. personnel records showing, for each person, all employees with managerial responsibilities related to Respondent’s warranty coverage requests for United States consumers, and all employees having managerial responsibilities for drafting or approving claims under said warranty; whether as an employee or otherwise, that person’s: name; addresses; telephone numbers; job title or position; dates of service; and (if applicable) the reason for termination;
- C. copies or records of all consumer complaints, warranty coverage claims, and refund requests relating to Respondent’s warranties, whether received directly or indirectly, such as through a third party, and any response;
- D. a copy of each unique warranty or other document summarizing the warranty; and
- E. all records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission.

## **VIII. Compliance Monitoring**

**IT IS FURTHER ORDERED** that, for the purpose of monitoring Respondent’s compliance with this Order:

- A. Within 10 days of receipt of a written request from a representative of the Commission, Respondent must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury, and produce records for inspection and copying.
- B. For matters concerning this Order, representatives of the Commission are authorized to communicate directly with Respondent. Respondent must permit representatives of the Commission to interview anyone affiliated with Respondent who has agreed to such an interview. The interviewee may have counsel present.
- C. The Commission may use all other lawful means, including posing through its representatives as consumers, suppliers, or other individuals or entities, to Respondent or any individual or entity affiliated with Respondent, without the necessity of identification or prior notice. Nothing in this Order limits the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

#### **IX. Order Effective Dates**

**IT IS FURTHER ORDERED** that this Order is final and effective upon the date of its publication on the Commission's website ([ftc.gov](http://ftc.gov)) as a final order. This Order will terminate 20 years from the date of its issuance (which date may be stated at the end of this Order, near the Commission's seal), or 20 years from the most recent date that the United States or the Commission files a complaint (with or without an accompanying settlement) in federal court alleging any violation of this Order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:

- A. Any Provision in this Order that terminates in less than 20 years;
- B. This Order's application to any Respondent that is not named as a defendant in such complaint; and
- C. This Order if such complaint is filed after the Order has terminated pursuant to this Provision.

*Provided, further*, that if such complaint is dismissed or a federal court rules that Respondent did not violate any provision of the Order, and the dismissal or ruling is either not appealed or upheld on appeal, then the Order will terminate according to this Provision as though the complaint had never been filed, except that the Order will not terminate between the date such

complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission.

April J. Tabor  
Secretary

SEAL:  
ISSUED:

## ATTACHMENT A: CONSUMER NOTICE

### **Re: Changes to your Harley-Davidson motorcycle warranty**

The Federal Trade Commission (FTC), the nation's consumer protection agency, has reached a settlement with Harley-Davidson over some of our warranty provisions. The FTC alleges that Harley-Davidson's motorcycle warranty violated federal law when it indicated that you and other Harley-Davidson owners have to use genuine Harley-Davidson parts and authorized service providers to keep your warranty coverage. The FTC also alleges that we didn't fully explain in our warranty what it covers and excludes, and it says that was also unlawful.

To settle the matter, we've agreed to revise our warranty. We're enclosing a copy of the revised warranty here.

### **Do I have to use genuine Harley-Davidson parts and services to maintain my warranty?**

**No.** You may elect to use non-genuine Harley-Davidson parts or service providers not authorized by Harley-Davidson and maintain your warranty. By law, we can't void your warranty just because you install another company's parts, use a service provider that is not authorized by Harley-Davidson, or do maintenance or repair work yourself, unless we give you the parts and services for free. However, as discussed below, Harley-Davidson is not obligated to pay for repairs of non-genuine Harley-Davidson parts, or for repairs for damages and defects caused by non-genuine Harley-Davidson parts or the use of non-authorized Harley-Davidson service providers.

### **Does my Harley-Davidson warranty cover the cost of repairing damages or defects caused by using another company's parts or by a service provider that is not affiliated with Harley-Davidson?**

**No.** Harley-Davidson **can deny** warranty claims for damages and defects that are:

- Caused by using another company's parts or accessories, or
- Caused by using non-authorized service providers.

Harley-Davidson **will also deny** warranty claims for functional defects of powertrain components tuned using a tuning product not covered by a California Air and Resources Board Executive Order or not otherwise authorized by the United States Environmental Protection Agency.

**Are there other reasons why Harley-Davidson may deny my warranty claims for damages and defects?**

**Yes.** Harley-Davidson can deny warranty claims for damages and defects that are:

- Caused by using a genuine Harley-Davidson part or accessory not authorized for use on your motorcycle,
- Caused by misuse of your motorcycle, like using it for racing or competition, or
- Caused by installing parts designed for improper uses of your motorcycle, like a trailer hitch.

**What should I do if I think an authorized Harley-Davidson dealer improperly refused to honor my warranty?**

If the dealer refuses to honor your warranty on the grounds that non-genuine Harley-Davidson parts or services were used—without explaining how those parts or services caused damage to the motorcycle or otherwise led to the issues you are seeking warranty coverage for—call us at [\_\_\_\_\_] so we can address the situation. You also can report it to the FTC at ReportFraud.ftc.gov.

**Where can I get the revised warranty and more information?**

We recommend that you keep a copy of this notice and the revised Harley-Davidson motorcycle warranty in your files. You can find the revised warranty attached, and at [insert easily typed url corresponding to Owner’s Manual Lookup page].

If you have questions, please visit [insert easily typed url]. To learn about your rights under federal warranty law, visit Auto Warranties and Service Contracts [https://consumer.ftc.gov/articles/auto-warranties-service-contracts] on the Federal Trade Commission website.

Sincerely,

Harley-Davidson Motor Company Group, LLC

## **ATTACHMENT B: Notice to Authorized Harley-Davidson Dealers**

The Federal Trade Commission (FTC), the nation's consumer protection agency, has alleged that Harley-Davidson's motorcycle warranty does not comply with federal warranty law. The FTC contends that our warranty unlawfully indicated that customers had to buy and use genuine Harley-Davidson parts and services to keep their warranty coverage. We have settled the matter. The settlement affects you.

**To be clear:** Customers don't have to use genuine Harley-Davidson parts and services to maintain their warranty coverage. By law, we can't void a customer's warranty simply for installing another company's parts, using a service provider that is not authorized by Harley-Davidson, or doing maintenance or repair work themselves, unless we provide the parts and services for free.

Harley-Davidson may, however, deny warranty claims for defects or damage caused by unauthorized parts, service, or use of the vehicle, including defects or damage caused by the installation of unapproved or aftermarket parts or use of the vehicle for racing or competition. This denial of coverage may be based on installation of parts designed for unauthorized uses of the vehicle, such as a trailer hitch.

Harley-Davidson will also deny warranty claims for functional defects of powertrain components tuned using a tuning product not covered by a California Air and Resources Board (CARB) Executive Order or otherwise authorized by the Environmental Protection Agency (EPA).

**If you or your employees suggest that customers must or should use genuine Harley-Davidson parts or services to maintain their warranties, you may be breaking the law. A suggestion of that nature is a false statement, unless we give them the parts and services for free under the warranty.**

**However, you may still inform customers that warranty coverage will not extend to repairs of defects or damage caused by unauthorized parts, service, or use of the vehicle, including defects or damage caused by the installation of unapproved aftermarket parts, use of the vehicle for racing or competition, or installation of parts designed for unauthorized uses of the vehicle, such as a trailer hitch. You should also inform customers that Harley-Davidson will deny warranty claims for functional defects of powertrain components that were tuned using a tuning product not covered by a CARB Executive Order or otherwise authorized by the EPA.**



## What the Settlement Requires Harley-Davidson to Do

To settle the matter, we've agreed to:

- Revise the warranty consistent with the FTC's Order, and
- Notify our customers and authorized dealers that customers don't have to use genuine Harley-Davidson parts and services to maintain their warranty, unless we give the customers the parts and services for free.

## What You Must Do

As an authorized Harley-Davidson dealer, you must promptly:

- **Review the Revised Warranty.** The Revised Warranty is attached to this letter and available at [accessible location at H-D Net].
- **Provide each customer a "Warranty Addendum Packet" at the time of sale of any new model year 2022 Harley-Davidson motorcycle.** This Warranty Addendum Packet should be provided to the customer in addition to the 2022 Owner's Manual. We will include a Warranty Addendum Packet with the Owner's Manual for any new model year 2022 Harley-Davidson motorcycle we ship, and you'll also find the Warranty Addendum Packet on H-DNet at [easily accessible location]. The Packet contains the Revised Warranty, a note that the Revised Warranty replaces the warranty contained in the Owner's Manual, and a separate customer notice about this settlement. You must keep records showing that you provided a Warranty Addendum Packet to each customer.
- **Train and monitor your employees.** Ensure that your employees understand the warranty and don't misrepresent its terms. You and your employees may not say or imply that customers should use genuine Harley-Davidson parts or services to maintain their warranty, unless we give the customers the parts and services for free under the warranty.
- **Remove deceptive display materials.** Remove any point-of-sale displays, posters, or other display materials that misrepresent the terms of the warranty

If you have questions, please visit [easily accessible location on H-DNet]. For more information about federal warranty law, visit the [Businessperson's Guide to Federal Warranty Law](https://www.ftc.gov/business-guidance/resources/businesspersons-guide-federal-warranty-law) [https://www.ftc.gov/business-guidance/resources/businesspersons-guide-federal-warranty-law] on the Federal Trade Commission website.

Sincerely,

Harley-Davidson Motor Company Group, LLC

## **Attachment C**

## 15 USC Ch. 50: CONSUMER PRODUCT WARRANTIES

### From Title 15—COMMERCE AND TRADE

#### CHAPTER 50—CONSUMER PRODUCT WARRANTIES

Sec.	
2301.	Definitions.
2302.	Rules governing contents of warranties.
2303.	Designation of written warranties.
2304.	Federal minimum standards for warranties.
2305.	Full and limited warranting of a consumer product.
2306.	Service contracts; rules for full, clear and conspicuous disclosure of terms and conditions; addition to or in lieu of written warranty.
2307.	Designation of representatives by warrantor to perform duties under written or implied warranty.
2308.	Implied warranties.
2309.	Procedures applicable to promulgation of rules by Commission.
2310.	Remedies in consumer disputes.
2311.	Applicability to other laws.
2312.	Effective dates.

### §2301. Definitions

For the purposes of this chapter:

(1) The term "consumer product" means any tangible personal property which is distributed in commerce and which is normally used for personal, family, or household purposes (including any such property intended to be attached to or installed in any real property without regard to whether it is so attached or installed).

(2) The term "Commission" means the Federal Trade Commission.

(3) The term "consumer" means a buyer (other than for purposes of resale) of any consumer product, any person to whom such product is transferred during the duration of an implied or written warranty (or service contract) applicable to the product, and any other person who is entitled by the terms of such warranty (or service contract) or under applicable State law to enforce against the warrantor (or service contractor) the obligations of the warranty (or service contract).

(4) The term "supplier" means any person engaged in the business of making a consumer product directly or indirectly available to consumers.

(5) The term "warrantor" means any supplier or other person who gives or offers to give a written warranty or who is or may be obligated under an implied warranty.

(6) The term "written warranty" means—

(A) any written affirmation of fact or written promise made in connection with the sale of a consumer product by a supplier to a buyer which relates to the nature of the material or workmanship and affirms or promises that such material or workmanship is defect free or will meet a specified level of performance over a specified period of time, or

(B) any undertaking in writing in connection with the sale by a supplier of a consumer product to refund, repair, replace, or take other remedial action with respect to such product in the event that such product fails to meet the specifications set forth in the undertaking,

which written affirmation, promise, or undertaking becomes part of the basis of the bargain between a supplier and a buyer for purposes other than resale of such product.

(7) The term "implied warranty" means an implied warranty arising under State law (as modified by sections 2308 and 2304(a) of this title) in connection with the sale by a supplier of a consumer product.

(8) The term "service contract" means a contract in writing to perform, over a fixed period of time or for a specified duration, services relating to the maintenance or repair (or both) of a consumer product.

(9) The term "reasonable and necessary maintenance" consists of those operations (A) which the consumer reasonably can be expected to perform or have performed and (B) which are necessary to keep any consumer product performing its intended function and operating at a reasonable level of performance.

(10) The term "remedy" means whichever of the following actions the warrantor elects:

- (A) repair,
- (B) replacement, or
- (C) refund;

except that the warrantor may not elect refund unless (i) the warrantor is unable to provide replacement and repair is not commercially practicable or cannot be timely made, or (ii) the consumer is willing to accept such refund.

(11) The term "replacement" means furnishing a new consumer product which is identical or reasonably equivalent to the warranted consumer product.

(12) The term "refund" means refunding the actual purchase price (less reasonable depreciation based on actual use where permitted by rules of the Commission).

(13) The term "distributed in commerce" means sold in commerce, introduced or delivered for introduction into commerce, or held for sale or distribution after introduction into commerce.

(14) The term "commerce" means trade, traffic, commerce, or transportation—

(A) between a place in a State and any place outside thereof, or

(B) which affects trade, traffic, commerce, or transportation described in subparagraph (A).

(15) The term "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Canal Zone, or American Samoa. The term "State law" includes a law of the United States applicable only to the District of Columbia or only to a territory or possession of the United States; and the term "Federal law" excludes any State law.

(Pub. L. 93–637, title I, §101, Jan. 4, 1975, 88 Stat. 2183.)

## REFERENCES IN TEXT

For definition of Canal Zone, referred to in par. (15), see section 3602(b) of Title 22, Foreign Relations and Intercourse.

## SHORT TITLE OF 2015 AMENDMENT

Pub. L. 114–51, §1, Sept. 24, 2015, 129 Stat. 494, provided that: "This Act [amending section 2302 of this title and enacting provisions set out as notes under section 2302 of this title] may be cited as the 'E-Warranty Act of 2015'."

## SHORT TITLE

Pub. L. 93–637, §1, Jan. 4, 1975, 88 Stat. 2183, provided: "That this act [enacting this chapter and sections 57a to 57c of this title, amending sections 45, 46, 49, 50, 52, 56, and 58 of this title, and enacting provisions set out as notes under sections 45, 56, 57a, and 57b of this title] may be cited as the 'Magnuson-Moss Warranty—Federal Trade Commission Improvement Act'."

## §2302. Rules governing contents of warranties

### (a) Full and conspicuous disclosure of terms and conditions; additional requirements for contents

In order to improve the adequacy of information available to consumers, prevent deception, and improve competition in the marketing of consumer products, any warrantor warranting a consumer product to a consumer by means of a written warranty shall, to the extent required by rules of the Commission, fully and conspicuously disclose in simple and readily understood language the terms and conditions of such warranty. Such rules may require inclusion in the written warranty of any of the following items among others:

(1) The clear identification of the names and addresses of the warrantors.

(2) The identity of the party or parties to whom the warranty is extended.

(3) The products or parts covered.

(4) A statement of what the warrantor will do in the event of a defect, malfunction, or failure to conform with such written warranty—at whose expense—and for what period of time.

(5) A statement of what the consumer must do and expenses he must bear.

(6) Exceptions and exclusions from the terms of the warranty.

(7) The step-by-step procedure which the consumer should take in order to obtain performance of any obligation under the warranty, including the identification of any person or class of persons authorized to perform the obligations set forth in the warranty.

(8) Information respecting the availability of any informal dispute settlement procedure offered by the warrantor and a recital, where the warranty so provides, that the purchaser may be required to resort to such procedure before pursuing any legal remedies in the courts.

(9) A brief, general description of the legal remedies available to the consumer.

(10) The time at which the warrantor will perform any obligations under the warranty.

(11) The period of time within which, after notice of a defect, malfunction, or failure to conform with the warranty, the warrantor will perform any obligations under the warranty.

(12) The characteristics or properties of the products, or parts thereof, that are not covered by the warranty.

(13) The elements of the warranty in words or phrases which would not mislead a reasonable, average consumer as to the nature or scope of the warranty.

**(b) Availability of terms to consumer; manner and form for presentation and display of information; duration; extension of period for written warranty or service contract; electronic display of terms of warranty**

(1)(A) The Commission shall prescribe rules requiring that the terms of any written warranty on a consumer product be made available to the consumer (or prospective consumer) prior to the sale of the product to him.

(B) The Commission may prescribe rules for determining the manner and form in which information with respect to any written warranty of a consumer product shall be clearly and conspicuously presented or displayed so as not to mislead the reasonable, average consumer, when such information is contained in advertising, labeling, point-of-sale material, or other representations in writing.

(2) Nothing in this chapter (other than paragraph (3) of this subsection) shall be deemed to authorize the Commission to prescribe the duration of written warranties given or to require that a consumer product or any of its components be warranted.

(3) The Commission may prescribe rules for extending the period of time a written warranty or service contract is in effect to correspond with any period of time in excess of a reasonable period (not less than 10 days) during which the consumer is deprived of the use of such consumer product by reason of failure of the product to conform with the written warranty or by reason of the failure of the warrantor (or service contractor) to carry out such warranty (or service contract) within the period specified in the warranty (or service contract).

(4)(A) Except as provided in subparagraph (B), the rules prescribed under this subsection shall allow for the satisfaction of all requirements concerning the availability of terms of a written warranty on a consumer product under this subsection by—

(i) making available such terms in an accessible digital format on the Internet website of the manufacturer of the consumer product in a clear and conspicuous manner; and

(ii) providing to the consumer (or prospective consumer) information with respect to how to obtain and review such terms by indicating on the product or product packaging or in the product manual—

(I) the Internet website of the manufacturer where such terms can be obtained and reviewed; and

(II) the phone number of the manufacturer, the postal mailing address of the manufacturer, or another reasonable non-Internet based means of contacting the manufacturer to obtain and review such terms.

(B) With respect to any requirement that the terms of any written warranty for a consumer product be made available to the consumer (or prospective consumer) prior to sale of the product, in a case in which a consumer product is offered for sale in a retail location, by catalog, or through door-to-door sales, subparagraph (A) shall only apply if the seller makes available, through electronic or other means, at the location of the sale to the consumer purchasing the consumer product the terms of the warranty for the consumer product before the purchase.

**(c) Prohibition on conditions for written or implied warranty; waiver by Commission**

No warrantor of a consumer product may condition his written or implied warranty of such product on the consumer's using, in connection with such product, any article or service (other than article or service provided without charge under the terms of the warranty) which is identified by brand, trade, or corporate name; except that the prohibition of this subsection may be waived by the Commission if—

(1) the warrantor satisfies 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

(2) the Commission finds that such a waiver is in the public interest.

The Commission shall identify in the Federal Register, and permit public comment on, all applications for waiver of the prohibition of this subsection, and shall publish in the Federal Register its disposition of any such application, including the reasons therefor.

**(d) Incorporation by reference of detailed substantive warranty provisions**

The Commission may by rule devise detailed substantive warranty provisions which warrantors may incorporate by reference in their warranties.

**(e) Applicability to consumer products costing more than \$5**

The provisions of this section apply only to warranties which pertain to consumer products actually costing the consumer more than \$5.

(Pub. L. 93–637, title I, §102, Jan. 4, 1975, 88 Stat. 2185; Pub. L. 114–51, §3(a), Sept. 24, 2015, 129 Stat. 494.)

## AMENDMENTS

2015—Subsec. (b)(4). Pub. L. 114–51 added par. (4).

## FINDINGS

Pub. L. 114–51, §2, Sept. 24, 2015, 129 Stat. 494, provided that: "Congress makes the following findings:

"(1) Many manufacturers and consumers prefer to have the option to provide or receive warranty information online.

"(2) Modernizing warranty notification rules is necessary to allow the United States to continue to compete globally in manufacturing, trade, and the development of consumer products connected to the Internet.

"(3) Allowing an electronic warranty option would expand consumer access to relevant consumer information in an environmentally friendly way, and would provide additional flexibility to manufacturers to meet their labeling and warranty requirements."

## **REVISION OF RULES**

Pub. L. 114–51, §3(b), Sept. 24, 2015, 129 Stat. 495, provided that:

"(1) IN GENERAL.—Not later than 1 year after the date of the enactment of this Act [Sept. 24, 2015], the Federal Trade Commission shall revise the rules prescribed under such section [meaning section 102(b) of Pub. L. 93–637, which is classified to subsec. (b) of this section] to comply with the requirements of paragraph (4) of such section, as added by subsection (a) of this section [amending this section].

"(2) AUTHORITY TO WAIVE REQUIREMENT FOR ORAL PRESENTATION.—In revising rules under paragraph (1), the Federal Trade Commission may waive the requirement of section 109(a) of such Act (15 U.S.C. 2309(a)) to give interested persons an opportunity for oral presentation if the Commission determines that giving interested persons such opportunity would interfere with the ability of the Commission to revise rules under paragraph (1) in a timely manner."

### **§2303. Designation of written warranties**

#### **(a) Full (statement of duration) or limited warranty**

Any warrantor warranting a consumer product by means of a written warranty shall clearly and conspicuously designate such warranty in the following manner, unless exempted from doing so by the Commission pursuant to subsection (c) of this section:

(1) If the written warranty meets the Federal minimum standards for warranty set forth in section 2304 of this title, then it shall be conspicuously designated a "full (statement of duration) warranty".

(2) If the written warranty does not meet the Federal minimum standards for warranty set forth in section 2304 of this title, then it shall be conspicuously designated a "limited warranty".

#### **(b) Applicability of requirements, standards, etc., to representations or statements of customer satisfaction**

This section and sections 2302 and 2304 of this title shall not apply to statements or representations which are similar to expressions of general policy concerning customer satisfaction and which are not subject to any specific limitations.

#### **(c) Exemptions by Commission**

In addition to exercising the authority pertaining to disclosure granted in section 2302 of this title, the Commission may by rule determine when a written warranty does not have to be designated either "full (statement of duration)" or "limited" in accordance with this section.

#### **(d) Applicability to consumer products costing more than \$10 and not designated as full warranties**

The provisions of subsections (a) and (c) of this section apply only to warranties which pertain to consumer products actually costing the consumer more than \$10 and which are not designated "full (statement of duration) warranties".

(Pub. L. 93–637, title I, §103, Jan. 4, 1975, 88 Stat. 2187.)

### **§2304. Federal minimum standards for warranties**

#### **(a) Remedies under written warranty; duration of implied warranty; exclusion or limitation on consequential damages for breach of written or implied warranty; election of refund or replacement**

In order for a warrantor warranting a consumer product by means of a written warranty to meet the Federal minimum standards for warranty—

(1) such warrantor must as a minimum remedy such consumer product within a reasonable time and without charge, in the case of a defect, malfunction, or failure to conform with such written warranty;

(2) notwithstanding section 2308(b) of this title, such warrantor may not impose any limitation on the duration of any implied warranty on the product;

(3) such warrantor may not exclude or limit consequential damages for breach of any written or implied warranty on such product, unless such exclusion or limitation conspicuously appears on the face of the warranty; and

(4) if the product (or a component part thereof) contains a defect or malfunction after a reasonable number of attempts by the warrantor to remedy defects or malfunctions in such product, such warrantor must permit the consumer to elect either a refund for, or replacement without charge of, such product or part (as the case may be). The Commission may by rule specify for purposes of this paragraph, what constitutes a reasonable number of

attempts to remedy particular kinds of defects or malfunctions under different circumstances. If the warrantor replaces a component part of a consumer product, such replacement shall include installing the part in the product without charge.

**(b) Duties and conditions imposed on consumer by warrantor**

(1) In fulfilling the duties under subsection (a) respecting a written warranty, the warrantor shall not impose any duty other than notification upon any consumer as a condition of securing remedy of any consumer product which malfunctions, is defective, or does not conform to the written warranty, unless the warrantor has demonstrated in a rulemaking proceeding, or can demonstrate in an administrative or judicial enforcement proceeding (including private enforcement), or in an informal dispute settlement proceeding, that such a duty is reasonable.

(2) Notwithstanding paragraph (1), a warrantor may require, as a condition to replacement of, or refund for, any consumer product under subsection (a), that such consumer product shall be made available to the warrantor free and clear of liens and other encumbrances, except as otherwise provided by rule or order of the Commission in cases in which such a requirement would not be practicable.

(3) The Commission may, by rule define in detail the duties set forth in subsection (a) of this section and the applicability of such duties to warrantors of different categories of consumer products with "full (statement of duration)" warranties.

(4) The duties under subsection (a) extend from the warrantor to each person who is a consumer with respect to the consumer product.

**(c) Waiver of standards**

The performance of the duties under subsection (a) shall not be required of the warrantor if he can show that the defect, malfunction, or failure of any warranted consumer product to conform with a written warranty, was caused by damage (not resulting from defect or malfunction) while in the possession of the consumer, or unreasonable use (including failure to provide reasonable and necessary maintenance).

**(d) Remedy without charge**

For purposes of this section and of section 2302(c) of this title, the term "without charge" means that the warrantor may not assess the consumer for any costs the warrantor or his representatives incur in connection with the required remedy of a warranted consumer product. An obligation under subsection (a)(1)(A) to remedy without charge does not necessarily require the warrantor to compensate the consumer for incidental expenses; however, if any incidental expenses are incurred because the remedy is not made within a reasonable time or because the warrantor imposed an unreasonable duty upon the consumer as a condition of securing remedy, then the consumer shall be entitled to recover reasonable incidental expenses which are so incurred in any action against the warrantor.

**(e) Incorporation of standards to products designated with full warranty for purposes of judicial actions**

If a supplier designates a warranty applicable to a consumer product as a "full (statement of duration)" warranty, then the warranty on such product shall, for purposes of any action under section 2310(d) of this title or under any State law, be deemed to incorporate at least the minimum requirements of this section and rules prescribed under this section.

(Pub. L. 93-637, title I, §104, Jan. 4, 1975, 88 Stat. 2187.)

**§2305. Full and limited warranting of a consumer product**

Nothing in this chapter shall prohibit the selling of a consumer product which has both full and limited warranties if such warranties are clearly and conspicuously differentiated.

(Pub. L. 93-637, title I, §105, Jan. 4, 1975, 88 Stat. 2188.)

**§2306. Service contracts; rules for full, clear and conspicuous disclosure of terms and conditions; addition to or in lieu of written warranty**

(a) The Commission may prescribe by rule the manner and form in which the terms and conditions of service contracts shall be fully, clearly, and conspicuously disclosed.

(b) Nothing 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.

(Pub. L. 93-637, title I, §106, Jan. 4, 1975, 88 Stat. 2188.)

**§2307. Designation of representatives by warrantor to perform duties under written or implied warranty**

Nothing in this chapter shall be construed to prevent any warrantor from designating representatives to perform duties under the written or implied warranty: *Provided*, That such warrantor shall make reasonable arrangements for compensation of such designated representatives, but no such designation shall relieve the warrantor of his direct responsibilities to the consumer or make the representative a cowarrantor.

(Pub. L. 93–637, title I, §107, Jan. 4, 1975, 88 Stat. 2189.)

## **§2308. Implied warranties**

### **(a) Restrictions on disclaimers or modifications**

No supplier may disclaim or modify (except as provided in subsection (b)) any implied warranty to a consumer with respect to such consumer product if (1) such supplier makes any written warranty to the consumer with respect to such consumer Product, or (2) at the time of sale, or within 90 days thereafter, such supplier enters into a service contract with the consumer which applies to such consumer product.

### **(b) Limitation on duration**

For purposes of this chapter (other than section 2304(a)(2) of this title), implied warranties may be limited in duration to the duration of a written warranty of reasonable duration, if such limitation is conscionable and is set forth in clear and unmistakable language and prominently displayed on the face of the warranty.

### **(c) Effectiveness of disclaimers, modifications, or limitations**

A disclaimer, modification, or limitation made in violation of this section shall be ineffective for purposes of this chapter and State law.

(Pub. L. 93–637, title I, §108, Jan. 4, 1975, 88 Stat. 2189.)

## **§2309. Procedures applicable to promulgation of rules by Commission**

### **(a) Oral presentation**

Any rule prescribed under this chapter shall be prescribed in accordance with section 553 of title 5; except that the Commission shall give interested persons an opportunity for oral presentations of data, views, and arguments, in addition to written submissions. A transcript shall be kept of any oral presentation. Any such rule shall be subject to judicial review under section 57a(e) of this title in the same manner as rules prescribed under section 57a(a)(1)(B) of this title, except that section 57a(e)(3)(B) of this title shall not apply.

### **(b) Warranties and warranty practices involved in sale of used motor vehicles**

The Commission shall initiate within one year after January 4, 1975, a rulemaking proceeding dealing with warranties and warranty practices in connection with the sale of used motor vehicles; and, to the extent necessary to supplement the protections offered the consumer by this chapter, shall prescribe rules dealing with such warranties and practices. In prescribing rules under this subsection, the Commission may exercise any authority it may have under this chapter, or other law, and in addition it may require disclosure that a used motor vehicle is sold without any warranty and specify the form and content of such disclosure.

(Pub. L. 93–637, title I, §109, Jan. 4, 1975, 88 Stat. 2189.)

## **§2310. Remedies in consumer disputes**

### **(a) Informal dispute settlement procedures; establishment; rules setting forth minimum requirements; effect of compliance by warrantor; review of informal procedures or implementation by Commission; application to existing informal procedures**

(1) Congress hereby declares it to be its policy to encourage warrantors to establish procedures whereby consumer disputes are fairly and expeditiously settled through informal dispute settlement mechanisms.

(2) The Commission shall prescribe rules setting forth minimum requirements for any informal dispute settlement procedure which is incorporated into the terms of a written warranty to which any provision of this chapter applies. Such rules shall provide for participation in such procedure by independent or governmental entities.

(3) One or more warrantors may establish an informal dispute settlement procedure which meets the requirements of the Commission's rules under paragraph (2). If—

(A) a warrantor establishes such a procedure,

(B) such procedure, and its implementation, meets the requirements of such rules, and

(C) he incorporates in a written warranty a requirement that the consumer resort to such procedure before pursuing any legal remedy under this section respecting such warranty,



then (i) the consumer may not commence a civil action (other than a class action) under subsection (d) of this section unless he initially resorts to such procedure; and (ii) a class of consumers may not proceed in a class action under subsection (d) except to the extent the court determines necessary to establish the representative capacity of the named plaintiffs, unless the named plaintiffs (upon notifying the defendant that they are named plaintiffs in a class action with respect to a warranty obligation) initially resort to such procedure. In the case of such a class action which is brought in a district court of the United States, the representative capacity of the named plaintiffs shall be established in the application of rule 23 of the Federal Rules of Civil Procedure. In any civil action arising out of a warranty obligation and relating to a matter considered in such a procedure, any decision in such procedure shall be admissible in evidence.

(4) The Commission on its own initiative may, or upon written complaint filed by any interested person shall, review the bona fide operation of any dispute settlement procedure resort to which is stated in a written warranty to be a prerequisite to pursuing a legal remedy under this section. If the Commission finds that such procedure or its implementation fails to comply with the requirements of the rules under paragraph (2), the Commission may take appropriate remedial action under any authority it may have under this chapter or any other provision of law.

(5) Until rules under paragraph (2) take effect, this subsection shall not affect the validity of any informal dispute settlement procedure respecting consumer warranties, but in any action under subsection (d), the court may invalidate any such procedure if it finds that such procedure is unfair.

**(b) Prohibited acts**

It shall be a violation of section 45(a)(1) of this title for any person to fail to comply with any requirement imposed on such person by this chapter (or a rule thereunder) or to violate any prohibition contained in this chapter (or a rule thereunder).

**(c) Injunction proceedings by Attorney General or Commission for deceptive warranty, noncompliance with requirements, or violating prohibitions; procedures; definitions**

(1) The district courts of the United States shall have jurisdiction of any action brought by the Attorney General (in his capacity as such), or by the Commission by any of its attorneys designated by it for such purpose, to restrain (A) any warrantor from making a deceptive warranty with respect to a consumer product, or (B) any person from failing to comply with any requirement imposed on such person by or pursuant to this chapter or from violating any prohibition contained in this chapter. Upon proper showing that, weighing the equities and considering the Commission's or Attorney General's likelihood of ultimate success, such action would be in the public interest and after notice to the defendant, a temporary restraining order or preliminary injunction may be granted without bond. In the case of an action brought by the Commission, if a complaint under section 45 of this title is not filed within such period (not exceeding 10 days) as may be specified by the court after the issuance of the temporary restraining order or preliminary injunction, the order or injunction shall be dissolved by the court and be of no further force and effect. Any suit shall be brought in the district in which such person resides or transacts business. Whenever it appears to the court that the ends of justice require that other persons should be parties in the action, the court may cause them to be summoned whether or not they reside in the district in which the court is held, and to that end process may be served in any district.

(2) For the purposes of this subsection, the term "deceptive warranty" means (A) a written warranty which (i) contains an affirmation, promise, description, or representation which is either false or fraudulent, or which, in light of all of the circumstances, would mislead a reasonable individual exercising due care; or (ii) 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; or (B) a written warranty created by the use of such terms as "guaranty" or "warranty", if the terms and conditions of such warranty so limit its scope and application as to deceive a reasonable individual.

**(d) Civil action by consumer for damages, etc.; jurisdiction; recovery of costs and expenses; cognizable claims**

(1) Subject to subsections (a)(3) and (e), a consumer who is damaged by the failure of a supplier, warrantor, or service contractor to comply with any obligation under this chapter, or under a written warranty, implied warranty, or service contract, may bring suit for damages and other legal and equitable relief—

(A) in any court of competent jurisdiction in any State or the District of Columbia; or

(B) in an appropriate district court of the United States, subject to paragraph (3) of this subsection.

(2) If a consumer finally prevails in any action brought under paragraph (1) of this subsection, he may be allowed by the court to recover as part of the judgment a sum equal to the aggregate amount of cost and expenses (including attorneys' fees based on actual time expended) determined by the court to have been reasonably incurred by the plaintiff for or in connection with the commencement and prosecution of such action, unless the court in its discretion shall determine that such an award of attorneys' fees would be inappropriate.

(3) No claim shall be cognizable in a suit brought under paragraph (1)(B) of this subsection—

(A) if the amount in controversy of any individual claim is less than the sum or value of \$25;

(B) if the amount in controversy is less than the sum or value of \$50,000 (exclusive of interests and costs) computed on the basis of all claims to be determined in this suit; or

(C) if the action is brought as a class action, and the number of named plaintiffs is less than one hundred.

**(e) Class actions; conditions; procedures applicable**

No action (other than a class action or an action respecting a warranty to which subsection (a)(3) applies) may be brought under subsection (d) for failure to comply with any obligation under any written or implied warranty or service contract, and a class of consumers may not proceed in a class action under such subsection with respect to such a failure except to the extent the court determines necessary to establish the representative capacity of the named plaintiffs, unless the person obligated under the warranty or service contract is afforded a reasonable opportunity to cure such failure to comply. In the case of such a class action (other than a class action respecting a warranty to which subsection (a)(3) applies) brought under subsection (d) for breach of any written or implied warranty or service contract, such reasonable opportunity will be afforded by the named plaintiffs and they shall at that time notify the defendant that they are acting on behalf of the class. In the case of such a class action which is brought in a district court of the United States, the representative capacity of the named plaintiffs shall be established in the application of rule 23 of the Federal Rules of Civil Procedure.

**(f) Warrantors subject to enforcement of remedies**

For purposes of this section, only the warrantor actually making a written affirmation of fact, promise, or undertaking shall be deemed to have created a written warranty, and any rights arising thereunder may be enforced under this section only against such warrantor and no other person.

(Pub. L. 93–637, title I, §110, Jan. 4, 1975, 88 Stat. 2189.)

## REFERENCES IN TEXT

Rule 23 of the Federal Rules of Civil Procedure, referred to in subsecs. (a)(3) and (e), is set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

## §2311. Applicability to other laws

**(a) Federal Trade Commission Act and Federal Seed Act**

(1) Nothing contained in this chapter shall be construed to repeal, invalidate, or supersede the Federal Trade Commission Act [15 U.S.C. 41 et seq.] or any statute defined therein as an Antitrust Act.

(2) Nothing in this chapter shall be construed to repeal, invalidate, or supersede the Federal Seed Act [7 U.S.C. 1551 et seq.] and nothing in this chapter shall apply to seed for planting.

**(b) Rights, remedies, and liabilities**

(1) Nothing in this chapter shall invalidate or restrict any right or remedy of any consumer under State law or any other Federal law.

(2) Nothing in this chapter (other than sections 2308 and 2304(a)(2) and (4) of this title) shall (A) affect the liability of, or impose liability on, any person for personal injury, or (B) supersede any provision of State law regarding consequential damages for injury to the person or other injury.

**(c) State warranty laws**

(1) Except as provided in subsection (b) and in paragraph (2) of this subsection, a State requirement—

(A) which relates to labeling or disclosure with respect to written warranties or performance thereunder;

(B) which is within the scope of an applicable requirement of sections 2302, 2303, and 2304 of this title (and rules implementing such sections), and

(C) which is not identical to a requirement of section 2302, 2303, or 2304 of this title (or a rule thereunder),

shall not be applicable to written warranties complying with such sections (or rules thereunder).

(2) If, upon application of an appropriate State agency, the Commission determines (pursuant to rules issued in accordance with section 2309 of this title) that any requirement of such State covering any transaction to which this chapter applies (A) affords protection to consumers greater than the requirements of this chapter and (B) does not unduly burden interstate commerce, then such State requirement shall be applicable (notwithstanding the provisions of paragraph (1) of this subsection) to the extent specified in such determination for so long as the State administers and enforces effectively any such greater requirement.

**(d) Other Federal warranty laws**

This chapter (other than section 2302(c) of this title) shall be inapplicable to any written warranty the making or content of which is otherwise governed by Federal law. If only a portion of a written warranty is so governed by Federal law, the remaining portion shall be subject to this chapter.

(Pub. L. 93–637, title I, §111, Jan. 4, 1975, 88 Stat. 2192.)

## REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in subsec. (a)(1), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables.

The Antitrust Acts, referred to in subsec. (a)(1), are defined in section 44 of this title.

The Federal Seed Act, referred to in subsec. (a)(2), is act [Aug. 9, 1939, ch. 615](#), 53 Stat. 1275, as amended, which is classified generally to chapter 37 (§1551 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1551 of Title 7 and Tables.

## **§2312. Effective dates**

### **(a) Effective date of chapter**

Except as provided in subsection (b) of this section, this chapter shall take effect 6 months after January 4, 1975, but shall not apply to consumer products manufactured prior to such date.

### **(b) Effective date of section 2302(a)**

Section 2302(a) of this title shall take effect 6 months after the final publication of rules respecting such section; except that the Commission, for good cause shown, may postpone the applicability of such sections until one year after such final publication in order to permit any designated classes of suppliers to bring their written warranties into compliance with rules promulgated pursuant to this chapter.

### **(c) Promulgation of rules**

The Commission shall promulgate rules for initial implementation of this chapter as soon as possible after January 4, 1975, but in no event later than one year after such date.

(Pub. L. 93-637, title I, §112, Jan. 4, 1975, 88 Stat. 2192.)



Displaying title 16, up to date as of 12/30/2021. Title 16 was last amended 12/09/2021.

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# Title 16

## PART 700 - INTERPRETATIONS OF MAGNUSON-MOSS WARRANTY ACT

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

**Source:** 42 FR 36114, July 13, 1977, unless otherwise noted.

### § 700.1 Products covered.

- (a) The Act applies to written warranties on tangible personal property which is normally used for personal, family, or household purposes. This definition includes property which is intended to be attached to or installed in any real property without regard to whether it is so attached or installed. This means that a product is a “consumer product” if the use of that type of product is not uncommon. The percentage of sales or the use to which a product is put by any individual buyer is not determinative. For example, products such as automobiles and typewriters which are used for both personal and commercial purposes come within the definition of consumer product. Where it is unclear whether a particular product is covered under the definition of consumer product, any ambiguity will be resolved in favor of coverage.
- (b) Agricultural products such as farm machinery, structures and implements used in the business or occupation of farming are not covered by the Act where their personal, family, or household use is uncommon. However, those agricultural products normally used for personal or household gardening (for example, to produce goods for personal consumption, and not for resale) are consumer products under the Act.
- (c) The definition of “Consumer product” limits the applicability of the Act to personal property, “including any such property intended to be attached to or installed in any real property without regard to whether it is so attached or installed.” This provision brings under the Act separate items of equipment attached to real property, such as air conditioners, furnaces, and water heaters.
- (d) The coverage of separate items of equipment attached to real property includes, but is not limited to, appliances and other thermal, mechanical, and electrical equipment. (It does not extend to the wiring, plumbing, ducts, and other items which are integral component parts of the structure.) State law would classify many such products as fixtures to, and therefore a part of, realty. The statutory definition is designed to bring such products under the Act regardless of whether they may be considered fixtures under state law.

- (e) The coverage of building materials which are not separate items of equipment is based on the nature of the purchase transaction. An analysis of the transaction will determine whether the goods are real or personal property. The numerous products which go into the construction of a consumer dwelling are all consumer products when sold "over the counter," as by hardware and building supply retailers. This is also true where a consumer contracts for the purchase of such materials in connection with the improvement, repair, or modification of a home (for example, paneling, dropped ceilings, siding, roofing, storm windows, remodeling). However, where such products are at the time of sale integrated into the structure of a dwelling they are not consumer products as they cannot be practically distinguished from realty. Thus, for example, the beams, wallboard, wiring, plumbing, windows, roofing, and other structural components of a dwelling are not consumer products when they are sold as part of real estate covered by a written warranty.
- (f) In the case where a consumer contracts with a builder to construct a home, a substantial addition to a home, or other realty (such as a garage or an in-ground swimming pool) the building materials to be used are not consumer products. Although the materials are separately identifiable at the time the contract is made, it is the intention of the parties to contract for the construction of realty which will integrate the component materials. Of course, as noted above, any separate items of equipment to be attached to such realty are consumer products under the Act.
- (g) Certain provisions of the Act apply only to products actually costing the consumer more than a specified amount. Section 103, 15 U.S.C. 2303, applies to consumer products actually costing the consumer more than \$10, excluding tax. The \$10 minimum will be interpreted to include multiple-packaged items which may individually sell for less than \$10, but which have been packaged in a manner that does not permit breaking the package to purchase an item or items at a price less than \$10. Thus, a written warranty on a dozen items packaged and priced for sale at \$12 must be designated, even though identical items may be offered in smaller quantities at under \$10. This interpretation applies in the same manner to the minimum dollar limits in section 102, 15 U.S.C. 2302, and rules promulgated under that section.
- (h) Warranties on replacement parts and components used to repair consumer products are covered; warranties on services are not covered. Therefore, warranties which apply solely to a repairer's workmanship in performing repairs are not subject to the Act. Where a written agreement warrants both the parts provided to effect a repair and the workmanship in making that repair, the warranty must comply with the Act and the rules thereunder.
- (i) The Act covers written warranties on consumer products "distributed in commerce" as that term is defined in section 101(13), 15 U.S.C. 2301(13). Thus, by its terms the Act arguably applies to products exported to foreign jurisdictions. However, the public interest would not be served by the use of Commission resources to enforce the Act with respect to such products. Moreover, the legislative intent to apply the requirements of the Act to such products is not sufficiently clear to justify such an extraordinary result. The Commission does not contemplate the enforcement of the Act with respect to consumer products exported to foreign jurisdictions. Products exported for sale at military post exchanges remain subject to the same enforcement standards as products sold within the United States, its territories and possessions.

*[42 FR 36114, July 13, 1977, as amended at 80 FR 42721, July 20, 2015]*

## **§ 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. When a consumer purchases repair of a consumer product the date of manufacture of any replacement parts used is the measuring date for determining coverage under the Act. The date of manufacture of the consumer product being repaired is in this instance not relevant. Where a consumer purchases or obtains on an exchange basis a rebuilt consumer product, the date that the rebuilding process is completed determines the Act's applicability.

*[42 FR 36114, July 13, 1977; 42 FR 38341, July 28, 1977, as amended at 80 FR 42721, July 20, 2015]*

## **§ 700.3 Written warranty.**

- (a) The Act imposes specific duties and liabilities on suppliers who offer written warranties on consumer products. Certain representations, such as energy efficiency ratings for electrical appliances, care labeling of wearing apparel, and other product information disclosures may be express warranties under the Uniform Commercial Code. However, these disclosures alone are not written warranties under this Act. Section 101(6), 15 U.S.C. 2301(6), provides that a written affirmation of fact or a written promise of a specified level of performance must relate to a specified period of time in order to be considered a "written warranty."<sup>[1]</sup> A product information disclosure without a specified time period to which the disclosure relates is therefore not a written warranty. In addition, section 111(d), 15 U.S.C. 2311(d), exempts from the

Act (except section 102(c), 15 U.S.C. 2302(c)) any written warranty the making or content of which is required by federal law. The Commission encourages the disclosure of product information which is not deceptive and which may benefit consumers, and will not construe the Act to impede information disclosure in product advertising or labeling.

- (b) Certain terms, or conditions, of sale of a consumer product may not be “written warranties” as that term is defined in section 101(6), 15 U.S.C. 2301(6), and should not be offered or described in a manner that may deceive consumers as to their enforceability under the Act. For example, a seller of consumer products may give consumers an unconditional right to revoke acceptance of goods within a certain number of days after delivery without regard to defects or failure to meet a specified level of performance. Or a seller may permit consumers to return products for any reason for credit toward purchase of another item. Such terms of sale taken alone are not written warranties under the Act. Therefore, suppliers should avoid any characterization of such terms of sale as warranties. The use of such terms as “free trial period” and “trade-in credit policy” in this regard would be appropriate. Furthermore, such terms of sale should be stated separately from any written warranty. Of course, the offering and performance of such terms of sale remain subject to section 5 of the Federal Trade Commission Act, 15 U.S.C. 45.
- (c) The Magnuson-Moss Warranty Act generally applies to written warranties covering consumer products. Many consumer products are covered by warranties which are neither intended for, nor enforceable by, consumers. A common example is a warranty given by a component supplier to a manufacturer of consumer products. (The manufacturer may, in turn, warrant these components to consumers.) The component supplier's warranty is generally given solely to the product manufacturer, and is neither intended to be conveyed to the consumer nor brought to the consumer's attention in connection with the sale. Such warranties are not subject to the Act, since a written warranty under section 101(6) of the Act, 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.” However, the Act applies to a component supplier's warranty in writing which is given to the consumer. An example is a supplier's written warranty to the consumer covering a refrigerator that is sold installed in a boat or recreational vehicle. The supplier of the refrigerator relies on the boat or vehicle assembler to convey the written agreement to the consumer. In this case, the supplier's written warranty is to a consumer, and is covered by the Act.

[42 FR 36114, July 13, 1977, as amended at 80 FR 42721, July 20, 2015]

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#### FOOTNOTES - 700.3

[1] A “written warranty” is also created by a written affirmation of fact or a written promise that the product is defect free, or by a written undertaking of remedial action within the meaning of section 101(6)(B), 15 U.S.C. 2301(6)(B).

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#### § 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. A supplier who does no more than distribute or sell a consumer product covered by a written warranty offered by another person or business and which identifies that person or business as the warrantor is not liable for failure of the written warranty to comply with the Act or rules thereunder. However, other actions and written and oral representations of such a supplier in connection with the offer or sale of a warranted product may obligate that supplier under the Act. If under State law the supplier is deemed to have “adopted” the written affirmation of fact, promise, or undertaking, the supplier is also obligated under the Act. Suppliers are advised to consult State law to determine those actions and representations which may make them co-warrantors, and therefore obligated under the warranty of the other person or business.

[42 FR 36114, July 13, 1977, as amended at 80 FR 42721, July 20, 2015]

#### § 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. For example, policies which have an express limitation of duration or a limitation of the amount to be refunded are not

exempted. This does not preclude the imposition of reasonable limitations based on the circumstances in each instance a consumer seeks to invoke such an agreement. For instance, a warrantor may refuse to honor such an expression of policy where a consumer has used a product for 10 years without previously expressing any dissatisfaction with the product. Such a refusal would not be a specific limitation under this provision.

*[42 FR 36114, July 13, 1977, as amended at 80 FR 42721, July 20, 2015]*

### **§ 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". Warrantors may include a statement of duration in a limited warranty designation. The designation or designations should appear clearly and conspicuously as a caption, or prominent title, clearly separated from the text of the warranty. The full (statement of duration) warranty and limited warranty are the exclusive designations permitted under the Act, unless a specific exception is created by rule.
- (b) 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. Therefore, a full warranty may not expressly restrict the warranty rights of a transferee during its stated duration. However, where the duration of a full warranty is defined solely in terms of first purchaser ownership there can be no violation of section 104(b)(4), 15 U.S.C. 2304(b)(4), since the duration of the warranty expires, by definition, at the time of transfer. No rights of a subsequent transferee are cut off as there is no transfer of ownership "during the duration of (any) warranty." Thus, these provisions do not preclude the offering of a full warranty with its duration determined exclusively by the period during which the first purchaser owns the product, or uses it in conjunction with another product. For example, an automotive battery or muffler warranty may be designated as "full warranty for as long as you own your car." Because this type of warranty leads the consumer to believe that proof of purchase is not needed so long as he or she owns the product a duty to furnish documentary proof may not be reasonably imposed on the consumer under this type of warranty. The burden is on the warrantor to prove that a particular claimant under this type of warranty is not the original purchaser or owner of the product. Warrantors or their designated agents may, however, ask consumers to state or affirm that they are the first purchaser of the product.

*[42 FR 36114, July 13, 1977, as amended at 80 FR 42721, July 20, 2015]*

### **§ 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. Warrantors have in the past stipulated the return of a "warranty registration" or similar card. By "warranty registration card" the Commission means a card which must be returned by the consumer shortly after purchase of the product and which is stipulated or implied in the warranty to be a condition precedent to warranty coverage and performance.
- (b) A requirement that the consumer return a warranty registration card or a similar notice as a condition of performance under a full warranty is an unreasonable duty. Thus, a provision such as, "This warranty is void unless the warranty registration card is returned to the warrantor" is not permissible in a full warranty, nor is it permissible to imply such a condition in a full warranty.
- (c) This does not prohibit the use of such registration cards where a warrantor suggests use of the card as one possible means of proof of the date the product was purchased. For example, it is permissible to provide in a full warranty that a consumer may fill out and return a card to place on file proof of the date the product was purchased. Any such suggestion to the consumer must include notice that failure to return the card will not affect rights under the warranty, so long as the consumer can show in a reasonable manner the date the product was purchased. Nor does this interpretation prohibit a seller from obtaining from purchasers at the time of sale information requested by the warrantor.

*[42 FR 36114, July 13, 1977, as amended at 80 FR 42721, July 20, 2015]*

### **§ 700.8 Warrantor's decision as final.**

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

[42 FR 36114, July 13, 1977, as amended at 80 FR 42721, July 20, 2015]

### **§ 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. If the warranted product has utility only when installed, a full warranty must provide such installation without charge regardless of whether or not the consumer originally paid for installation by the warrantor or his agent. However, this does not preclude the warrantor from imposing on the consumer a duty to remove, return, or reinstall where such duty can be demonstrated by the warrantor to meet the standard of reasonableness under section 104(b)(1), 15 U.S.C. 2304(b)(1).

[42 FR 36114, July 13, 1977, as amended at 80 FR 42721, July 20, 2015]

### **§ 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. A warrantor or his designated representative may not provide parts under the warranty in a manner which impedes or precludes the choice by the consumer of the person or business to perform necessary labor to install such parts.
- (c) No warrantor may condition the continued validity of a warranty on the use of only authorized repair service and/or authorized replacement parts for non-warranty service and maintenance (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 the warranty. This does not preclude a warrantor from expressly excluding liability for defects or damage caused by "unauthorized" articles or service; nor does it preclude the warrantor from denying liability where the warrantor can demonstrate that the defect or damage was so caused.

[42 FR 36114, July 13, 1977, as amended at 80 FR 42721, July 20, 2015]

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

- (a) The Act recognizes two types of agreements which may provide similar coverage of consumer products, the written warranty, and the service contract. In addition, other agreements may meet the statutory definitions of either "written warranty" or "service contract," but are sold and regulated under state law as contracts of insurance. One example is the automobile breakdown insurance policies sold in many jurisdictions and regulated by the state as a form of casualty insurance. The McCarran-Ferguson Act, 15 U.S.C. 1011 *et seq.*, 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. This means that it must be conveyed at the time of sale of the consumer product and the consumer must not give any consideration beyond the purchase price of the consumer product in order to benefit from the agreement. It is not a requirement of the Act that an agreement obligate a supplier of the consumer product to a written warranty, but merely that it be part of the basis of the bargain between a supplier and a consumer. This contemplates written warranties by third-party non-suppliers.
- (c) A service contract under the Act must meet the definitions of section 101(8), 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 test is a service contract. For example, an agreement which calls for some consideration in addition to the purchase price of the consumer product, or which is entered into at some date after the purchase of the consumer product to which it applies, is a service contract. An agreement which relates only to the performance of maintenance and/or inspection services and which is not an undertaking, promise, or affirmation with respect to a specified level of performance, or that the product is free of defects in materials or workmanship, is a service contract. An agreement to perform periodic cleaning and inspection of a product over a specified period of time, even when offered at the time of sale and without charge to the consumer, is an example of such a service contract.

*[42 FR 36114, July 13, 1977, as amended at 80 FR 42722, July 20, 2015]*

#### **§ 700.12 Effective date of 16 CFR parts 701 and 702.**

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



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# Title 16

## **PART 701 - DISCLOSURE OF WRITTEN CONSUMER PRODUCT WARRANTY TERMS AND CONDITIONS**

**Authority:** 15 U.S.C. 2302 and 2309.

**Source:** 40 FR 60188, Dec. 31, 1975, unless otherwise noted.

### **§ 701.1 Definitions.**

- (a) *The Act* means the Magnuson-Moss Warranty Federal Trade Commission Improvement Act, 15 U.S.C. 2301, *et seq.*
- (b) *Consumer product* means any tangible personal property which is distributed in commerce and which is normally used for personal, family, or household purposes (including any such property intended to be attached to or installed in any real property without regard to whether it is so attached or installed. Products which are purchased solely for commercial or industrial use are excluded solely for purposes of this part.
- (c) *Written warranty* means:
  - (1) Any written affirmation of fact or written promise made in connection with the sale of a consumer product by a supplier to a buyer which relates to the nature of the material or workmanship and affirms or promises that such material or workmanship is defect free or will meet a specified level of performance over a specified period of time, or
  - (2) Any undertaking in writing in connection with the sale by a supplier of a consumer product to refund, repair, replace, or take other remedial action with respect to such product in the event that such product fails to meet the specifications set forth in the undertaking, which written affirmation, promise or undertaking becomes part of the basis of the bargain between a supplier and a buyer for purposes other than resale of such product.
- (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.
- (e) *Remedy* means whichever of the following actions the warrantor elects:
  - (1) Repair,
  - (2) Replacement, or
  - (3) Refund; except that the warrantor may not elect refund unless:
    - (i) The warrantor is unable to provide replacement and repair is not commercially practicable or cannot be timely made, or
    - (ii) The consumer is willing to accept such refund.
- (f) *Supplier* means any person engaged in the business of making a consumer product directly or indirectly available to consumers.

- (g) **Manufacturer** means any person engaged in the business of making a consumer product.
- (h) **Warrantor** means any supplier, manufacturer, or other person who gives or offers to give a written warranty.
- (i) **Consumer** means a buyer (other than for purposes of resale or use in the ordinary course of the buyer's business) of any consumer product, any person to whom such product is transferred during the duration of an implied or written warranty applicable to the product, and any other such person who is entitled by the terms of such warranty or under applicable State law to enforce against the warrantor the obligations of the warranty.
- (j) **On the face of the warranty** means:
  - (1) Where the warranty is a single sheet with printing on both sides of the sheet or where the warranty is comprised of more than one sheet, the page on which the warranty text begins;
  - (2) Where the warranty is included as part of a larger document, such as a use and care manual, the page in such document on which the warranty text begins;
  - (3) Where the warranty is on an Internet Web site or displayed electronically, in close proximity to the location where the warranty text begins.

[40 FR 60188, Dec. 31, 1975, as amended at 80 FR 42722, July 20, 2015; 81 FR 63669, Sept. 15, 2016]

### § 701.2 Scope.

The regulations in this part establish requirements for warrantors for disclosing the terms and conditions of written warranties on consumer products actually costing the consumer more than \$15.00.

### § 701.3 Written warranty terms.

- (a) Any warrantor warranting to a consumer by means of a written warranty a consumer product actually costing the consumer more than \$15.00 shall clearly and conspicuously disclose in a single document in simple and readily understood language, the following items of information:
  - (1) The identity of the party or parties to whom the written warranty is extended, if the enforceability of the written warranty is limited to the original consumer purchaser or is otherwise limited to persons other than every consumer owner during the term of the warranty;
  - (2) A clear description and identification of products, or parts, or characteristics, or components or properties covered by and where necessary for clarification, excluded from the warranty;
  - (3) A statement of what the warrantor will do in the event of a defect, malfunction or failure to conform with the written warranty, including the items or services the warrantor will pay for or provide, and, where necessary for clarification, those which the warrantor will not pay for or provide;
  - (4) The point in time or event on which the warranty term commences, if different from the purchase date, and the time period or other measurement of warranty duration;
  - (5) A step-by-step explanation of the procedure which the consumer should follow in order to obtain performance of any warranty obligation, including the persons or class of persons authorized to perform warranty obligations. This includes the name(s) of the warrantor(s), together with: The mailing address(es) of the warrantor(s), and/or the name or title and the address of any employee or department of the warrantor responsible for the performance of warranty obligations, and/or a telephone number which consumers may use without charge to obtain information on warranty performance;
  - (6) Information respecting the availability of any informal dispute settlement mechanism elected by the warrantor in compliance with part 703 of this subchapter;
  - (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.

- (8) Any exclusions of or limitations on relief such as incidental or consequential damages, accompanied by the following statement, which may be combined with the statement required in paragraph (a)(7) of this section:

Some States do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to you.

- (9) A statement in the following language:

This warranty gives you specific legal rights, and you may also have other rights which vary from State to State.

- (b) Paragraphs (a) (1) through (9) of this section shall not be applicable with respect to statements of general policy on emblems, seals or insignias issued by third parties promising replacement or refund if a consumer product is defective, which statements contain no representation or assurance of the quality or performance characteristics of the product; *Provided That:* (1) The disclosures required by paragraphs (a)

(1) through (9) of this section are published by such third parties in each issue of a publication with a general circulation, and

(2) such disclosures are provided free of charge to any consumer upon written request.

*[40 FR 60188, Dec. 31, 1975, as amended at 80 FR 42722, July 20, 2015]*

#### **§ 701.4 Owner registration cards.**

When a warrantor employs any card such as an owner's registration card, a warranty registration card, or the like, and the return of such card is a condition precedent to warranty coverage and performance, the warrantor shall disclose this fact in the warranty. If the return of such card reasonably appears to be a condition precedent to warranty coverage and performance, but is not such a condition, that fact shall be disclosed in the warranty.



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# Title 16

## PART 702 - PRE-SALE AVAILABILITY OF WRITTEN WARRANTY TERMS

**Authority:** 15 U.S.C. 2302 and 2309.

**Source:** 40 FR 60189, Dec. 31, 1975, unless otherwise noted.

### § 702.1 Definitions.

- (a) *The Act* means the Magnuson-Moss Warranty Federal Trade Commission Improvement Act, 15 U.S.C. 2301, *et seq.*
- (b) *Consumer product* means any tangible personal property which is distributed in commerce and which is normally used for personal, family, or household purposes (including any such property intended to be attached to or installed in any real property without regard to whether it is so attached or installed). Products which are purchased solely for commercial or industrial use are excluded solely for purposes of this part.
- (c) *Written warranty* means -
  - (1) Any written affirmation of fact or written promise made in connection with the sale of a consumer product by a supplier to a buyer which relates to the nature of the material or workmanship and affirms or promises that such material or workmanship is defect free or will meet a specified level of performance over a specified period of time, or
  - (2) Any undertaking in writing in connection with the sale by a supplier of a consumer product to refund, repair, replace or take other remedial action with respect to such product in the event that such product fails to meet the specifications set forth in the undertaking,  
  
which written affirmation, promise, or undertaking becomes part of the basis of the bargain between a supplier and a buyer for purposes other than resale of such product.
- (d) *Warrantor* means any supplier, manufacturer, or other person who gives or offers to give a written warranty.
- (e) *Seller* means any person who sells or offers for sale for purposes other than resale or use in the ordinary course of the buyer's business any consumer product.
- (f) *Supplier* means any person engaged in the business of making a consumer product directly or indirectly available to consumers.
- (g) *Manufacturer* means any person engaged in the business of making a consumer product.

[40 FR 60189, Dec. 31, 1975, as amended at 52 FR 7574, Mar. 12, 1987; 81 FR 63669, Sept. 15, 2016]

### § 702.2 Scope.

The regulations in this part establish requirements for sellers and warrantors for making the terms of any written warranty on a consumer product available to the consumer prior to sale.

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

The following requirements apply to consumer products actually costing the consumer more than \$15.00:

- (a) **Duties of seller.** Except as provided in paragraphs (c) through (d) of this section, the seller of a consumer product with a written warranty shall make a text of the warranty readily available for examination by the prospective buyer by:
- (1) Displaying it in close proximity to the warranted product (including through electronic or other means, if the warrantor has elected the option described in paragraph (b)(2) of this section), or
  - (2) Furnishing it upon request prior to sale (including through electronic or other means, if the warrantor has elected the option described in paragraph (b)(2) of this section) and placing signs reasonably calculated to elicit the prospective buyer's attention in prominent locations in the store or department advising such prospective buyers of the availability of warranties upon request.
- (b) **Duties of the warrantor.**
- (1) A warrantor who gives a written warranty warranting to a consumer a consumer product actually costing the consumer more than \$15.00 shall:
    - (i) Provide sellers with warranty materials necessary for such sellers to comply with the requirements set forth in paragraph (a) of this section, by the use of one or more of the following means:
      - (A) Providing a copy of the written warranty with every warranted consumer product;
      - (B) Providing a tag, sign, sticker, label, decal or other attachment to the product, which contains the full text of the written warranty;
      - (C) Printing on or otherwise attaching the text of the written warranty to the package, carton, or other container if that package, carton or other container is normally used for display purposes. If the warrantor elects this option a copy of the written warranty must also accompany the warranted product; or
      - (D) Providing a notice, sign, or poster disclosing the text of a consumer product warranty. If the warrantor elects this option, a copy of the written warranty must also accompany each warranted product.
    - (ii) Provide catalog, mail order, and door-to-door sellers with copies of written warranties necessary for such sellers to comply with the requirements set forth in paragraphs (c) and (d) of this section.
  - (2) As an alternative method of compliance with paragraph (b)(1) of this section, a warrantor may provide the warranty terms in an accessible digital format on the warrantor's Internet Web site. If the warrantor elects this option, the warrantor must:
    - (i) Provide information to the consumer that will inform the consumer how to obtain warranty terms by indicating, in a clear and conspicuous manner, in the product manual or on the product or product packaging:
      - (A) The Internet Web site of the warrantor where such warranty terms can be reviewed, and
      - (B) The phone number, the postal mailing address of the warrantor, or other reasonable non-Internet based means for the consumer to request a copy of the warranty terms;
    - (ii) Provide a hard copy of the warranty terms promptly and free of charge upon request by a consumer or seller made pursuant to paragraph (b)(2)(i)(B) of this section;
    - (iii) Ensure that warranty terms are posted in a clear and conspicuous manner and remain accessible to the consumer on the Internet Web site of the warrantor; and
    - (iv) Provide information with the consumer product or on the Internet Web site of the warrantor sufficient to allow the consumer to readily identify on such Internet Web sites the warranty terms that apply to the specific warranted product.
  - (3) Paragraph (a)(1) of this section shall not be applicable with respect to statements of general policy on emblems, seals or insignias issued by third parties promising replacement or refund if a consumer product is defective, which statements contain no representation or assurance of the quality or performance characteristics of the product; provided that
    - (i) The disclosures required by § 701.3(a)(1) through (9) of this chapter are published by such third parties in each issue of a publication with a general circulation, and

- (ii) Such disclosures are provided free of charge to any consumer upon written request.
- (c) **Catalog and mail order sales.**
- (1) For purposes of this paragraph:
    - (i) Catalog or mail order sales means any offer for sale, or any solicitation for an order for a consumer product with a written warranty, which includes instructions for ordering the product which do not require a personal visit to the seller's establishment.
    - (ii) Close conjunction means on the page containing the description of the warranted product, or on the page facing that page.
  - (2) Any seller who offers for sale to consumers consumer products with written warranties by means of a catalog or mail order solicitation shall clearly and conspicuously disclose in such catalog or solicitation in close conjunction to the description of the warranted product, or in an information section of the catalog or solicitation clearly referenced, including a page number, in close conjunction to the description of the warranted product, either:
    - (i) The full text of the written warranty; or
    - (ii) The address of the Internet Web site of the warrantor where such warranty terms can be reviewed (if such Internet Web site exists), as well as that the written warranty can be obtained free upon specific request, and the address or phone number where such warranty can be requested. If this option is elected, such seller shall promptly provide a copy of any written warranty requested by the consumer (and may provide such copy through electronic or other means, if the warrantor has elected the option described in paragraph (b)(2) of this section).
- (d) **Door-to-door sales.**
- (1) For purposes of this paragraph:
    - (i) Door-to-door sale means a sale of consumer products in which the seller or his representative personally solicits the sale, including those in response to or following an invitation by a buyer, and the buyer's agreement to offer to purchase is made at a place other than the place of business of the seller.
    - (ii) Prospective buyer means an individual solicited by a door-to-door seller to buy a consumer product who indicates sufficient interest in that consumer product or maintains sufficient contact with the seller for the seller reasonably to conclude that the person solicited is considering purchasing the product.
  - (2) Any seller who offers for sale to consumers consumer products with written warranties by means of door-to-door sales shall, prior to the consummation of the sale, disclose the fact that the sales representative has copies of the warranties for the warranted products being offered for sale, which may be inspected by the prospective buyer at any time during the sales presentation. Such disclosure shall be made orally and shall be included in any written materials shown to prospective buyers. If the warrantor has elected the option described in paragraph (b)(2) of this section, the sales representative may provide a copy of the warranty through electronic or other means.

[81 FR 63669, Sept. 15, 2016]



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# Title 16

## PART 703 - INFORMAL DISPUTE SETTLEMENT PROCEDURES

**Authority:** 15 U.S.C. 2309 and 2310.

**Source:** 40 FR 60215, Dec. 31, 1975, unless otherwise noted.

### § 703.1 Definitions.

- (a) *The Act* means the Magnuson-Moss Warranty - Federal Trade Commission Improvement Act, 15 U.S.C. 2301, *et seq.*
- (b) *Consumer product* means any tangible personal property which is distributed in commerce and which is normally used for personal, family, or household purposes (including any such property intended to be attached to or installed in any real property without regard to whether it is so attached or installed).
- (c) *Written warranty* means:
  - (1) Any written affirmation of fact or written promise made in connection with the sale of a consumer product by a supplier to a buyer which relates to the nature of the material or workmanship and affirms or promises that such material or workmanship is defect free or will meet a specified level of performance over a specified period of time, or
  - (2) Any undertaking in writing in connection with the sale by a supplier of a consumer product to refund, repair, replace, or take other remedial action with respect to such product in the event that such product fails to meet the specifications set forth in the undertaking, which written affirmation, promise or undertaking becomes part of the basis of the bargain between a supplier and a buyer for purposes other than resale of such product.
- (d) *Warrantor* means any person who gives or offers to give a written warranty which incorporates an informal dispute settlement mechanism.
- (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.
- (f) *Members* means the person or persons within a Mechanism actually deciding disputes.
- (g) *Consumer* means a buyer (other than for purposes of resale) of any consumer product, any person to whom such product is transferred during the duration of a written warranty applicable to the product, and any other person who is entitled by the terms of such warranty or under applicable state law to enforce against the warrantor the obligations of the warranty.
- (h) *On the face of the warranty* means:



- (1) If the warranty is a single sheet with printing on both sides of the sheet, or if the warranty is comprised of more than one sheet, the page on which the warranty text begins;
- (2) If the warranty is included as part of a longer document, such as a use and care manual, the page in such document on which the warranty text begins.

*[40 FR 60215, Dec. 31, 1975, as amended at 80 FR 42722, July 20, 2015]*

### **§ 703.2 Duties of warrantor.**

- (a) The warrantor shall not incorporate into the terms of a written warranty a Mechanism that fails to comply with the requirements contained in §§ 703.3 through 703.8 of this part. 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.
- (b) The warrantor shall disclose clearly and conspicuously at least the following information on the face of the written warranty:
  - (1) A statement of the availability of the informal dispute settlement mechanism;
  - (2) The name and address of the Mechanism, or the name and a telephone number of the Mechanism which consumers may use without charge;
  - (3) A statement of any requirement that the consumer resort to the Mechanism before exercising rights or seeking remedies created by Title I of the Act; together with the disclosure that if a consumer chooses to seek redress by pursuing rights and remedies not created by Title I of the Act, resort to the Mechanism would not be required by any provision of the Act; and
  - (4) A statement, if applicable, indicating where further information on the Mechanism can be found in materials accompanying the product, as provided in § 703.2(c) of this section.
- (c) The warrantor shall include in the written warranty or in a separate section of materials accompanying the product, the following information:
  - (1) Either
    - (i) A form addressed to the Mechanism containing spaces requesting the information which the Mechanism may require for prompt resolution of warranty disputes; or
    - (ii) A telephone number of the Mechanism which consumers may use without charge;
  - (2) The name and address of the Mechanism;
  - (3) A brief description of Mechanism procedures;
  - (4) The time limits adhered to by the Mechanism; and
  - (5) The types of information which the Mechanism may require for prompt resolution of warranty disputes.
- (d) The warrantor shall take steps reasonably calculated to make consumers aware of the Mechanism's existence at the time consumers experience warranty disputes. Nothing contained in paragraphs (b), (c), or (d) of this section shall limit the warrantor's option to encourage consumers to seek redress directly from the warrantor as long as the warrantor does not expressly require consumers to seek redress directly from the warrantor. The warrantor shall proceed fairly and expeditiously to attempt to resolve all disputes submitted directly to the warrantor.
- (e) Whenever a dispute is submitted directly to the warrantor, the warrantor shall, within a reasonable time, decide whether, and to what extent, it will satisfy the consumer, and inform the consumer of its decision. In its notification to the consumer of its decision, the warrantor shall include the information required in § 703.2 (b) and (c) of this section.
- (f) The warrantor shall:
  - (1) Respond fully and promptly to reasonable requests by the Mechanism for information relating to disputes;
  - (2) Upon notification of any decision of the Mechanism that would require action on the part of the warrantor, immediately notify the Mechanism whether, and to what extent, warrantor will abide by the decision; and
  - (3) Perform any obligations it has agreed to.

- (g) The warrantor shall act in good faith in determining whether, and to what extent, it will abide by a Mechanism decision.
- (h) The warrantor shall comply with any reasonable requirements imposed by the Mechanism to fairly and expeditiously resolve warranty disputes.

[40 FR 60215, Dec. 31, 1975, as amended at 80 FR 42722, July 20, 2015]

## MINIMUM REQUIREMENTS OF THE MECHANISM

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### § 703.3 Mechanism organization.

- (a) The Mechanism shall be funded and competently staffed at a level sufficient to ensure fair and expeditious resolution of all disputes, and shall not charge consumers any fee for use of the Mechanism.
- (b) The warrantor and the sponsor of the Mechanism (if other than the warrantor) shall take all steps necessary to ensure that the Mechanism, and its members and staff, are sufficiently insulated from the warrantor and the sponsor, so that the decisions of the members and the performance of the staff are not influenced by either the warrantor or the sponsor. Necessary steps shall include, at a minimum, committing funds in advance, basing personnel decisions solely on merit, and not assigning conflicting warrantor or sponsor duties to Mechanism staff persons.
- (c) The Mechanism shall impose any other reasonable requirements necessary to ensure that the members and staff act fairly and expeditiously in each dispute.

### § 703.4 Qualification of members.

- (a) No member deciding a dispute shall be:
  - (1) A party to the dispute, or an employee or agent of a party other than for purposes of deciding disputes; or
  - (2) A person who is or may become a party in any legal action, including but not limited to class actions, relating to the product or complaint in dispute, or an employee or agent of such person other than for purposes of deciding disputes. For purposes of this paragraph (a) a person shall not be considered a "party" solely because he or she acquires or owns an interest in a party solely for investment, and the acquisition or ownership of an interest which is offered to the general public shall be prima facie evidence of its acquisition or ownership solely for investment.
- (b) When one or two members are deciding a dispute, all shall be persons having no direct involvement in the manufacture, distribution, sale or service of any product. When three or more members are deciding a dispute, at least two-thirds shall be persons having no direct involvement in the manufacture, distribution, sale or service of any product. "Direct involvement" shall not include acquiring or owning an interest solely for investment, and the acquisition or ownership of an interest which is offered to the general public shall be prima facie evidence of its acquisition or ownership solely for investment. Nothing contained in this section shall prevent the members from consulting with any persons knowledgeable in the technical, commercial or other areas relating to the product which is the subject of the dispute.
- (c) Members shall be persons interested in the fair and expeditious settlement of consumer disputes.

### § 703.5 Operation of the Mechanism.

- (a) The Mechanism shall establish written operating procedures which shall include at least those items specified in paragraphs (b) through (j) of this section. Copies of the written procedures shall be made available to any person upon request.
- (b) Upon notification of a dispute, the Mechanism shall immediately inform both the warrantor and the consumer of receipt of the dispute.
- (c) The Mechanism shall investigate, gather and organize all information necessary for a fair and expeditious decision in each dispute. When any evidence gathered by or submitted to the Mechanism raises issues relating to the number of repair attempts, the length of repair periods, the possibility of unreasonable use of the product, or any other issues relevant in light of Title I of the Act (or rules thereunder), including issues relating to consequential damages, or any other remedy under the Act (or rules thereunder), the Mechanism shall investigate these issues. When information which will or may be used in the decision, submitted by one party, or a consultant under § 703.4(b) of this part, or any other source tends to contradict facts submitted by the other party, the Mechanism shall clearly, accurately, and completely disclose

to both parties the contradictory information (and its source) and shall provide both parties an opportunity to explain or rebut the information and to submit additional materials. The Mechanism shall not require any information not reasonably necessary to decide the dispute.

- (d) If the dispute has not been settled, the Mechanism shall, as expeditiously as possible but at least within 40 days of notification of the dispute, except as provided in paragraph (e) of this section:
- (1) Render a fair decision based on the information gathered as described in paragraph (c) of this section, and on any information submitted at an oral presentation which conforms to the requirements of paragraph (f) of this section (A decision shall include any remedies appropriate under the circumstances, including repair, replacement, refund, reimbursement for expenses, compensation for damages, and any other remedies available under the written warranty or the Act (or rules thereunder); and a decision shall state a specified reasonable time for performance);
  - (2) Disclose to the warrantor its decision and the reasons therefor;
  - (3) If the decision would require action on the part of the warrantor, determine whether, and to what extent, warrantor will abide by its decision; and
  - (4) Disclose to the consumer its decision, the reasons therefor, warrantor's intended actions (if the decision would require action on the part of the warrantor), and the information described in paragraph (g) of this section. For purposes of paragraph (d) of this section a dispute shall be deemed settled when the Mechanism has ascertained from the consumer that:
    - (i) The dispute has been settled to the consumer's satisfaction; and
    - (ii) The settlement contains a specified reasonable time for performance.
- (e) The Mechanism may delay the performance of its duties under paragraph (d) of this section beyond the 40 day time limit:
- (1) Where the period of delay is due solely to failure of a consumer to provide promptly his or her name and address, brand name and model number of the product involved, and a statement as to the nature of the defect or other complaint; or
  - (2) For a 7 day period in those cases where the consumer has made no attempt to seek redress directly from the warrantor.
- (f) The Mechanism may allow an oral presentation by a party to a dispute (or a party's representative) only if:
- (1) Both warrantor and consumer expressly agree to the presentation;
  - (2) Prior to agreement the Mechanism fully discloses to the consumer the following information:
    - (i) That the presentation by either party will take place only if both parties so agree, but that if they agree, and one party fails to appear at the agreed upon time and place, the presentation by the other party may still be allowed;
    - (ii) That the members will decide the dispute whether or not an oral presentation is made;
    - (iii) The proposed date, time and place for the presentation; and
    - (iv) A brief description of what will occur at the presentation including, if applicable, parties' rights to bring witnesses and/or counsel; and
  - (3) Each party has the right to be present during the other party's oral presentation. Nothing contained in this paragraph (b) of this section shall preclude the Mechanism from allowing an oral presentation by one party, if the other party fails to appear at the agreed upon time and place, as long as all of the requirements of this paragraph have been satisfied.
- (g) The Mechanism shall inform the consumer, at the time of disclosure required in paragraph (d) of this section that:
- (1) If he or she is dissatisfied with its decision or warrantor's intended actions, or eventual performance, legal remedies, including use of small claims court, may be pursued;
  - (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
  - (3) The consumer may obtain, at reasonable cost, copies of all Mechanism records relating to the consumer's dispute.

- (h) If the warrantor has agreed to perform any obligations, either as part of a settlement agreed to after notification to the Mechanism of the dispute or as a result of a decision under paragraph (d) of this section, the Mechanism shall ascertain from the consumer within 10 working days of the date for performance whether performance has occurred.
- (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. Except that, if the Mechanism delays performance of its paragraph (d) of this section duties as allowed by paragraph (e) of this section, the requirement that the consumer initially resort to the Mechanism shall not be satisfied until the period of delay allowed by paragraph (e) of this section has ended.
- (j) Decisions of the Mechanism shall not be legally binding on any person. However, the warrantor shall act in good faith, as provided in § 703.2(g) of this part. 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).

*[40 FR 60215, Dec. 31, 1975, as amended at 80 FR 42722, July 20, 2015]*

### **§ 703.6 Recordkeeping.**

- (a) The Mechanism shall maintain records on each dispute referred to it which shall include:
  - (1) Name, address and telephone number of the consumer;
  - (2) Name, address, telephone number and contact person of the warrantor;
  - (3) Brand name and model number of the product involved;
  - (4) The date of receipt of the dispute and the date of disclosure to the consumer of the decision;
  - (5) All letters or other written documents submitted by either party;
  - (6) All other evidence collected by the Mechanism relating to the dispute, including summaries of relevant and material portions of telephone calls and meetings between the Mechanism and any other person (including consultants described in § 703.4(b) of this part);
  - (7) A summary of any relevant and material information presented by either party at an oral presentation;
  - (8) The decision of the members including information as to date, time and place of meeting, and the identity of members voting; or information on any other resolution;
  - (9) A copy of the disclosure to the parties of the decision;
  - (10) A statement of the warrantor's intended action(s);
  - (11) Copies of follow-up letters (or summaries of relevant and material portions of follow-up telephone calls) to the consumer, and responses thereto; and
  - (12) Any other documents and communications (or summaries of relevant and material portions of oral communications) relating to the dispute.
- (b) The Mechanism shall maintain an index of each warrantor's disputes grouped under brand name and sub-grouped under product model.
- (c) The Mechanism shall maintain an index for each warrantor as will show:
  - (1) All disputes in which the warrantor has promised some performance (either by settlement or in response to a Mechanism decision) and has failed to comply; and
  - (2) All disputes in which the warrantor has refused to abide by a Mechanism decision.
- (d) The Mechanism shall maintain an index as will show all disputes delayed beyond 40 days.
- (e) The Mechanism shall compile semi-annually and maintain statistics which show the number and percent of disputes in each of the following categories:
  - (1) Resolved by staff of the Mechanism and warrantor has complied;
  - (2) Resolved by staff of the Mechanism, time for compliance has occurred, and warrantor has not complied;

- (3) Resolved by staff of the Mechanism and time for compliance has not yet occurred;
  - (4) Decided by members and warrantor has complied;
  - (5) Decided by members, time for compliance has occurred, and warrantor has not complied;
  - (6) Decided by members and time for compliance has not yet occurred;
  - (7) Decided by members adverse to the consumer;
  - (8) No jurisdiction;
  - (9) Decision delayed beyond 40 days under § 703.5(e)(1) of this part;
  - (10) Decision delayed beyond 40 days under § 703.5(e)(2) of this part;
  - (11) Decision delayed beyond 40 days for any other reason; and
  - (12) Pending decision.
- (f) The Mechanism shall retain all records specified in paragraphs (a) through (e) of this section for at least 4 years after final disposition of the dispute.

### **§ 703.7 Audits.**

- (a) The Mechanism shall have an audit conducted at least annually, to determine whether the Mechanism and its implementation are in compliance with this part. All records of the Mechanism required to be kept under § 703.6 of this part shall be available for audit.
- (b) Each audit provided for in paragraph (a) of this section shall include at a minimum the following:
  - (1) Evaluation of warrantors' efforts to make consumers aware of the Mechanism's existence as required in § 703.2(d) of this part;
  - (2) Review of the indexes maintained pursuant to § 703.6 (b), (c), and (d) of this part; and
  - (3) Analysis of a random sample of disputes handled by the Mechanism to determine the following:
    - (i) Adequacy of the Mechanism's complaint and other forms, investigation, mediation and follow-up efforts, and other aspects of complaint handling; and
    - (ii) Accuracy of the Mechanism's statistical compilations under § 703.6(e) of this part. (For purposes of this subparagraph "analysis" shall include oral or written contact with the consumers involved in each of the disputes in the random sample.)
- (c) A report of each audit under this section shall be submitted to the Federal Trade Commission, and shall be made available to any person at reasonable cost. The Mechanism may direct its auditor to delete names of parties to disputes, and identity of products involved, from the audit report.
- (d) Auditors shall be selected by the Mechanism. No 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.

### **§ 703.8 Openness of records and proceedings.**

- (a) The statistical summaries specified in § 703.6(e) of this part shall be available to any person for inspection and copying.
- (b) Except as provided under paragraphs (a) and (e) of this section, and paragraph (c) of § 703.7 of this part, all records of the Mechanism may be kept confidential, or made available only on such terms and conditions, or in such form, as the Mechanism shall permit.
- (c) The policy of the Mechanism with respect to records made available at the Mechanism's option shall be set out in the procedures under § 703.5(a) of this part; the policy shall be applied uniformly to all requests for access to or copies of such records.
- (d) Meetings of the members to hear and decide disputes shall be open to observers on reasonable and nondiscriminatory terms. The identity of the parties and products involved in disputes need not be disclosed at meetings.
- (e) Upon request the Mechanism shall provide to either party to a dispute:

- (1) Access to all records relating to the dispute; and
  - (2) Copies of any records relating to the dispute, at reasonable cost.
- (f) The Mechanism shall make available to any person upon request, information relating to the qualifications of Mechanism staff and members.