

**Informal Dispute Settlement Procedures**  
**16 C.F.R. 703**  
**(OMB Control Number 3084-0113)**

**1. Necessity for Collecting the Information**

Section 110(a)(2) of the Magnuson-Moss Warranty Act (15 U.S.C. Section 2301, et seq.) directed the Commission to prescribe rules setting forth the minimum requirements for any informal dispute settlement procedure that the warrantor requires the consumer to use before pursuing any legal action in court. On December 31, 1975, the Commission issued its Rule on Informal Dispute Settlement Procedures, 16 C.F.R. 703 (“the Rule” or “Rule 703”), which sets minimum standards for informal dispute settlement mechanisms (“IDSM”) established to resolve consumer warranty disputes. The purpose of the Rule is to carry out Congress’s intent to encourage the fair and expeditious handling of consumer disputes through the use of alternative dispute resolution methods.

Rule 703 applies only to those warrantors who (1) provide a written warranty, (2) on a consumer product, and (3) place a “prior resort” requirement in their warranty (i.e., require consumers to use a dispute resolution mechanism before exercising their legal remedies in court). Neither the Act nor Rule 703 requires warrantors to set up IDSMs. Furthermore, a warrantor is free to set up an IDSM that does not comply with Rule 703 as long as the warranty does not contain a “prior resort requirement.”

Rule 703 contains procedural standards that must be followed by every IDSM that is incorporated, through a prior resort clause, into the terms of a written consumer product warranty. These standards include requirements concerning the mechanism’s structure, the qualifications of staff or decision makers, the mechanism’s procedures for resolving disputes, recordkeeping, and annual audits.

The recordkeeping provision of the Rule, Section 703.6, requires IDSMs to maintain three types of information:

- (a) Individual records for each dispute submitted to the IDSM [§ 703.6(a)];
- (b) Indexes that categorize disputes by product model and show the extent to which the warrantor has abided by decisions of the mechanism [§ 703.6(b) - (d)]; and
- (c) Statistical summaries that group disputes according to various status and final disposition categories [§ 703.6(e)].

Section 703.6(f) requires the records specified in Section 703.6(a) through (e) to be retained for four years after final disposition of a dispute. Section 703.7 of the Rule requires IDSMs operating under Rule 703 to conduct an annual audit of their procedures and submit the

audit to the FTC.

## **2. Use of the Information**

Information that IDSMs are required to maintain under Section 703.6(f) is available for review by consumers and by the FTC to determine compliance. In addition, the annual audit required under Section 703.7 must be submitted to the Federal Trade Commission, where it is placed on the public record for review by any interested party. Finally, states have incorporated the Rule by reference in many of their “lemon law” statutes and may use the records and audits required by Rule 703 in their own review and enforcement actions.

## **3. Consideration of the Use of Improved Information Technology to Reduce Burden**

Rule 703 requires that warrantors disclose the existence of the IDSM within their written warranties, sets out guidelines for operating the mechanism, and specifies recordkeeping and reporting functions. The recordkeeping functions are the primary area where entities subject to the Rule could employ new or improved information technology to reduce burdens under the Rule. In this regard, the Rule does not specify how the information required to be maintained and reported is to be kept. Thus, those IDSMs subject to the Rule are free to use whatever information systems they wish to use. In addition, there is nothing in Rule 703 that would preclude mechanisms from allowing interested parties the option of viewing audits and other public information online. Indeed, the FTC and some IDSMs make the annual audits available on their websites. Accordingly, consistent with the Government Paperwork Elimination Act, Pub. L. No. 105-277, Title XVII, 112 Stat. 2681-749, nothing in the Rule prescribes that disclosures be made, records filed or kept, or signatures executed, on paper or in any particular format that would preclude the use of electronic methods to comply with the Rule’s requirements.

## **4. Efforts to Identify Duplication/Availability of Similar Information**

There is no other statute or regulation of nationwide applicability that governs the operation of dispute resolution mechanisms for consumer product warranty disputes. Some states have incorporated Rule 703 by reference in their state lemon laws; others have set up arbitration systems under their lemon laws. Where states have set up their own systems, they have used Rule 703 as a guide. Accordingly, staff believes there is little, if any, duplication. There are no other sources of information concerning the operation of the Rule 703 IDSMs.

## **5. Efforts to Minimize the Burden on Small Businesses**

Although warrantors of any size may utilize informal dispute settlement procedures, the IDSMs that currently operate under the Rule are maintained by very large organizations. However, the Rule is flexible in terms of the type of procedures that can be offered. The Act does not require warrantors to set up IDSMs. Furthermore, a warrantor is free to set up an IDSM

that does not comply with Rule 703 as long as the warranty does not contain a “prior resort requirement.” Thus, a small warrantor is free to set up an IDSM that does not comply with Rule 703 if there is no prior resort requirement in the warranty; alternatively, a small warrantor can choose to contract with organizations such as the Better Business Bureau to handle any consumer warranty disputes that might arise.

## **6. Consequences of Conducting the Collection Less Frequently**

If the individual case files required by Section 703.6(a) of the Rule were compiled less frequently, the IDSM would not be able to comply with Section 703.8(e) of the Rule, which requires it to provide (upon request) to either party to a dispute access to all records relating to the dispute and copies of any records relating to the dispute at a reasonable cost. It is essential that these files be maintained by the mechanism and that they be made available to the parties because they would provide the basis for any subsequent arbitration, legal or other proceedings following action by the IDSM.

The indexes required by Section 703.6(b) are intended to enable the mechanism to analyze patterns of complaints and report indications of consistent problems to the warrantor. Less frequent compilation of the information in the index would not affect the Commission’s or the public’s ability to monitor the IDSM’s compliance, but it would prevent the mechanism from imparting useful information to the warrantor.

Less frequent compilation of the indexes required under Sections 703.6(c) and (d) would hamper the Commission’s ability to monitor compliance with the Rule. These indexes provide key indicators of a warrantor’s good faith participation in an IDSM and the mechanism’s ability to resolve disputes expeditiously.

The statistical reporting requirements set forth in Section 703.6(e) provide the basis for review by interested members of the public. On the basis of the statistically-reported performance of an IDSM, an interested person could determine whether to file a complaint with the FTC pursuant to Section 110(a)(4) of the Magnuson-Moss Warranty Act, and thereby initiate an FTC review of the bona fide operation of the IDSM. The statistics required under Section 703.6(e) must be compiled semiannually. If the statistics were compiled less frequently, the ability of the public to evaluate the performance of the IDSM would be hindered.

The audit report is intended to be a comprehensive evaluation of the IDSM’s performance and its compliance with the Rule. If the audit report were required less frequently, public review of the mechanism as well as the Commission’s evaluation of the mechanism would most likely be based on outdated information.

**7. Special Circumstances Requiring Collection Inconsistent With Guidelines**

The collection of information required by the Rule is consistent with all applicable guidelines contained in 5 C.F.R. § 1320.5(d)(2).

**8. Public Comments/Consultation Outside the Agency**

**(a) Public comments**

As a prelude to this request, the Commission sought public comment. See 75 Fed. Reg. 71,704 (Nov. 24, 2010). No comments were received. Pursuant to the OMB regulations that implement the PRA (5 C.F.R. Part 1320), the Commission is providing a second opportunity for public comment while seeking OMB approval to extend the existing paperwork clearance for the Rule.

**(b) Consultation Outside the Agency**

As part of its program of periodic ten-year regulatory review of all Commission rules and guides, the Commission plans to solicit public comments during 2011 on the costs and benefits of Rule 703, as well as its regulatory and economic impact. The Commission has also consulted with industry members as part of its periodic evaluation of Rule 703. At the conclusion of the prior periodic rule review in 1999, the Commission announced that it would retain Rule 703 unchanged (64 Fed. Reg. 19,700; April 22, 1999). During that earlier review, thirteen comments were received. The comments generally reflected strong support for the view that the Rule is achieving the objective it was fashioned to achieve – i.e., to facilitate the fair and expeditious handling of consumer product warranty disputes through informal dispute settlement.

**9. Payments or Gifts to Respondents**

Not applicable. There have been no payments or gifts to respondents in connection with Rule 703.

**10. & 11. Assurances of Confidentiality/Matters of a Sensitive Nature**

Section 703.8(b) of the Rule provides that all records of a mechanism may be kept confidential, except the statistical summaries specified in Section 703.6(e). Therefore, the Rule presents no issues concerning confidentiality or questions of a sensitive nature. The Rule does not require any confidential or sensitive information to be filed with the FTC as part of the audit report mandated by the Rule.

From time to time, the Commission may require a warrantor or IDSM to submit information as part of a law enforcement investigation to determine whether it has engaged in any practices that might have violated Rule 703. Any information provided to the Commission

in connection with such law enforcement investigations is treated as confidential under Sections 6(f) and 21(f) of the Federal Trade Commission Act, 15 U.S.C. § 46(f) and 61(f).

## **12. Hours and Labor Cost Burden**

**Total annual hours burden.** 13,000 hours, rounded to the nearest thousand.

**Recordkeeping Provisions.** The primary burden from the Rule comes from the Rule's recordkeeping requirements that apply to those IDSMs incorporated into a consumer product warranty. The burden of the Rule's disclosure requirements is limited. The Rule requires IDSMs to maintain records of each consumer warranty dispute that is referred to it. These case files must include information such as the consumer's contact information, the make and model of the product at issue, all letters or other correspondence submitted by the consumer or warrantor, and all evidence collected to resolve the dispute. The staff has retained its previous estimate that maintaining individual case files imposes a burden of 30 minutes per case.

The amount of work required will depend on the number of dispute resolution proceedings undertaken in each IDSM. A review of the annual audits completed since the prior submission to OMB in 2007 (audits for calendar years 2006 through 2009) indicates that currently there are two IDSMs operating under the Rule: the BBB AUTO LINE and the National Center for Dispute Settlement (NCDS). The BBB AUTO LINE audits from calendar years 2006 through 2009 indicate that it handled an average of 16,187 disputes each year.<sup>1</sup> Audit reports submitted on behalf of NCDS, which most recently handled disputes on behalf of six automobile manufacturers, indicate that an average of 2,040 disputes were closed each year for calendar years 2006 through 2009.<sup>2</sup>

Based on the above figures, staff estimates that the average number of disputes handled annually by IDSMs covered by the Rule is approximately 18,227 (an average of 16,187 disputes handled by BBB AUTO LINE + an average of 2,040 disputes handled by NCDS).<sup>3</sup> Accordingly,

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<sup>1</sup> According to its annual audits, the number of disputes filed each year with the BBB AUTO LINE are as follows: 20,658 in 2006; 17,365 in 2007; 14,958 in 2008; and 11,768 in 2009. As of its most recent audit in 2009, the BBB AUTO LINE handled disputes on a national basis for thirteen automobile manufacturers. An additional eight manufacturers utilized BBB AUTO LINE in some states, but not others.

<sup>2</sup> According to its annual audits, the number of disputes closed each year with NCDS are as follows: 1,836 in 2006; 1,759 in 2007; 2,110 in 2008; and 2,455 in 2009.

<sup>3</sup> Because the number of annual disputes filed has fluctuated, staff believes that taking the average number of disputes filed for years 2006 through 2009 (the most recent available data) is the best way to project what will happen over the next three years of the OMB clearance for the

staff estimates the total annual recordkeeping burden attributable to the Rule to be approximately 9,114 hours (18,227 disputes x 30 minutes of burden ÷ 60 minutes).

**Reporting Provisions.** The Rule requires IDSMs to update indexes, complete semiannual statistical summaries, and submit an annual audit report to the FTC. Staff retains its previous estimate that covered entities spend approximately 10 minutes per case for these activities, resulting in a total annual burden of approximately 3,038 hours (18,227 disputes x 10 minutes of burden ÷ 60 minutes).

### **Disclosure Requirements.**

#### *Warrantors' Disclosure Burden*

The Rule requires warrantors that elect to incorporate the use of an IDSM into their warranties to disclose in their warranties the following: a statement about the availability of the IDSM, the contact information for the IDSM, and any “prior resort requirement.”<sup>4</sup> In its 2007 submission to OMB, staff noted that any incremental costs to the warrantor of including this additional information in the warranty would be negligible, and thus, did not account for warrantors’ disclosure burden in its previous submission. Upon further review, staff has determined that it would be appropriate to account for the disclosure burden as it relates to warrantors based on two types of additional information that warrantors are required to disclose under the Rule: (1) more detailed information concerning the IDSM and its procedures; and (2) information that makes consumers aware of the existence of the IDSM.

First, the Rule requires that warrantors include, either in the warranty or in a separate document accompanying the warranted product, more detailed information concerning the IDSM. Among other things, this information may include: a form addressed to the IDSM with spaces to be filled out by the consumer to provide the IDSM with information needed to resolve consumer disputes, a brief description of IDSM procedures, the time limits adhered to by the IDSM, and the types of information the IDSM might require for prompt resolution of the consumer dispute.<sup>5</sup> Because warrantors have the option of providing this additional information in materials separate from the warranty, warrantors likely will bear an additional burden that is separate and apart from whatever burden already is imposed on warrantors from drafting warranty terms that comply with Rule 701, the rule on the disclosure of warranty terms.

Second, the Rule requires that warrantors take steps reasonably calculated to make

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Rule.

<sup>4</sup> 16 CFR 703.2(b).

<sup>5</sup> 16 CFR 703.2(c).

consumers aware of the IDSM's existence at the time consumers experience warranty disputes.<sup>6</sup> The annual audits – which are required to assess how well warrantors comply with this requirement – demonstrate the different steps warrantors take to inform consumers of the existence of the IDSM procedures. For example, some warrantors create separate pamphlets that deal specifically with the IDSM process. Other warrantors publish entire warranty manuals or booklets, within which several pages are dedicated to the IDSM. Still other warrantors have created posters to alert consumers to the existence of the informal dispute settlement process. Based on this information, it is clear that warrantors bear more than a negligible disclosure burden under the Rule. Accordingly, staff now includes an assessment of the disclosure burden for warrantors in its estimates as follows.

A review of the annual audits of the BBB AUTO LINE and the NCDS indicates that currently there are approximately twenty-seven automobile manufacturers covered by the Rule. Staff assumes that each manufacturer spends an average of thirty hours a year creating, revising, and distributing the informational materials necessary to comply with the Rule, resulting in an annual disclosure burden of 810 hours (27 manufacturers x 30 hours).

#### *IDSMs' Disclosure Burden*

Under the Rule, a portion of the disclosure burden would be borne by the IDSM itself, which is required to provide to interested consumers upon request copies of the various types of information the IDSM possesses, including its annual audits. In addition, consumers who have filed disputes with the IDSM also have a right to copies of their records. (IDSMs are permitted to charge for providing both types of information.)

Based on discussions with representatives of the IDSMs over the years, staff estimates that the burden imposed by the disclosure requirements is approximately 304 hours per year for the existing IDSMs to provide copies of this information. This estimate draws from the average number of consumers who file claims each year with the IDSMs (18,227) and the assumption that twenty percent of consumers individually request copies of the records pertaining to their disputes, or approximately 3,645 consumers. Staff estimates that copying such records would require approximately 5 minutes per consumer, including a negligible number of requests for copies of the annual audit.<sup>7</sup> Thus, the IDSMs currently operating under the Rule have an estimated total disclosure burden of 304 hours (3,645 consumers x 5 minutes of burden ÷ 60

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<sup>6</sup> 16 CFR 703.2(d).

<sup>7</sup> This estimate includes the additional amount of time required to copy the annual audit upon a consumer's request. However, because staff has determined that a very small minority of consumers request a copy of the annual audit, this estimate is likely an overstatement. In addition, at least a portion of case files are provided to consumers electronically, which further would reduce the paperwork burden borne by the IDSMs.

minutes).

Accordingly, the total PRA-related annual hours burden attributed to the Rule is approximately 13,266 hours (9,114 hours for recordkeeping + 3,038 hours for reporting + 1,114 hours for disclosures).

**Total Annual Labor Cost Burden.** Staff assumes that IDSMs uses clerical staff to comply with the recordkeeping requirements contained in the Rule at an hourly rate of \$15. Thus, the labor cost associated with the 9,114 annual burden hours for recordkeeping is approximately \$136,710 (9,114 burden hours x \$15 per hour).

In addition, staff assumes that IDSMs also use clerical support staff at an hourly rate of \$15 to comply with the reporting requirements. Thus, the labor cost associated with the 3,038 annual burden hours for reporting is approximately \$45,570 (3,038 burden hours x \$15 per hour).

Finally, staff assumes that the work required to comply with the warrantors' disclosure requirements entails an equal mix of legal, clerical, and graphic design work. The legal work entails ensuring that the warranty information and other materials contain the information required to be disclosed by the Rule, as well as reviewing the annual audits for any recommendations for how to improve the warrantors' materials, and implementing those recommended changes as appropriate. The graphic design work entails creating pamphlets, brochures, posters, or other materials that are aimed at making consumers aware of the existence of the IDSM and its procedures. The clerical work entails copying and distributing those informational materials. Staff assumes that one third of the total disclosure hours for warrantors (270 hours) requires legal work at a rate of \$250 an hour, one third requires graphic design at a rate of \$23 an hour, and one third requires clerical work at a rate of \$15 an hour. This results in a disclosure labor burden of \$77,760 for warrantors ((270 x \$250) + (270 x \$23) + (270 x \$15)). In addition, staff assumes that IDSMs use clerical support at an hourly rate of \$15 to reproduce records and, therefore, the labor cost associated with the 304 annual hours of disclosure burden for IDSMs is approximately \$4,560 (304 burden hours x \$15 per hour).

Accordingly, the combined total annual labor cost for PRA-related burden under the Rule is approximately \$264,600 (\$136,710 for recordkeeping + \$45,570 for reporting + \$82,320 for disclosures).

### **13. Estimated Capital/Other Non-Labor Costs Burden**

**(a) Total capital and start-up costs.** The Rule imposes no appreciable current capital or start-up costs. The vast majority of warrantors have already developed systems to retain the records and provide the disclosures required by the Rule. Rule compliance does not require the use of any capital goods, other than ordinary office equipment, to which providers would already have access. In addition, according to a representative of one IDSM, it has already developed



systems to collect and retain information needed to produce the indexes and statistical summaries required by the Rule, and thus, estimated very low capital or start-up costs.

The only additional cost imposed on IDSMs operating under the Rule that would not be incurred for other IDSMs is the annual audit requirement. According to representatives of the IDSMs, the vast majority of costs associated with this requirement are the fees paid to the auditors and their staffs to perform the annual audit. Representatives of the IDSMs previously estimated a combined cost of \$300,000 for both IDSMs currently operating under the Rule, and staff retains that estimate.

**(b) Total operation/maintenance/purchase of services costs.** This total is based on estimated copying costs of 7 cents per page and several conservative assumptions. Staff estimates that the average dispute-related file is 35 pages long and that a typical annual audit file is approximately 200 pages in length. As discussed above, staff assumes that twenty percent of consumers using an IDSM currently operating under the Rule (approximately 3,645 consumers) request copies of the records relating to their disputes.

Staff also estimates that a very small minority of consumers request a copy of the annual audit. This assumption is based on (1) the number of consumer requests actually received by the IDSMs in the past; and (2) the fact that the IDSMs' annual audits are available online. For example, annual audits are available on the FTC's web site, where consumers may view and or print pages as needed, at no cost to the IDSM. In addition, the Better Business Bureau makes available on its web site the annual audit of the BBB AUTO LINE. Therefore, staff conservatively estimates that only five percent of consumers using an IDSM covered by the Rule (approximately 911 consumers) will request a copy of the IDSM's audit report. Therefore, the total annual copying cost for dispute-related files is approximately \$8,930 (35 pages per file x \$.07 per page x 3,645 consumer requests) and the total annual copying cost for annual audit reports is approximately \$12,754 (200 pages per audit report x \$.07 per page x 911 consumer requests). Accordingly, the total cost attributed to copying under the Rule is approximately \$21,684.

Thus, the total non-labor cost under the Rule is approximately \$321,684 (\$300,000 for auditor fees + \$21,684 for copying costs).

#### **14. Estimated Cost to the Federal Government**

Staff estimates that the yearly cost to the Federal Government resulting from administration of the Rule's warranty disclosure requirements is \$10,000, which is the cost of one-tenth of a professional work year.

**15. Program Changes or Adjustments**

There are no program changes. The estimated total annual hours burden has decreased to 13,000 hours from the 17,000 hours estimated in 2007. Although the Rule's information collection requirements have not changed since 2007, staff adjusted its previous estimates based on the following two factors. First, the annual audits filed by the two IDSMs currently operating under the Rule indicate that, on average, fewer disputes were handled since the previous submission to OMB in 2007. This factor results in a decreased annual hours burden estimate for the IDSMs. Second, staff has reevaluated the methodology used and the assumptions made in its previous submission with respect to the burden imposed on warrantors under the Rule, and now includes that analysis in its new estimates. This factor results in an increased annual burden estimate for warrantors (from negligible in 2007 to 804 annual hours in 2011). The result of both factors was an overall decrease of 4,000 hours. Because the annual burden hours has decreased, the associated labor costs have also decreased, from \$266,000 in 2007 to \$264,600.

The estimate of the total capital and non-labor costs has decreased slightly from \$329,000 in 2007 to \$322,000. This new estimate retains the previous estimate of \$300,000 in capital and start-up costs, but decreases the copying costs from \$29,000 in 2007 to \$22,000 in 2011. The decrease is due primarily to a decrease in the number of estimated disputes filed each year (from 4,896 in 2007 to 3,645 in 2011).

**16. Plans for Tabulation and Publication**

There are no plans to publish any information.