

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 82 Fed. Reg. 8,614 (January 27, 2017). No germane comments were received.¹ 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 periodic review of all Commission rules and guides, the Commission solicited public comments on August 23, 2011, about the costs and benefits of all Rules promulgated under the Magnuson-Moss Act, including Rule 703, as well as the regulatory and economic impacts. 76 Fed. Reg. 52,596.

The FTC received six comments addressing whether the FTC should amend Rule 703. The commenters highlighted the Rule's importance in serving as a standard for IDSMs in general, and more specifically, in providing a benchmark for state lemon law IDSMs and certification programs for IDSMs. Many states' criteria focus on the IDSM's compliance with Rule 703's provisions. Therefore, commenters stressed that any repeal or change to Rule 703 will also affect state lemon law and certification programs. Notwithstanding this fact, some commenters asked the Commission to change certain elements of the Rule, including the Mechanism's procedure, record-keeping, and audit requirements, and also reassess the Commission's position on binding arbitration clauses in warranty contracts. After considering the comments received, the FTC decided not to amend Rule 703.

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

¹ The Commission received two non-germane comments.

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 57b-2(f).

12. Hours and Labor Cost Burden

Total annual hours burden: 7,841 hours (derived from 5,364 recordkeeping hours +1,788 reporting hours + 689 disclosure hours).

The primary burden from the Dispute Settlement Rule comes from the recordkeeping requirements that apply to IDSMs that are incorporated into a consumer product warranty through a prior resort clause. A review of the annual audits completed since the prior submission to OMB in 2014 (audits for calendar years 2013 through 2015) indicates that there are two IDSMs operating under the Rule: the BBB AUTO LINE and the National Center for Dispute Settlement (NCDS).

In its 2014 submission to OMB, staff estimated a total annual hours burden of approximately 8,318 hours (derived from 5,757 hours for recordkeeping + 1,919 hours for reporting + 642 hours for disclosures). Although the Rule's information collection requirements have not changed since 2014, staff has adjusted its previous estimates downward for its 2017 calculations because the annual audits filed by the two IDSMs currently operating under the Rule indicate that, on average, fewer disputes have been handled since the previous submission to OMB (11,514 disputes/year in 2014; 10,727 disputes/year in 2017). This factor results in a decreased annual hours burden estimate for the IDSMs. The calculations underlying staff's new estimates follow.

Recordkeeping: The Rule requires IDSMs to maintain records of each consumer warranty dispute that is referred to them. 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. Because maintaining individual case records is a necessary function for any IDSM, much of the burden would be incurred in the ordinary course of the IDSM's business. Nonetheless, staff retains its previous estimate that maintaining individual case files imposes an additional burden of 30 minutes per case.

The amount of work required will depend on the number of dispute resolution proceedings undertaken in each IDSM. The BBB AUTO LINE audits from calendar years 2013

through 2015 indicate that it handled an average of 9,398 disputes each year.² Audit reports submitted on behalf of NCDS indicate that it handled an average of 1,329 disputes each year for calendar years 2013 through 2015.³

Based on the above figures, staff estimates that the average number of disputes handled annually by IDSMs covered by the Rule is approximately 10,727 (an average of 9,398 disputes handled by BBB AUTO LINE + an average of 1,329 disputes handled by NCDS).⁴ Accordingly, staff estimates the total annual recordkeeping burden attributable to the Rule to be approximately 5,364 hours ((10,727 disputes × 30 minutes of burden/dispute) ÷ 60 minutes/hour).

Reporting: 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 1,788 hours ((10,727 disputes × 10 minutes of burden/dispute) ÷ 60 minutes/hour).

Disclosure

(a) Warrantors' Disclosure Burden

The Rule requires warrantors that incorporate the use of an IDSM into their warranties to disclose in their warranties a statement about the availability of the IDSM, the contact information for the IDSM, and any “prior resort requirement.”⁵ Similar to 2014, 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) information concerning 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, filled

² According to its annual audits, the BBB AUTO LINE closed 10,162 disputes in 2015. In 2014 and 2013, respectfully, the BBB AUTO LINE opened and closed 9,038 and 8,995 disputes within the same year. This includes disputes for at least one manufacturer that does not include a prior resort requirement. Therefore, this number likely overstates the number of disputes covered by the Rule. Nevertheless, staff is using this number to make its current burden estimates.

³ According to NCDS’ annual audits, the number of disputes both within its jurisdiction and closed each year are 1,719 (2015); 1,184 (2014); and 1,084 (2013).

⁴ Both the BBB AUTOLINE and NCDS report the number of disputes closed each year. Staff is using those numbers to project what will happen over the next three years of OMB clearance for the Rule.

⁵ 16 CFR 703.2(b).

out by the consumer that provides 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.⁶ 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 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 consumers aware of the IDSM's existence at the time consumers experience warranty disputes.⁷ 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.

A review of the annual audits of the BBB AUTO LINE and the NCDS indicates that there are approximately seventeen 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 510 hours (17 manufacturers × 30 hours).

(b) 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 these disclosure requirements is approximately 179 hours per year for the existing IDSMs. This estimate draws from the average number of disputes closed each year with the IDSMs (10,727) and the assumption that twenty percent of consumers request copies of the records pertaining to their disputes (approximately 2,145 disputes).⁸ Staff estimates that copying

⁶ 16 CFR 703.2(c).

⁷ 16 CFR 703.2(d).

⁸ This assumes each dispute is associated with one consumer.

such records would require approximately 5 minutes per dispute, including a negligible number of requests for copies of the annual audit.⁹ Thus, the IDSMs currently operating under the Rule have an estimated total disclosure burden of approximately 179 hours ((2,145 disputes \times 5 minutes of burden/dispute) \div 60 minutes/hour).

Accordingly, the total PRA-related annual hours burden attributed to the Rule is approximately 7,841 (5,364 hours for recordkeeping + 1,788 hours for reporting + 510 hours for warrantors' disclosures + 179 hours for IDSM disclosures).

Total annual labor cost: \$159,265.

Recordkeeping: Staff assumes that IDSMs use clerical staff to comply with the recordkeeping requirements contained in the Rule at an hourly rate of approximately \$15. Thus, the labor cost associated with the 5,364 annual burden hours for recordkeeping is approximately \$80,460 (5,364 burden hours \times \$15 per hour).

Reporting: 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 1,788 annual burden hours for reporting is approximately \$26,820 (1,788 burden hours \times \$15 per hour).

Disclosure: 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 improving the warrantors' materials, and implementing those recommended changes as appropriate. The graphic design work entails creating pamphlets, brochures, posters, or other materials 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 (170 hours) require legal work at a rate of \$250 per hour, one third require graphic design at a rate of \$25 per hour, and one third require clerical work at a rate of \$15 per hour. This results in a disclosure labor burden of \$49,300 for warrantors ((170 \times \$250) + (170 \times \$25) + (170 \times \$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 179 annual hours of disclosure burden for IDSMs is approximately \$2,685 (179 burden hours \times \$15 per hour).

⁹ 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, some case files are provided to consumers electronically, which further reduces the paperwork burden borne by the IDSMs.

Accordingly, the combined total annual labor cost for PRA-related burden under the Rule is approximately \$159,265 (\$80,460 for recordkeeping + \$26,820 for reporting + \$51,985 for disclosures).

13. Estimated Capital/Other Non-Labor Costs Burden

Total annual capital or other non-labor costs: \$312,759.

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 already have access.

The Rule imposes only one additional cost on IDSMs operating under the Rule that would not apply to other IDSMs: the annual audit requirement. According to representatives of the IDSMs, the vast majority of costs associated with this requirement consist of 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. Staff retains that estimate.

Other non-labor costs: \$12,759 in copying costs, based on estimated copying costs of 7 cents per page and several conservative assumptions. Staff estimates that the average dispute-related file contains 35 pages and a typical annual audit file contains approximately 200 pages. As discussed above, staff assumes that the IDSMs operating under the Rule will copy approximately twenty percent of dispute files (2,145).

Staff also estimates that a very small minority of consumers request a copy of the annual audit. Staff bases this assumption on (1) the number of consumer requests 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 website, 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 website 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 will request a copy of the IDSM's audit report (approximately 536 audit reports).¹⁰

Thus, the total annual copying cost for dispute-related files is approximately \$5,255 (35 pages per file \times \$.07 per page \times 2,145 disputes) and the total annual copying cost for annual audit reports is approximately \$7,504 (200 pages per audit report \times \$.07 per page \times 536 audit reports). Accordingly, the total cost attributed to copying under the Rule is approximately \$12,759. Thus, the total non-labor cost under the Rule is approximately \$312,759 (\$300,000 for auditor fees + \$12,759 for copying costs).

¹⁰ This estimate assumes each dispute is associated with one consumer.

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 7,841 hours in 2017 from the 8,318 hours estimated in 2014. Although the Rule's information collection requirements have not changed since 2014, staff adjusted its previous estimates because 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 (11,514 disputes/year in 2014; 10,727 disputes/year in 2017). This factor results in a decreased annual hours burden estimate for the IDSMs. Because the annual burden hours has decreased, the associated labor costs have also decreased, from the estimated \$161,220 in 2014 to \$159,265 in 2017.

The estimate of the total capital and non-labor costs has decreased slightly from \$313,707 in 2014 to \$312,759 in 2017. This new estimate retains the previous estimate of \$300,000 in capital and start-up costs, but decreases the copying costs from \$13,707 in 2014 to \$12,759 in 2017. The decrease is due primarily to a decrease in the number of estimated disputes filed each year (from 2,303 in 2014 to 2,145 in 2017).

16. Plans for Tabulation and Publication

There are no plans to publish any information.