

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 becomes public record and available 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 IDSMS 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

As a prelude to this request, the Commission sought public comment. See 85 Fed. Reg. 14,939 (March 16, 2020). 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.

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 57b-2(f).

12. Hours and Labor Cost Burden

The primary burden from the Rule comes from the recordkeeping requirements that apply to IDSMs that are incorporated into a consumer product warranty through a prior resort clause. Currently, there are two IDSMs operating under the Rule: the BBB AUTO LINE and the National Center for Dispute Settlement (NCDS). Although the Rule's information collection requirements have not changed since 2017, staff has adjusted its previous estimates upward for

¹ The Commission received six non-germane comments.

its 2020 calculations because the two IDSMs indicate that, on average, more disputes have been handled since the previous submission to OMB (10,727 disputes/year projected in 2017; 12,241 disputes/year projected in 2020). The calculations underlying staff's new estimates follow.

Estimated Annual Burden Hours: 9,055 (derived from 6,121 recordkeeping hours in addition to 2,040 reporting hours and 894 disclosure hours).

Recordkeeping: The Rule requires IDSMs to maintain records of each consumer warranty dispute. 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. The BBB AUTO LINE handles an average of 9,894 disputes each year. NCDS handles an average of 2,347 disputes each year. Based on these figures, staff estimates that the average number of IDSM disputes covered by the Rule is approximately 12,241. 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 business. Nonetheless, staff estimates that maintaining individual case files imposes an additional burden of 30 minutes per case.

Accordingly, the total annual recordkeeping burden is approximately 6,121 hours ((12,241 disputes \times 30 minutes of burden/dispute) \div 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 estimates that covered entities spend approximately 10 minutes per case for these activities, resulting in a total annual burden of approximately 2,040 hours ((12,241 disputes \times 10 minutes of burden/dispute) \div 60 minutes/hour).

Disclosure

(a) Warrantors' Disclosure Burden

Similar to 2017, 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 the IDSM and its procedures; and (2) information that makes consumers aware of the existence of the IDSM. A review of the annual audits of the BBB AUTO LINE and the NCDS indicates that there are approximately twenty-three 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 690 hours (23 manufacturers \times 30 hours).

(b) IDSMS' Disclosure Burden

Under the Rule, the IDSMS are 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 two IDSMS, staff estimates that the burden imposed by these disclosure requirements is approximately 179 hours per year. This estimate draws from the average number of disputes closed each year with the IDSMS (12,241) and the assumption that twenty percent of consumers request copies of the records pertaining to their disputes (approximately 2,448 disputes). Staff estimates that copying such records would require approximately 5 minutes per dispute. Staff estimates a total disclosure burden of approximately 204 hours $((2,448 \text{ disputes} \times 5 \text{ minutes of burden/dispute}) \div 60 \text{ minutes/hour})$ for the IDSMS.

Accordingly, the total PRA-related annual hours burden attributed to the Rule is approximately 9,055 (6,121 hours for recordkeeping plus 2,040 hours for reporting plus 690 hours for warrantors' disclosures and 204 hours for IDSM disclosures).

Total annual labor cost: \$209,595.

Recordkeeping: Staff assumes that IDSMS use clerical staff to comply with the recordkeeping requirements contained in the Rule at an hourly rate of approximately \$17. Thus, the labor cost associated with the 6,121 annual burden hours for recordkeeping is approximately \$104,057 $(6,121 \text{ burden hours} \times \$17 \text{ per hour})$.

Reporting: Staff assumes that IDSMS also use clerical support staff at an hourly rate of \$17 to comply with the reporting requirements. Thus, the labor cost associated with the 2,040 annual burden hours for reporting is approximately \$34,680 $(2,040 \text{ burden hours} \times \$17 \text{ per hour})$.

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. Staff assumes that one third of the total disclosure hours for warrantors (230 hours) require legal work at a rate of \$250 per hour, one third require graphic design at a rate of \$26 per hour, and one third require clerical work at a rate of \$17 per hour. This results in a disclosure labor burden of \$67,390 for warrantors $((230 \times \$250) + (230 \times \$26) + (230 \times \$17))$.

In addition, staff assumes that IDSMS use clerical support at an hourly rate of \$17 to reproduce records and, therefore, the labor cost associated with the 204 annual hours of disclosure burden for IDSMS is approximately \$3,468 $(204 \text{ burden hours} \times \$17 \text{ per hour})$.

Accordingly, the combined total annual labor cost for PRA-related burden under the Rule is approximately \$209,595 $(\$104,057 \text{ for recordkeeping} + \$34,680 \text{ for reporting} + \$70,858 \text{ for disclosures})$.

13. Estimated Capital/Other Non-Labor Costs Burden

Total annual capital or other non-labor costs: \$314,566.

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 one additional cost on IDSMSs operating under the rule, which is the annual audit requirement. According to representatives of the IDSMSs, the vast majority of costs associated with this requirement consist of the fees paid to the auditors and their staffs. Representatives of the IDSMSs previously estimated a combined cost of \$300,000 associated with the audits. Staff retains that estimate.

Other non-labor costs: As discussed above, staff assumes that approximately twenty percent of dispute files (approximately 2,448 files) are requested by consumers. Staff also estimates that only five percent of consumers will request a copy of the IDSMS's audit report (approximately 612 audit reports).² Staff bases this assumption on the number of consumer requests received by the IDSMSs in the past and the fact that the IDSMSs' annual audits are available online. Staff estimates that the average dispute-related file contains 35 pages and a typical annual audit file contains approximately 200 pages. Staff estimates copying costs of 7 cents per page.

Thus, the total annual copying cost for dispute-related files is approximately \$5,998 (35 pages per file × \$0.07 per page × 2,448 disputes) and the total annual copying cost for annual audit reports is approximately \$8,568 (200 pages per audit report × \$0.07 per page × 612 audit reports). Accordingly, the total cost attributed to copying under the Rule is approximately \$14,566.

Thus, the total non-labor cost under the Rule is approximately \$314,566 (\$300,000 for auditor fees + \$14,566 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.

² This estimate assumes each dispute is associated with one consumer.

15. Program Changes or Adjustments

There are no program changes. The estimated total annual hours of burden has increased from 7,841 hours in 2017 to 9,055 hours estimated in 2020. Although the Rule's information collection requirements have not changed since 2017, staff adjusted its previous estimates because the annual audits filed by the two IDSMs currently operating under the Rule indicate that, on average, more disputes were handled since the previous submission to OMB (10,727 disputes/year in 2017; 12,241 disputes/year in 2020). This factor results in an increased annual hours burden estimate for the IDSMs. Because the annual burden hours has increased, the associated labor costs have also increased, from the estimated \$159,265 in 2017 to \$209,595 in 2020.

The estimate of the total capital and non-labor costs has increased slightly from \$312,759 in 2017 to \$314,566 in 2020. This new estimate retains the previous estimate of \$300,000 in capital and start-up costs, but increases the copying costs from \$12,759 in 2017 to 14,566 in 2020. The increase is due primarily to a increase in the number of estimated disputes filed each year (from 2,145 in 2017 to 2,448 in 2020).

16. Plans for Tabulation and Publication

There are no plans to publish any information.