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FEDERAL TRADE COMMISSION

Agency Information Collection Activities;

Proposed Collection; Comment Request

AGENCY: Federal Trade Commission (FTC or Commission).

ACTION: Notice.

SUMMARY: The information collection requirements described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act (PRA). The FTC seeks public comments on its proposal to extend, for three years, the current PRA clearance for information collection requirements contained in its Informal Dispute Settlement Procedures Rule. That clearance expires on April 30, 2017.

DATES: Comments must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Interested parties may file a comment online or on paper by following the instructions in the Request for Comments part of the SUPPLEMENTARY INFORMATION section below. Write “Warranty Rules: Paperwork Comment, FTC File No. P044403” on your comment, and file your comment online at <https://ftcpublish.commentworks.com/ftc/idsprpra> by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex J), Washington, DC 20580, or

deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Requests for copies of the collection of information and supporting documentation should be addressed to Christine M.

Todaro, Attorney, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW, CC-8528, Washington, DC 20580, (202) 326-3711.

SUPPLEMENTARY INFORMATION:

Proposed Information Collection Activities

Under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501-3520, federal agencies must get OMB approval for each collection of information they conduct, sponsor, or require. "Collection of information" means agency requests or requirements to submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3); 5 CFR 1320.3(c). As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the existing PRA clearance for the information collection requirements associated with the Commission's Informal Dispute Settlement Procedures Rule (the Dispute Settlement Rule or the Rule), 16 CFR 703 (OMB Control Number 3084-0113).

The FTC invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the

agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond. All comments must be received on or before [insert date 60 days after date of publication in the FEDERAL REGISTER].

The Dispute Settlement Rule is one of three rules¹ that the FTC implemented pursuant to requirements of the Magnuson-Moss Warranty Act, 15 U.S.C. 2301 et seq. (Warranty Act or Act).² The Dispute Settlement Rule, 16 CFR 703, specifies the minimum standards which must be met by any informal dispute settlement mechanism (IDSM) that is incorporated into a written consumer product warranty and which the consumer must use before pursuing legal remedies under the Act in court. In enacting the Warranty Act, Congress recognized the potential benefits of consumer dispute mechanisms as an alternative to the judicial process. Section 110(a) of the Act sets out the Congressional policy to “encourage warrantors to establish procedures whereby consumer disputes are fairly and expeditiously settled through informal dispute settlement mechanisms” and erected a framework for their establishment.³ As an incentive for warrantors to establish IDSMs, Congress provided in Section 110(a)(3) that warrantors may incorporate into their written consumer product warranties a requirement that a consumer must resort to an IDSM before pursuing a legal remedy under the Act for

¹ The other two rules relate to the information that must appear in any written warranty offered on a consumer product costing more than \$15 and the pre-sale availability of warranty terms.

² 40 FR 60168 (Dec. 31, 1975).

breach of warranty.⁴ To ensure fairness to consumers, however, Congress also directed that, if a warrantor were to incorporate such a “prior resort requirement” into its written warranty, the warrantor must comply with the minimum standards set by the Commission for such IDSMs.⁵ Section 110(a)(2) of the Act directed the Commission to establish those minimum standards.⁶

The Dispute Settlement Rule contains standards for IDSMs, including requirements concerning the mechanism’s structure (e.g., funding, staffing, and neutrality), the qualifications of staff or decision makers, the mechanism’s procedures for resolving disputes (e.g., notification, investigation, time limits for decisions, and follow-up), recordkeeping, and annual audits. The Rule requires that IDSMs establish written operating procedures and provide copies of those procedures upon request.

The Dispute Settlement Rule applies only to those firms that choose to require consumers to use an IDSM. Neither the Rule nor the Act requires warrantors to set up IDSMs. A warrantor is free to set up an IDSM that does not comply with the Rule as long as the warranty does not contain a prior resort requirement.

Dispute Settlement Rule Burden Statement

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

³ 15 U.S.C. 2310(a).

⁴ 15 U.S.C. 2310(a)(3).

⁵ *Id.*

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.

⁶ 15 U.S.C. 2310(a)(2).

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.⁷ Audit reports submitted on behalf of NCDS indicate that it handled an average of 1,329 disputes each year for calendar years 2013 through 2015.⁸

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).⁹ Accordingly, staff estimates the total annual recordkeeping burden attributable to the Rule to be approximately 5,364 hours $((10,727 \text{ disputes} \times 30 \text{ minutes of burden/dispute}) \div 60 \text{ minutes/hour})$.

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 $((10,727 \text{ disputes} \times 10 \text{ minutes of burden/dispute}) \div 60 \text{ minutes/hour})$.

Disclosure

(a) Warrantors' Disclosure Burden

⁷ 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.

⁸ 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).

⁹ Both the BBB AUTOLINE and NCDS report the number of disputes closed each year. Staff is using

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.”¹⁰ 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 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.¹¹ 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

those numbers to project what will happen over the next three years of OMB clearance for the Rule.

¹⁰ 16 CFR 703.2(b).

¹¹ 16 CFR 703.2(c).

consumers aware of the IDSM's existence at the time consumers experience warranty disputes.¹² 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.

¹² 16 CFR 703.2(d).

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).¹³ Staff estimates that copying such records would require approximately 5 minutes per dispute, including a negligible number of requests for copies of the annual audit.¹⁴ Thus, the IDSMs currently operating under the Rule have an estimated total disclosure burden of approximately 179 hours $((2,145 \text{ disputes} \times 5 \text{ minutes of burden/dispute}) \div 60 \text{ minutes/hour})$.

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 $(5,364 \text{ burden hours} \times \$15 \text{ per hour})$.

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

¹³ This assumes each dispute is associated with one consumer.

¹⁴ 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

with the 1,788 annual burden hours for reporting is approximately \$26,820 (1,788 burden hours × \$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 × \$250) + (170 × \$25) + (170 × \$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 × \$15 per hour).

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).

the annual audit, this estimate is likely an overstatement. In addition, some case files are provided to

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 electronically, which further reduces the paperwork burden borne by the IDSMs.

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).¹⁵

Thus, the total annual copying cost for dispute-related files is approximately \$5,255 (35 pages per file × \$.07 per page × 2,145 disputes) and the total annual copying cost for annual audit reports is approximately \$7,504 (200 pages per audit report × \$.07 per page × 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).

Request for Comments

You can file a comment online or on paper. Write “Warranty Rules: Paperwork Comment, FTC File No. P044403” on your comment. Your comment -- including your name and your state -- will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission website, at <http://www.ftc.gov/os/publiccomments.shtm>. As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission website.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like

¹⁵ This estimate assumes each dispute is associated with one consumer.

anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any "[t]rade secret or any commercial or financial information which is . . . privileged or confidential," as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you must follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).¹⁶ Your comment will be kept confidential only if the FTC General Counsel grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, the Commission encourages you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublic.commentworks.com/ftc/idsprpra> by following the instructions on the web-based form. If this Notice appears at <http://www.regulations.gov>,

¹⁶ In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. See FTC Rule 4.9(c), 16 CFR 4.9(c).

you also may file a comment through that website.

If you file your comment on paper, write “Warranty Rules: Paperwork Comment, FTC File No. P044403” on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H-113 (Annex J), 600 Pennsylvania Avenue, NW, Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Website at <http://www.ftc.gov> to read this Notice. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before [insert date 60 days after date of publication in the FEDERAL REGISTER]. You can find more

information, including routine uses permitted by the Privacy Act, in the Commission’s privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

David C. Shonka,
Principal Deputy General Counsel.

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