



BILLING CODE: 6750-01-S

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Federal Trade Commission (FTC or Commission) is seeking public comment on its proposal to extend for an additional three years the Office of Management and Budget (OMB) clearance for information collection requirements in its Informal Dispute Settlement Procedures Rule (the Dispute Settlement Rule or the Rule). The current clearance expires on May 31, 2020.

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 “Dispute Settlement Rule; PRA Comment: FTC File No. P072108” on your comment, and file your comment online at <https://www.regulations.gov> by following the instructions on the web-based form. If you prefer to file your comment on paper, mail 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: Christine M. Todaro, Attorney, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580, (202) 326-3711.

SUPPLEMENTARY INFORMATION:

Title: Informal Dispute Settlement Procedures Rule (the Dispute Settlement Rule or the Rule), 16 CFR 703.

OMB Control Number: 3084-0113.

Type of Review: Extension of a currently approved collection.

Likely Respondents: Warrantors (Automobile Manufacturers) and Informal Dispute Settlement Mechanisms.

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

Estimated Annual Labor Costs: \$209,595.

Estimated Annual Capital or Other Non-labor Costs: \$314,566.

Abstract:

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 is required to use before pursuing legal

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).

remedies under the Act in court (known as the “prior resort requirement”).³

The Dispute Settlement Rule standards for IDSMs include 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.

Under the PRA, 44 U.S.C. 3501-3521, the FTC is requesting that OMB renew the clearance (OMB Control Number 3084-0113) for the PRA burden associated with the Rule.

Burden statement:

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. 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 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; 12,241disputes/year projected in 2020). The calculations underlying staff’s new estimates follow.

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

³ 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.

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.⁴ NCDS handles an average of 2,347 disputes each year.⁵ 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 $((12,241 \text{ disputes} \times 30 \text{ minutes of burden/dispute}) \div 60 \text{ minutes/hour})$.

Reporting: The Rule requires IDSMs to update indexes, complete semiannual statistical summaries, and submit an annual audit report to the FTC. Staff estimates that covered entities spend approximately 10 minutes per case for these activities, resulting in a total annual burden of approximately 2,040 hours $((12,241 \text{ disputes} \times 10 \text{ minutes of burden/dispute}) \div 60 \text{ minutes/hour})$.

Disclosure

(a) Warrantors' Disclosure Burden

Similar to 2017, staff has determined that it would be appropriate to account for the

⁴ According to its annual audits, the BBB AUTO LINE closed 9,748 disputes in 2016, 10,615 in 2017, and 9,318 in 2018. 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.

⁵ According to NCDS' annual audits, the number of disputes both within its jurisdiction and closed each year are 2,269 (2016); 2,332 (2017); and 2,439 (2018).

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.⁶

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 × 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).⁷ Staff estimates that copying such records would require approximately 5 minutes per dispute.⁸ Staff estimates a total disclosure burden of approximately 204 hours ((2,448 disputes × 5 minutes of burden/dispute) ÷ 60 minutes/hour) for the IDSMs.

⁶ 16 CFR 703.2(b).

⁷ This assumes each dispute is associated with one consumer.

⁸ In addition, some case files are provided to consumers electronically, which further reduces the paperwork burden borne by 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 burden hours $\times$ \$17 per hour⁹).

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 burden hours $\times$ \$17 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 burden hours $\times$ \$17 per hour).

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

⁹ The wage rate is derived from occupational data found in the Bureau of Labor Statistics, Occupational Employment and Wages (May 2018).

disclosures).

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 IDSMs operating under the rule, which is 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. Representatives of the IDSMs 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 IDSM's audit report (approximately 612 audit reports).¹⁰ Staff bases this assumption on the number of consumer requests received by the IDSMs in the past and the fact that the IDSMs' 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

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

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).

Request for Comments

Pursuant to Section 3506(c)(2)(A) of the PRA, 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 maintaining records, providing reports to the government and providing disclosures to consumers. All comments must be received on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

You can file a comment online or on paper. For the FTC to consider your comment, we must receive it on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Write "Dispute Settlement Rule; PRA Comment: FTC File No. P072108" on your comment. Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it through the <https://www.regulations.gov> website by following the instructions on the web-based form provided. Your comment -- including your name and your state -- will be placed on the public record of this proceeding, including the <https://www.regulations.gov> website.

If you file your comment on paper, write “Dispute Settlement Rule; PRA Comment: FTC File No. P072108” on your comment and on the envelope, and mail 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. If possible, submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the public record, you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else’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, such as medical records or other individually identifiable health information. In addition, your comment should not include any “trade secret or any commercial or financial information which . . . is privileged or confidential” – as provided by 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) – including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled “Confidential,” and must comply with FTC Rule 4.9(c). 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.¹¹ Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted publicly at www.regulations.gov, we cannot redact or remove your comment unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

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 <https://www.ftc.gov/site-information/privacy-policy>.

Josephine Liu,

Assistant General Counsel

for Legal Counsel.

¹¹ See FTC Rule 4.9(c).

