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TITLE 248 NEBRASKA DEPARTMENT OF MOTOR VEHICLES

Chapter 1 STANDARDS FOR AN INFORMAL DISPUTE SETTLEMENT PROCEDURE

001 SCOPE

001.01 Applicability. These standards apply to all mechanisms as defined in these rules and regulations.

001.02 Incorporation by Reference. The following regulations are adopted, promulgated and incorporated in these rules and regulations by reference:

001.02A Federal Trade Commission (FTC) regulations 16 CFR Part 703 in existence as of February 22, 1983.

002 DEFINITIONS

002.01 Consumer means the purchaser, other than for purposes of resale, of a motor vehicle normally used for personal, family, household, or business purposes, any person to whom such motor vehicle is transferred for the same purposes during the duration of an express warranty applicable to such motor vehicle, and any other person entitled by the terms of such warranty to enforce the obligations of the warranty.

002.02 Manufacturer's express warranty means the written warranty, so labeled, of the manufacturer of a new motor vehicle.

002.03 Mechanism means an informal dispute resolution procedure adopted by the manufacturer to resolve questions of law and fact relating to disputes between consumers and the manufacturer commencing within one year following the expiration of the express warranty term, or two years following the date of original delivery of a motor vehicle to the consumer, whichever is the earlier date.

002.04 Motor vehicle means a new motor vehicle as defined in Neb. Rev. Stat. 60-1401.02 (8), which is sold in this state, excluding self-propelled mobile homes as defined in section 60-301.

002.05 Warrantor means any person who gives or offers to give a written warranty which incorporates an informal dispute settlement mechanism.

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DON TRENZIG
ATTORNEY GENERAL

BY *[Signature]*
Assistant Attorney General
DATE .. 12/31/92

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003 DUTIES OF WARRANTOR

003.01 Disclosure. The warrantor shall disclose clearly and conspicuously at least the following information on the face of the written warranty:

003.01A A statement of the availability of the informal dispute settlement mechanism; and

003.01B The name and address of the Mechanism, or the name and a telephone number of the Mechanism which consumers may use without charge.

004 MECHANISM ORGANIZATION

004.01 Impartiality. If a manufacturer has established or participates in a dispute settlement procedure, such procedure shall insure that the system is impartial, accessible within this state to the buyer and shall operate at no cost to the buyer.

004.02 Influence by Manufacturer or Sponsor. The manufacturer and the sponsor of the dispute mechanism (if other than the manufacturer) shall take all steps necessary to insure that the Mechanism and its members and staff are sufficiently insulated from the manufacturer and the sponsor, so that the decisions of the members and the performance of the staff are not influenced by either the warrantor or the sponsor.

005 QUALIFICATION OF MEMBERS

005.01 Not a Party. No member deciding a dispute shall be a party to the dispute, or an employee or agent of a party other than for purposes of deciding disputes.

005.02 No Direct Involvement. When one or two members are deciding a dispute, all shall be persons having no direct involvement in the manufacture, distribution, sale or service of any motor vehicles. When three or more members are deciding a dispute, at least two-thirds shall be persons having no direct involvement in the manufacture, distribution, sale or service (including warranty service) of any motor vehicle. Direct involvement shall not include acquiring or owning an interest solely for investment, and the acquisition or ownership or an interest which is offered to the general public shall be prima facie evidence of its acquisition or ownership solely for investment. Nothing contained in this section shall prevent the members from consulting with any persons knowledgeable in the technical, commercial or other areas relating to the product which is the subject of the dispute.

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005.03 Fair Settlement. Members shall be persons interested in the fair and expeditious settlement of consumer disputes.

006 OPERATION OF THE MECHANISM

006.01 Written Operating Procedures. The Mechanism shall establish written operating procedures which shall include at least the following items specified.

006.02 Notice of Receipt of Dispute. Upon notification of a dispute, the Mechanism shall immediately inform both the manufacturer and the consumer of receipt of the dispute.

006.03 Investigation. The Mechanism shall investigate, gather and organize all information necessary for a fair and expeditious decision in each dispute. When any evidence gathered by or submitted to the Mechanism raises issues relating to the number of repair attempts, the length of repair periods, the possibility of unreasonable use, or any other remedy, the mechanism shall investigate these issues. When information which will or may be used in the decision, submitted by one party or consultant, or any other source tends to contradict facts submitted by the other party, the Mechanism shall clearly, accurately, and completely disclose to both parties the contradictory information (and its source) and shall provide both parties an opportunity to explain or rebut the information and to submit additional materials. The Mechanism shall not require any information not reasonably necessary to decide the dispute.

006.04 Decision. Within 40 days if the dispute has not been settled, the Mechanism shall, as expeditiously as possible but at least within 40 days of notification of the dispute except as otherwise provided.

006.04A Render a fair decision based on the information gathered as described in paragraph 006.03 of these rules and regulations, and on any information submitted at an oral presentation. A decision shall include any remedies deemed appropriate under the circumstances, and limited to those remedies available under 16 CFR Part 703.5 (d)(1), including repair, replacement, refund, reimbursement for expenses, compensation for damages, and any other remedies available under the written warranty; and a decision shall state a specified reasonable time for performance;

006.04B Disclose to the manufacturer its decision and the reasons therefor;

006.04C If the decision would require action on the part of the manufacturer, determine whether, and to what extent, manufacturer will abide by its decision; and

006.04D Disclose to the consumer its decision, the reasons therefor, the manufacturer's intended actions, and the information described in section 006.08 of these rules and regulations.

006.05 Settlement. A dispute shall be deemed settled when the Mechanism has ascertained from the consumer that the dispute has been settled to the consumer's satisfaction; and the settlement contains a specified reasonable time for performance.

006.06 Delay Beyond 40 Days. The Mechanism may delay the performance of its duties beyond the 40 day time limit:

006.06A Where the period of delay is due solely to failure of a consumer to provide promptly his or her name and address, brand name and identification number of the vehicle involved, and a statement as to the nature of the defect or other complaint; or

006.06B For a 7-day period in those cases where the consumer has made no attempt to seek redress directly from the warrantor.

006.07 Oral Presentation Allowed. The Mechanism may allow an oral presentation by a party to a dispute (or a party's representative) only if:

006.07A Both manufacturer and consumer expressly agree to the presentation; and

006.07B Prior to agreement the Mechanism fully discloses to the consumer the following information:

006.07B1 That the presentation by either party will take place if both parties agree, but that if they agree, and one party fails to appear at the agreed upon time and place, the presentation by the other party may still be allowed;

006.07B2 That the members will decide the dispute whether or not an oral presentation is made;

006.07B3 The proposed date, time and place for the presentation;

006.07B4 A brief description of what will occur at the presentation including, if applicable, parties' rights to bring witnesses and/or counsel; and

006.07B5 That each party has the right to be present during the other party's oral presentation.

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006.07B6 Oral presentations (either in person or by teleconferencing) are encouraged. Nothing contained in this section shall preclude the Mechanism from allowing an oral presentation, provided all the requirements of this section are met.

006.08 Appeal of Decision. The Mechanism shall inform the consumer, at the time of disclosure of the decision by the Mechanism that if he or she is dissatisfied with its decision or manufacturer's intended actions, or eventual performance, legal remedies may be pursued.

007 RECORD KEEPING

007.01 Records Information. The Mechanism shall maintain records on each dispute referred to it which shall include:

007.01A Name and address of the consumer;

007.01B Name and address of the contact person of the manufacturer;

007.01C Brand name, and description of the vehicle involved and the identification number; and

007.01D Copies of all documents submitted by either party and copies of disposition taken by the Mechanism.

008 AUDITS

008.01 Annual. The Mechanism shall have an audit conducted at least annually, to determine whether the Mechanism and its implementation are in compliance.

008.02 Contents. Each audit provided for in this section shall include at a minimum the following:

008.02A The warrantor's or manufacturer's efforts to make consumers aware of the Mechanism's existence; and

008.02B Analysis of a random sample of disputes to determine the following:

008.02B1 Adequacy of the Mechanism's complaint and other forms, investigation, mediation and follow-up efforts, and other aspects of complaint handling; and

008.02B2 Accuracy of the Mechanism's statistical compilations.

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008.02B2 008.03 Auditors. Auditors shall be selected by Mechanism. No auditor may be involved with the Mechanism as a warrantor, sponsor or member, or employee or agent thereof, other than for purposes of the audit.

009 OPENNESS OF RECORDS AND PROCEEDINGS

009.01 Policy. The policy of the Mechanism with respect to records made available at the Mechanism's option shall be set out in the procedures under section 6 (OPERATION AND MECHANISM).

009.02 Copies upon request. Upon request the Mechanism shall provide to either party to the dispute access to all records and copies of records relating to the dispute.

009.03 Reporting requirement to Department of Motor Vehicles. The Mechanism shall furnish to the Nebraska Department of Motor Vehicles a report of the activities of the Mechanism for the calendar year setting forth the number of cases and the disposition of each.

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DON STENBERG
ATTORNEY GENERAL

BY *[Signature]*
Assistant Attorney General
DATE ... 12/27/93

Source: 40 FR 60115, Dec. 31, 1975, unless otherwise noted.

§ 703.1 Definitions.

(a) "The Act" means the Magnuson-Moss Warranty—Federal Trade Commission Improvement Act, 15 U.S.C. 2301, et seq.

(b) "Consumer product" means any tangible personal property which is distributed in commerce and which is normally used for personal, family, or household purposes (including any such property intended to be attached to or installed in any real property without regard to whether it is so attached or installed).

(c) "Written affirmation" means:

(1) Any written affirmation of fact or written promise made in connection with the sale of a consumer product by a supplier to a buyer which relates to the nature of the material or workmanship and affirms or promises that such material or workmanship is defect free or will meet a specified level of performance over a specified period of time; or

(2) Any undertaking in writing in connection with the sale by a supplier of a consumer product to refund, repair, replace, or take other remedial action with respect to such product in the event that such product fails to meet the specifications set forth in the undertaking, which written affirmation, promise or undertaking becomes part of the basis of the bargain between a supplier and a buyer for purposes other than resale of such product.

(d) "Warrantor" means any person who gives or offers to give a written warranty which incorporates an informal dispute settlement mechanism.

(e) "Mechanism" means an informal dispute settlement procedure which is incorporated into the terms of a written warranty to which any provision of Title I of the Act applies, as provided in Section 110 of the Act.

(f) "Members" means the person or persons within a Mechanism actually deciding disputes.

(g) "Consumer" means a buyer (other than for purposes of resale) of any consumer product, any person to whom such product is transferred during the duration of a written war-

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ranty applicable to the product, and any other person who is entitled by the terms of such warranty or under applicable state law to enforce against the warrantor the obligations of the warranty.

(h) "On the face of the warranty" means:

(1) If the warranty is a single sheet with printing on both sides of the sheet, or if the warranty is comprised of more than one sheet, the page on which the warranty text begins;

(2) If the warranty is included as part of a longer document, such as a use and care manual, the page in such document on which the warranty text begins.

§ 703.2 Duties of warrantor.

(a) The warrantor shall not incorporate into the terms of a written warranty a Mechanism that fails to comply with the requirements contained in § 703.3-703.8 of this part.

(b) This paragraph shall not prohibit a warrantor from incorporating into the terms of a written warranty the step-by-step procedure which the consumer should take in order to obtain performance of any obligation under the warranty as described in section 102(a)(7) of the Act and required by Part 701 of this subchapter.

(c) The warrantor shall disclose clearly and conspicuously at least the following information on the face of the written warranty:

(1) A statement of the availability of the informal dispute settlement mechanism;

(2) The name and address of the Mechanism, or the name and a telephone number of the Mechanism which consumers may use without charge;

(3) A statement of any requirement that the consumer resort to the Mechanism before exercising rights or seeking remedies created by Title I of the Act; together with the disclosure that if a consumer chooses to seek redress by pursuing rights and remedies not created by Title I of the Act, resort to the Mechanism would not be required by any provision of the Act; and

(4) A statement, if applicable, indicating where further information on the Mechanism can be found in materials accompanying the product, as provided in § 703.2(c) of this section.

(c) The warrantor shall include in the written warranty or in a separate section of materials accompanying the product, the following information:

(1) Either (i) a form addressed to the Mechanism containing spaces requesting the information which the Mechanism may require for prompt resolution of warranty disputes; or (ii) a telephone number of the Mechanism which consumers may use without charge;

(2) The name and address of the Mechanism;

(3) A brief description of Mechanism procedures;

(4) The time limits adhered to by the Mechanism; and

(5) The types of information which the Mechanism may require for prompt resolution of warranty disputes.

(d) The warrantor shall take steps reasonably calculated to make consumers aware of the Mechanism's existence at the time consumers experience warranty disputes. Nothing contained in paragraphs (b), (c), or (d) of this section shall limit the warrantor's option to encourage consumers to seek redress directly from the warrantor as long as the warrantor does not expressly require consumers to seek redress directly from the warrantor. The warrantor shall proceed fairly and expeditiously to attempt to resolve all disputes submitted directly to the warrantor.

(e) Whenever a dispute is submitted directly to the warrantor, the warrantor shall, within a reasonable time, decide whether, and to what extent, it will satisfy the consumer, and inform the consumer of its decision. In its notification to the consumer of its decision, the warrantor shall include the information required in § 703.2 (b) and (c) of this section.

(f) The warrantor shall: (1) Respond fully and promptly to reasonable requests by the Mechanism for information relating to disputes;

(2) Upon notification of any decision of the Mechanism that would require action on the part of the warrantor, immediately notify the Mechanism

rais accompanying the product, as provided in § 703.2(c) of this section.

(c) The warrantor shall include in the written warranty or in a separate section of materials accompanying the product, the following information:

(1) Either (i) a form addressed to the Mechanism containing spaces requesting the information which the Mechanism may require for prompt resolution of warranty disputes; or (ii) a telephone number of the Mechanism which consumers may use without charge;

(2) The name and address of the Mechanism;

(3) A brief description of Mechanism procedures;

(4) The time limits adhered to by the Mechanism; and

(5) The types of information which the Mechanism may require for prompt resolution of warranty disputes.

(d) The warrantor shall take steps reasonably calculated to make consumers aware of the Mechanism's existence at the time consumers experience warranty disputes. Nothing contained in paragraphs (b), (c), or (d) of this section shall limit the warrantor's option to encourage consumers to seek redress directly from the warrantor as long as the warrantor does not expressly require consumers to seek redress directly from the warrantor. The warrantor shall proceed fairly and expeditiously to attempt to resolve all disputes submitted directly to the warrantor.

(e) Whenever a dispute is submitted directly to the warrantor, the warrantor shall, within a reasonable time, decide whether, and to what extent, it will satisfy the consumer, and inform the consumer of its decision. In its notification to the consumer of its decision, the warrantor shall include the information required in § 703.2 (b) and (c) of this section.

(f) The warrantor shall: (1) Respond fully and promptly to reasonable requests by the Mechanism for information relating to disputes;

(2) Upon notification of any decision of the Mechanism that would require action on the part of the warrantor, immediately notify the Mechanism

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cluded in any written materials shown to prospective buyers.

(2) Any seller who offers for sale to consumers consumer products with written warranties by means of door-to-door sales shall, prior to the consummation of the sale, disclose the fact that the sales representative has copies of the warranties for the warranted products being offered for sale, which may be inspected by the prospective buyer at any time during the sales presentation. Such disclosure shall be made orally and shall be included in any written materials shown to prospective buyers.

- 03.1 Definitions.
03.2 Duties of warrantor.
03.3 Mechanism organization.
03.4 Qualification of members.
03.5 Operation of the Mechanism.
03.6 Recordskeeping.
03.7 Audits.
03.8 Operation of records and proceedings.

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hether, and to what extent, warrantor will abide by the decision, and (3) Perform any obligations it has agreed to.

(2) The warrantor shall act in good faith in determining whether, and to that extent, it will abide by a Mechanism decision.

(b) The warrantor shall comply with the reasonable requirements imposed by the Mechanism to fairly and expeditiously resolve warranty disputes.

MINIMUM REQUIREMENTS OF THE MECHANISM

703.3 Mechanism organization.

(a) The Mechanism shall be funded and completely staffed at a level sufficient to ensure fair and expeditious resolution of all disputes, and shall charge consumers any fee for use of the Mechanism.

(b) The warrantor and the sponsor of the Mechanism (if other than the warrantor) shall take all steps necessary to ensure that the Mechanism, its members and staff, are sufficiently insulated from the warrantor and the sponsor, so that the decisions of the members and the performance of the staff are not influenced by the warrantor or the sponsor. Necessary steps shall include, at a minimum, committing funds in advance, basing personnel decisions solely on merit, and not assigning conflicting warrantor or sponsor duties to Mechanism staff persons.

(c) The Mechanism shall impose any other reasonable requirements necessary to ensure that the members and staff act fairly and expeditiously in each dispute.

703.4 Qualification of members.

(a) No member deciding a dispute shall be: (1) A party to the dispute, or employee or agent of a party other than for purposes of deciding disputes; (2) A person who is or may become a party in any legal action, including but not limited to class actions, relating to the product or complaint in dispute, or employee or agent of such person other than for purposes of this paragraph. For purposes of this paragraph (a) a person shall not be consid-

ered a "party" solely because he or she acquires or owns an interest in a party solely for investment, and the acquisition or ownership of an interest which is offered to the general public shall be prima facie evidence of its acquisition or ownership solely for investment.

(b) When one or two members are deciding a dispute, all shall be persons having no direct involvement in the manufacture, distribution, sale or service of any product. "Direct involvement" shall not include acquiring or owning an interest solely for investment, and the acquisition or ownership of an interest which is offered to the general public shall be prima facie evidence of its acquisition or ownership solely for investment. Nothing contained in this section shall prevent the members from consulting with any persons knowledgeable in the technical, commercial or other areas relating to the product which is the subject of the dispute.

(c) Members shall be persons interested in the fair and expeditious settlement of consumer disputes.

703.5 Operation of the Mechanism.

(a) The Mechanism shall establish written operating procedures which shall include at least those items specified in paragraphs (b) through (j) of this section. Copies of the written procedures shall be made available to any person upon request.

(b) Upon notification of a dispute, the Mechanism shall immediately inform both the warrantor and the consumer of receipt of the dispute.

(c) The Mechanism shall investigate, gather and organize all information necessary for a fair and expeditious decision in each dispute. When any evidence gathered by or submitted to the Mechanism raises issues relating to the number of repair attempts, the length of repair periods, the possibility of unreasonable use of the product, or any other issues relevant in light of Title I of the Act (or rules thereunder), including issues relating to consequential damages, or any other remedy under the Act (or rules thereunder), the Mechanism shall investigate these issues. When information which will or may be used in the decision, submitted by one party, or a consumer under § 703.4(b) of this part, or any other source tends to contradict facts submitted by the other party, the Mechanism shall clearly, accurately, and completely disclose to both parties the contradictory information (and its source) and shall provide both parties an opportunity to explain or rebut the information and to submit additional materials. The Mechanism shall not require any information not reasonably necessary to decide the dispute.

(d) If the dispute has not been settled, the Mechanism shall, as expeditiously as possible but at least within 40 days of notification of the dispute, except as provided in paragraph (e) of this section:

(1) Render a fair decision based on the information gathered as described in paragraph (c) of this section, and on any information submitted at an oral presentation which conforms to the requirements of paragraph (f) of this section (A decision shall include any remedies appropriate under the circumstances, including repair, replacement, refund, reimbursement for expenses, compensation for damages, and any other remedies available under the written warranty or the Act (or rules thereunder); and a decision shall state a specified reasonable time for performance);

(2) Disclose to the warrantor its decision and the reasons therefor;

(3) If the decision would require action on the part of the warrantor, determine whether, and to what extent, warrantor will abide by its decision; and

(4) Disclose to the consumer its decision, the reasons therefor, warrantor's intended action (if the decision would require action on the part of the warrantor), and the information described in paragraph (g) of this section. For purposes of this paragraph (4) a dispute shall be deemed settled when the Mechanism has ascertained from the consumer that:

(1) The dispute has been settled to the consumer's satisfaction and (ii) the settlement contains a specified reasonable time for performance.

(e) The Mechanism may delay the performance of its duties under paragraph (d) of this section beyond the 40 day time limit:

(1) Where the period of delay is due solely to failure of a consumer to provide promptly his or her name and address, brand name and model number of the product involved, and a statement as to the nature of the defect or other complaint; or

(2) For a 7 day period in those cases where the consumer has made no attempt to seek redress directly from the warrantor.

(f) The Mechanism may allow an oral presentation by a party to a dispute (or a party's representative) only if: (1) Both warrantor and consumer expressly agree to the presentation; (2) Prior to agreement the Mechanism fully discloses to the consumer the following information:

(i) That the presentation by either party will take place only if both parties so agree, but that if they agree, and one party fails to appear at the agreed upon time and place, the presentation by the other party may still be allowed;

(ii) That the members will decide the dispute whether or not an oral presentation is made;

(iii) The proposed date, time and place for the presentation; and

(iv) A brief description of what will occur at the presentation including, if applicable, parties' rights to bring witnesses and/or counsel; and

(3) Each party has the right to be present during the other party's oral presentation. Nothing contained in this paragraph (b) of this section shall preclude the Mechanism from allowing an oral presentation by one party, if the other party fails to appear at the agreed upon time and place, as long as all of the requirements of this paragraph have been satisfied.

(g) The Mechanism shall inform the consumer, at the time of disclosure required in paragraph (d) of this section that:

(1) If he or she is dissatisfied with its decision or warrantor's intended ac-

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5. of eventual performance, legal actions, including use of small claims court, may be pursued;

6. The Mechanism's decision is admissible in evidence as provided in section 110(a) (3) of the Act; and

7. The consumer may obtain, at reasonable cost, copies of all Mechanism records relating to the consumer dispute.

(3) If the warrantor has agreed to perform any obligations, either as part of settlement, agreed to after notification to the Mechanism of the dispute, or as a result of a decision under paragraph (d) of this section, the warrantor shall ascertain from the consumer within 10 working days of the date for performance whether performance has occurred.

A requirement that a consumer consent to an action under section 3) of the Act shall be satisfied 40 days after notification to the Mechanism of the dispute or when the Mechanism completes all of its duties under paragraph (d) of this section, which occurs sooner. Except that, if the Mechanism delays performance of its duties by paragraph (e) of this section, the requirement that the consumer initially resort to the Mechanism shall not be satisfied until the end of delay allowed by paragraph (f) of this section has ended.

Decisions of the Mechanism shall be legally binding on any person, except the warrantor shall act in faith, as provided in § 703.2(g) of this part. In any civil action arising from a warranty obligation and relating to a matter considered by the Mechanism, any decision of the Mechanism shall be admissible in evidence, provided in section 110(a) (3) of the Act.

6. Recordkeeping.

The Mechanism shall maintain records on each dispute referred to it. Such records shall include:

(1) Name, address and telephone number of the consumer;

(2) Name, address, telephone number and contact person of the warrantor;

(3) Brand name and model number of the product involved;

(4) The date of receipt of the dispute and the date of disclosure to the consumer of the decision;

(5) All letters or other written documents submitted by either party;

(6) All other evidence collected by the Mechanism relating to the dispute, including summaries of relevant and material portions of telephone calls and meetings between the Mechanism and any other person (including consultants described in § 703.4(b) of this part);

(7) A summary of any relevant and material information presented by either party at an oral presentation;

(8) The decision of the members, including information as to date, time and place of meeting, and the identity of members voting; or information on any other resolution;

(9) A copy of the disclosure to the parties of the decision;

(10) A statement of the warrantor's intended actions;

(11) Copies of follow-up letters (or summaries of relevant and material portions of follow-up telephone calls) to the consumer, and responses therefor; and

(12) Any other documents and communications for summaries of relevant and material portions of oral communications relating to the dispute.

(b) The Mechanism shall maintain an index of each warrantor's disputes grouped under brand name and subgrouped under product model.

(c) The Mechanism shall maintain an index for each warrantor as will show:

(1) All disputes in which the warrantor has promised some performance (either by settlement or in response to a Mechanism decision) and has failed to comply; and

(2) All disputes in which the warrantor has refused to abide by a Mechanism decision.

(d) The Mechanism shall maintain an index as will show all disputes delayed beyond 40 days.

(e) The Mechanism shall compile semi-annually and maintain statistics which show the number and percent of disputes in each of the following categories:

(1) Resolved by staff of the Mechanism and warrantor has complied;

(2) Resolved by staff of the Mechanism, time for compliance has occurred, and warrantor has not complied;

(3) Resolved by staff of the Mechanism and time for compliance has not yet occurred;

(4) Decided by members and warrantor has complied;

(5) Decided by members and warrantor has not complied; and time for compliance has occurred, and warrantor has not complied;

(6) Decided by members and time for compliance has not yet occurred;

(7) Decided by members adverse to the consumer;

(8) No jurisdiction;

(9) Decision delayed beyond 40 days under § 703.5(e)(1) of this part; 40 days under § 703.5(e)(2) of this part;

(11) Decision delayed beyond 40 days for any other reason; and

(12) Pending decision.

(1) The Mechanism shall retain all records specified in paragraphs (a) through (e) of this section for at least 4 years after final disposition of the dispute.

§ 703.7 Audit.

(a) The Mechanism shall have an audit conducted at least annually, to determine whether the Mechanism and its implementation are in compliance with this part. All records of the Mechanism required to be kept under § 703.6 of this part shall be available for audit.

(b) Each audit provided for in paragraph (a) of this section shall include at a minimum the following:

(1) Evaluation of warrantors' efforts to make consumers aware of the Mechanism's existence as required in § 703.2(d) of this part;

(2) Review of the indexes maintained pursuant to § 703.6 (b), (c), and (d) of this part; and

(3) Analysis of a random sample of disputes handled by the Mechanism to determine the following:

(1) Accuracy of the Mechanism's complaint and other forms, investigation, mediation and follow-up efforts, and other aspects of complaint handling; and

(2) Accuracy of the Mechanism's statistical compilations under § 703.6(e) of this part. (For purposes of this subparagraph, "analysis" shall include oral or written contact with the consumers involved in each of the disputes in the random sample.)

(c) A report of each audit under this section shall be submitted to the Federal Trade Commission, and shall be made available to any person at reasonable cost. The Mechanism may direct its auditor to delete names of parties to disputes, and identity of products involved, from the audit report.

(d) Auditors shall be selected by the Mechanism. No auditor may be involved with the Mechanism as a warrantor, sponsor or member, or employee or agent thereof, other than for purposes of the audit.

§ 703.8 Openness of records and proceedings.

(a) The statistical summaries specified in § 703.6(e) of this part shall be available to any person for inspection and copying.

(b) Except as provided under paragraphs (a) and (e) of this section, and paragraph (c) of § 703.7 of this part, all records of the Mechanism may be kept confidential, or made available only on such terms and conditions, or in such form, as the Mechanism shall permit.

(c) The policy of the Mechanism with respect to records made available at the Mechanism's option shall be set out in the procedures under § 703.5(a) of this part; the policy shall be applied uniformly to all requests for access to or copies of such records.

(d) Meetings of the members to hear and decide disputes shall be open to observers on reasonable and nondiscriminatory terms. The identity of the parties and products involved in disputes need not be disclosed at meetings.

(e) Upon request the Mechanism shall provide to either party to a dispute:

(1) Access to all records relating to the dispute; and

(2) Copies of any records relating to the dispute, at reasonable cost.

(11) Resolved by staff of the Mechanism and warrantor has complied;

(12) Resolved by staff of the Mechanism, time for compliance has occurred, and warrantor has not complied;

(13) Resolved by staff of the Mechanism and time for compliance has not yet occurred;

(14) Decided by members and warrantor has complied;

(15) Decided by members and warrantor has not complied; and time for compliance has occurred, and warrantor has not complied;

(16) Decided by members and time for compliance has not yet occurred;

(17) Decided by members adverse to the consumer;

(18) No jurisdiction;

(19) Decision delayed beyond 40 days under § 703.5(e)(1) of this part; 40 days under § 703.5(e)(2) of this part;

(21) Decision delayed beyond 40 days for any other reason; and

(22) Pending decision.

(a) The Mechanism shall have an audit conducted at least annually, to determine whether the Mechanism and its implementation are in compliance with this part. All records of the Mechanism required to be kept under § 703.6 of this part shall be available for audit.

(b) Each audit provided for in paragraph (a) of this section shall include at a minimum the following:

(1) Evaluation of warrantors' efforts to make consumers aware of the Mechanism's existence as required in § 703.2(d) of this part;

(2) Review of the indexes maintained pursuant to § 703.6 (b), (c), and (d) of this part; and

(3) Analysis of a random sample of disputes handled by the Mechanism to determine the following:

(1) Accuracy of the Mechanism's complaint and other forms, investigation, mediation and follow-up efforts, and other aspects of complaint handling; and

(2) Accuracy of the Mechanism's statistical compilations under § 703.6(e) of this part. (For purposes of this subparagraph, "analysis" shall include oral or written contact with the consumers involved in each of the disputes in the random sample.)

(c) A report of each audit under this section shall be submitted to the Federal Trade Commission, and shall be made available to any person at reasonable cost. The Mechanism may direct its auditor to delete names of parties to disputes, and identity of products involved, from the audit report.

(d) Auditors shall be selected by the Mechanism. No auditor may be involved with the Mechanism as a warrantor, sponsor or member, or employee or agent thereof, other than for purposes of the audit.

§ 703.8 Openness of records and proceedings.

(a) The statistical summaries specified in § 703.6(e) of this part shall be available to any person for inspection and copying.

(b) Except as provided under paragraphs (a) and (e) of this section, and paragraph (c) of § 703.7 of this part, all records of the Mechanism may be kept confidential, or made available only on such terms and conditions, or in such form, as the Mechanism shall permit.

(c) The policy of the Mechanism with respect to records made available at the Mechanism's option shall be set out in the procedures under § 703.5(a) of this part; the policy shall be applied uniformly to all requests for access to or copies of such records.

(d) Meetings of the members to hear and decide disputes shall be open to observers on reasonable and nondiscriminatory terms. The identity of the parties and products involved in disputes need not be disclosed at meetings.

(e) Upon request the Mechanism shall provide to either party to a dispute:

(1) Access to all records relating to the dispute; and

(2) Copies of any records relating to the dispute, at reasonable cost.

(11) Resolved by staff of the Mechanism and warrantor has complied;

(12) Resolved by staff of the Mechanism, time for compliance has occurred, and warrantor has not complied;

(13) Resolved by staff of the Mechanism and time for compliance has not yet occurred;

(14) Decided by members and warrantor has complied;

(15) Decided by members and warrantor has not complied; and time for compliance has occurred, and warrantor has not complied;

(16) Decided by members and time for compliance has not yet occurred;

(17) Decided by members adverse to the consumer;

(18) No jurisdiction;

(19) Decision delayed beyond 40 days under § 703.5(e)(1) of this part; 40 days under § 703.5(e)(2) of this part;

(21) Decision delayed beyond 40 days for any other reason; and

(22) Pending decision.

(a) The Mechanism shall have an audit conducted at least annually, to determine whether the Mechanism and its implementation are in compliance with this part. All records of the Mechanism required to be kept under § 703.6 of this part shall be available for audit.

(b) Each audit provided for in paragraph (a) of this section shall include at a minimum the following:

(1) Evaluation of warrantors' efforts to make consumers aware of the Mechanism's existence as required in § 703.2(d) of this part;

(2) Review of the indexes maintained pursuant to § 703.6 (b), (c), and (d) of this part; and

(3) Analysis of a random sample of disputes handled by the Mechanism to determine the following:

(1) Accuracy of the Mechanism's complaint and other forms, investigation, mediation and follow-up efforts, and other aspects of complaint handling; and

(2) Accuracy of the Mechanism's statistical compilations under § 703.6(e) of this part. (For purposes of this subparagraph, "analysis" shall include oral or written contact with the consumers involved in each of the disputes in the random sample.)

(c) A report of each audit under this section shall be submitted to the Federal Trade Commission, and shall be made available to any person at reasonable cost. The Mechanism may direct its auditor to delete names of parties to disputes, and identity of products involved, from the audit report.

(d) Auditors shall be selected by the Mechanism. No auditor may be involved with the Mechanism as a warrantor, sponsor or member, or employee or agent thereof, other than for purposes of the audit.

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Chapter I—Federal Trade Commission

§ 800.1

SUBCHAPTER H—RULES, REGULATIONS, STATEMENTS AND INTERPRETATIONS UNDER THE HART-SCOTT-RODINO ANTI-TRUST IMPROVEMENTS ACT OF 1976

PART 800—TRANSITIONAL RULE

§ 800.1 Transitional rule.

(a) This rule is promulgated under the authority of subsection (b)(2)(C) of section 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, Pub. L. 94-435, 15 U.S.C. sec. 18A, hereinafter referred to as "this section." References to specific subsections refer to subsections thereof.

(b) An acquisition shall be exempt from all requirements of this section if made on or after February 27, 1977, and before the effective date of the notification and report form and rules promulgated by the Federal Trade Commission under the authority of this section (hereinafter referred to as the "form" and "rules" respectively). Such date shall be identified in the Federal Register at least 30 days in advance.

(c)(1) An acquisition made on or after the effective date of the form and rules shall be exempt from the waiting period required by paragraph (a) of this section, except as provided by paragraph (c)(2) of this section, if:

(i) All persons required by this section and the rules to file notification with respect to such acquisition (or in the case of an acquisition described by § 801.30(k) of the rules, the acquiring person) file notification with both the Federal Trade Commission and the Assistant Attorney General, in the manner prescribed by the rules, on the effective date of the form and rules. Notification received by the Federal Trade Commission and Assistant Attorney General prior to the effective date of the rules shall be deemed to be filed on the effective date of the form and rules;

(ii) Neither the Federal Trade Commission nor the Assistant Attorney General requests additional information or documentary material pursuant to subsection (e) and the rules, from any person filing notification with respect to such acquisition, prior

to the consummation of the acquisition, and

(iii) The acquisition is consummated no later than 30 (or, in the case of cash tender offers, as defined in the rules, 15) calendar days after the effective date of the form and rules.

(2) In the event of a request for additional information or documentary material, the waiting period normally deriving from such a request, pursuant to paragraph (e) of this section and the rules, shall take effect at the time of such request, and shall expire, or be terminated, or terminated, or extended thereafter in accordance with this section and the rules.

(d) All acquisitions otherwise subject to the requirements of this section, and not falling within paragraphs (b) or (c) of this section, shall be subject to the requirements of this section and the rules.

(e) In the case of an acquisition described by § 801.30 of this chapter and falling within paragraph (c) of this section, persons other than the acquiring person shall file such notification as is required by this section and the rules.

(Sec. 201(d)(2)(C), Pub. L. 94-435, 15 U.S.C. Sec. 18A)

(13 FR 27517, June 26, 1976)

PART 801—COVERAGE RULES

Sec.

801.1 Definitions.

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801.3 Activities in or affecting commerce.

801.4 Secondary acquisition.

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