Should the informal dispute settlement mechanism requirements of rule 703 be changed? Why or why not? What changes, if any, should be made? What evidence supports these changes?

Yes. Repeal the statistical requirements of section 703.6(b-f) and audit requirements of section 703.7. Create a new section 703.7 providing the FTC electronic access to all warrantor and mechanism documents necessary to determine if the mechanism complies with Rule 703.

The Magnuson-Moss Warranty Act [15 USC 2310(a)] encourages warrantors to establish procedures whereby warranty disputes are fairly and expeditiously settled through informal dispute settlement mechanisms. The Act directs the FTC to prescribe rules setting forth minimum requirements for any informal dispute settlement procedure which a warrantor incorporates into its written warranty. The Act requires a consumer, prior to commencing a civil action, to resort to a warrantor's informal dispute settlement procedure provided that: the warrantor has a procedure; the procedure and its implementation meet the requirements of Rule 703; and, the warrantor incorporates the prior resort requirement in its written warranty. The procedure's decision is admissible in evidence. The FTC, on its own initiative may, or upon written complaint filed by any interested person shall, review the bona fide operation of such a procedure.

Sections 703.2 through 703.5 appear to fulfill the legislative intent. Consumer access to the mechanism (informal dispute settlement procedure) to commence a claim must be clear and easy. The mechanism must be sufficiently insulated from the warrantor. The mechanism must investigate, gather and organize all information necessary for a fair and expeditious decision in each dispute. The mechanism has 40 days to decide the dispute if the consumer has promptly provided 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 47 days if the consumer has made no attempt to seek redress directly from the warrantor). If the procedure is fair, consumers with valid warranty disputes should receive satisfactory settlements or acceptable decisions at least half of the time. If the procedure is expeditious, regardless of outcome, a consumer's quest for statutory relief is delayed no longer than 40 days.

If warrantors require resort to mechanisms that are fair and expeditious and comply with Rule 703, then the statutory scheme is working as intended for consumers with valid warranty disputes. However, if consumers are forced to resort to non-complying mechanisms, then the Act has not only fails to achieve its objectives, but also fosters an environment compounding injury to consumers. Unfair and prolonged outcomes tax consumers' persistence. Consumers give up and are denied the relief the Act was intended to provide. If the product is unsafe, consumers risk bodily injury or possibly death if it is not repaired, replaced or repurchased. Those who pursue a civil action have the added obstacle of an adverse decision being admissible in evidence, unless the consumer can prove the mechanism does not comply with Rule 703 (a very tall order for any individual consumer to achieve).

Thirteen automobile manufacturers in their 2011 warranties and/or warranty supplement materials require consumers to use their mechanism before pursuing legal remedies under the Magnuson/Moss Warranty Act. Nine of these manufacturers, Aston Martin, BMW, Ford, Hyundai, Kia, Mazda, Nissan/Infiniti, Saab and Volkswagen/Audi, sponsor the BBB AUTO LINE mechanism. Three, Mitsubishi,

Suzuki and Toyota/Lexus, sponsor the National Center for Dispute Settlement (NCDS) mechanism and one, Porsche, sponsors the CAP-Motors mechanism. If these manufacturers' self-proclamations of compliance are false, the financial, physical and emotional consequences to consumers stuck with chronically defective automobiles can be severe.

Empirical evidence suggests that the manufacturer compliance self-proclamations (i.e., mandatory prior resort) may be false, and, if so, the manufacturer warranties, deceptive. For example, in 2010, 17,259 cases were submitted to the BBB AUTO LINE mechanism, of which nearly 3 out of 4 were never settled or decided by the BBB. The actual number of consumers who received meaningful relief was only a small fraction of this total (see https://www.auto.bbb.org/scripts/cgiip.exe/WService=wsbroker1/stats/arbstats.w). Consequently, if the mechanism complied with Rule 703, one must at least question why these statistics are not more balanced. While these outcome categories may not tell whole story, they are at least more specific than those required to be compiled under section 703.6(b-f) and reviewed by the auditor under section 703.7 (see http://www.bbb.org/us/storage/16/documents/BBBAutoLine/FTC-AUDIT-BBB-AUTO-LINE-2010.pdf). Furthermore, the premise that an auditor will conduct the audit objectively, impartially and scientifically is flawed. The mechanism hires the auditor which may be a significant amount of his or her annual income. More importantly, an auditor's finding that the mechanism does not comply with Rule 703 would open the floodgate to litigation that that the manufacturers' warranties were deceptive. An objective analysis can only be carried out independent of these considerations.

While some manufacturers and mechanisms may point to certification or approval by some states that their mechanisms comply with Rule 703, Congress did not delegate this responsibility to the states. In reality, most states do not perform any review of the mechanism's paper materials or operations, or at best, only do so periodically. The few states that perform active reviews are themselves understaffed and their evaluations sometimes are not comprehensive enough to pinpoint critical manufacturer or mechanism practices that might evidence non-compliance.

The responsibility to ensure compliance with the Magnuson-Moss Warranty Act and Rule 703 rests with the FTC. A rule change is not necessarily needed to capture this responsibility, but it could specify the methodology to carry it out. One provision should include electronic access to all disputes and pertinent documents, including the contract between the warrantor and the mechanism and the terms of compensation for services rendered. Another would require a review of a random and representative and statistically valid sample of disputes submitted to the mechanism in conjunction with any other methodology deemed necessary by the FTC to determine whether the mechanism fairly and expeditiously resolves disputes. The FTC should be required to perform this evaluation at least once a year.