



STATE OF WEST VIRGINIA
OFFICE OF THE ATTORNEY GENERAL
CHARLESTON 25305

CHARLIE BROWN
ATTORNEY GENERAL

March 11, 1987

NOTICE OF PUBLIC HEARING OR COMMENT PERIOD ON A PROPOSED RULE

PUBLIC HEARING

AGENCY: Attorney General

RULE TYPE: Procedural Rule

RULE TITLE: Proposed procedural rule pertaining to the qualification and approval of motor vehicle manufacturers' informal dispute settlement mechanisms.

A PUBLIC HEARING ON THE ABOVE PROPOSED RULE WILL BE HELD AT 10:30 a.m. ON March 24, 1987, AT the Courtroom of Independence Hall, 1528 Market Street, Wheeling, West Virginia

COMMENTS ARE LIMITED TO: ORAL WRITTEN BOTH X

COMMENTS MAY ALSO BE MAILED TO: 812 Quarrier Street, L&S Building, Sixth Floor, Charleston, West Virginia 25301

THE DEPARTMENT REQUESTS THAT PERSONS WISHING TO MAKE COMMENTS AT THE HEARING MAKE AN EFFORT TO SUBMIT WRITTEN COMMENTS IN ORDER TO FACILITATE A REVIEW OF THESE COMMENTS.

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THE PROPOSED RULE.

CHARLES G. BROWN
Attorney General

SECRETARY OF STATE

1987 MAR 11 PM 2:12

FILED

FISCAL NOTE FOR PROPOSED RULES

Proposed procedural rule pertaining to the qualification and approval
 Rule Title: of motor vehicle manufacturers' informal dispute settlement mechanisms.

Type of Rule: Legislative Interpretive Procedural

Office of the Attorney General
 Agency Consumer Protection Division Address 1204 Kanawha Boulevard, East
Charleston, West Virginia 25301

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$	\$	\$	\$	\$
Personal Services	\$0	\$0	\$0	\$0	\$0
Current Expense	\$0	\$0	\$0	\$0	\$0
Repairs and Alterations	\$0	\$0	\$0	\$0	\$0
Equipment	\$0	\$0	\$0	\$0	\$0
Other	\$0	\$0	\$0	\$0	\$0

2. Explanation of above estimates.
 No estimated cost increase or decrease.

3. Objectives of these rules:
 The proposed procedural rule is designed to establish a procedure for the review and approval of informal dispute settlement mechanisms chosen by automobile manufacturers to arbitrate disputes under the New Motor Vehicle Warranties Act, W. Va. Code §§ 46A-6A-1 et seq.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None

B. Economic Impact on Political Subdivisions; Specific Industries;
Specific groups of citizens.

None

C. Economic Impact on Citizens/Public at Large.

None

Date

7/21/87

Signature of Agency Head or Authorized Representative

Charles G. Brown

WEST VIRGINIA PROCEDURAL RULES
ATTORNEY GENERAL
CHAPTER 46A-6A
SERIES 7

OFFICE OF THE ATTORNEY GENERAL
WEST VIRGINIA

1987 JAN 29 PM 5:09

FILED

Title: Proposed procedural rule pertaining to the qualification and approval of motor vehicle manufacturers' informal dispute settlement mechanisms.

- Section 1. General
2. Definitions
3. Application for Qualification
4. Review of Application
5. Provisionally Qualified Mechanisms
6. Continuing Obligations of Qualified Mechanisms
7. Revocation of Qualification
8. Unqualified Mechanisms

WEST VIRGINIA PROCEDURAL RULE
ATTORNEY GENERAL
CHAPTER 46A-6A
SERIES _____

Title: Proposed procedural rule pertaining to the qualification and approval of motor vehicle manufacturers' informal dispute settlement mechanisms.

Section 1. General

1.1 Rule Designation--This rule is procedural.

1.2 Scope and Purpose--This proposed procedural rule specifies the process and requirements for the issuance of a declaratory ruling on the qualification of motor vehicle manufacturers' informal dispute settlement mechanisms and is intended to supplement and be read together with the Legislative Rule pertaining to the establishment and qualification of third-party dispute mechanisms for the resolution of new motor vehicle warranty disputes between the consumer and the manufacturer, its agents, or its authorized dealer, Title 142, Rules of the Attorney General, Chapter 46A-6A, Series 3 (hereinafter the Legislative Rule, Series 3.)

1.3 Authority--W. Va. Code § 46A-6-103 and Code § 46A-6A-8.

1.4 Filing Date--

1.5 Effective Date--

1.6 Construction--This rule shall be liberally construed to effectuate the purposes of the West Virginia New Motor Vehicle Warranties Act, W. Va. Code §§ 46A-6A-1 et seq.

1.7 Severability--If, for any reason, any section, subsection, sentence, clause, phrase, or provision of this Rule or the application thereof to any person or circumstance is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect other sections, subsections, sentences, clauses, phrases, or provisions or its application to any other person or circumstance, and to this end each

Attorney General
Procedural Rule, 46A-6A
Series __, Sec. 1

and every section, subsection, sentence, clause, phrase, or provision of this rule is hereby declared severable.

Section 2. Definitions

2.1 "The Act" means the Consumer Protection-New Motor Vehicle Warranties Act, W. Va. Code §§ 46A-6A-1 et seq.

2.2 "Manufacturer" means a person engaged in the business of manufacturing, assembling, or distributing motor vehicles, who will, under normal business conditions during the year, manufacture, assemble or distribute to dealers at least ten new motor vehicles.

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

2.4 "Consumer" means the purchaser, other than for purposes of resale, of a new motor vehicle purchased in this State used primarily for personal, family or household purposes, a person to whom the new motor vehicle is transferred for the same purposes during the duration of an express warranty applicable to the motor vehicle and any other person entitled by the term of the warranty to enforce the obligation of the warranty.

2.5 "Mechanism" means the organization, persons, or entity which conducts the decision-making processes under an informal dispute settlement procedure which is incorporated into the terms of a written warranty.

2.6 "Members" mean the person or persons within a Mechanism actually deciding disputes.

2.7 "Qualified Mechanism" means a third-party dispute settlement Mechanism which has been reviewed by the Director of the Consumer Protection Division, Office of the Attorney General, and certified and approved as meeting the requirements specified in the Act, W. Va. Code § 46A-6A-8, and the requirements of the Legislative Rule, Series 3.

Attorney General
Procedural Rule, 46A-6A
Series __, Sec. 2

2.8 "Provisionally Qualified Mechanism" means a third-party dispute settlement Mechanism which is not able to submit a complete application under the requirements of this Rule and is granted a one year approval under the terms of Section 5 of this Rule.

Section 3 Application for Qualification

3.1 Application by a Mechanism for certification as a Qualified Mechanism shall be made to the Director of the Consumer Protection Division, Office of the Attorney General, and shall include the following information unless specific exceptions are provided in this Rule:

3.1.1 Name, address, and telephone number of the Mechanism. In the event that the applicant does not maintain one or more West Virginia addresses and telephone numbers at the time of application, the application shall set forth the specific plans for making the Mechanism accessible to West Virginia consumers.

3.1.2 The Manufacturers, vehicle makes and vehicle models for which the Mechanism is authorized to hear disputes.

3.1.3 Copies of all warranty documents and disclosure information used to alert consumers to the Mechanism and the warranty proffered by the Manufacturer for each vehicle make and model, together with any other informational material, advertising copy or other notices used to inform consumers concerning warranties, the availability and operation of the Mechanism and any other Manufacturer dispute resolution procedures.

3.1.4 Copies of all written operating standards and procedures promulgated by the Mechanism, as required by Legislative Rule, Series 3, Section 5.3.1, or which are distributed to consumers.

3.1.5 The names, addresses and qualifications of all Members of the Mechanism, together with a list of all other persons employed by the Mechanism and a description of the duties of each such person and Member.

Attorney General
Procedural Rule, 46A-6A
Series __, Sec. 3

3.1.6 Copies of the operating budget of the Mechanism during the two preceding fiscal years and the anticipated budget if approval is granted.

3.1.7 A description of all training programs conducted for Mechanism Members, and the plans for any such programs should approval be granted.

3.1.8 Copies of the Indexes required by the Legislative Rule, Series 3, Sections 5.4.2, 5.4.3, and 5.4.4 for the record year preceding the application.

3.1.9 Copies of the semiannual statistical compilations, required by the Legislative Rule, Series 3, Section 5.4.5, for the preceding year.

3.1.10 Copies of all annual audits previously compiled pursuant to the Legislative Rule, Series 3, Section 5.5.

3.1.11 Copies of not less than twenty-five written decision documents issued by the Mechanism to West Virginia consumers during the preceding year, representing a cross-section of decisions involving the award of and denial of requests for replacement vehicles, complete refunds, incidental damages and consequential damages and further reflecting the manner in which the substantive provisions of the Act were applied to such decisions.

3.1.12 Statistics for the previous record year showing the number of oral presentations under the Legislative Rule, Series 3, Section 5.3.6, conducted for each Warrantor served by the Mechanism, the number of times such a presentation was requested by a consumer and rejected by the Warrantor and the number of times such a presentation was requested by the Warrantor and rejected by the consumer.

3.1.13 Such other or additional information as the Director of the Consumer Protection Division might request after initial review of the application.

Attorney General
Procedural Rule, 46A-6A
Series __, Sec. 4

Section 4. Review of Application

4.1 Upon receipt of a completed application, the Director of the Consumer Protection Division shall direct his staff to prepare a report, reviewing the operation of the Mechanism in view of the requirements of the Act and the Legislative Rule, Series 3, and to recommend an appropriate ruling on the application.

4.2 After receipt of the staff report and independent review of the application, the Director shall announce his declaratory ruling, certifying the applicant as a Qualified Mechanism, granting Provisional Qualification for such time and upon such conditions as may be specified, or rejecting the application.

4.3 A final report will be prepared to accompany the Director's ruling, setting forth the basis therefor.

Section 5. Provisionally Qualified Mechanisms

5.1 Provisional Qualification shall be available only for those Mechanisms which have not conducted sufficient operations in West Virginia under the terms of the Act and the Legislative Rule, Series 3, prior to submitting an application, so as to permit the submission of a complete application.

5.2 Applicants for Provisional Qualification shall complete so much of the application submission as possible, supplementing West Virginia information and records with comparable documents and statistics from one or more other states, if available. All applicants for Provisional Qualification shall clearly so state on the face of the application.

5.3 In the event Provisional Qualification is granted, it shall continue for a period of one year. Following nine months of operation as a Provisionally Qualified Mechanism, such Mechanism shall update its original application with the statistics and materials required in an application under this Rule, reflecting the nine-month operating period, and reapply for approval as a Qualified Mechanism.

Attorney General
Procedural Rule, 46A-6A
Series __, Sec. 5

5.4 After review of the application as provided in Section 4, the Director may approve or reject the application or grant one additional year of Provisional Qualification. This ruling will be reflected in a report, as provided in Section 4.3.

Section 6. Continuing Obligations of Qualified Mechanisms

6.1 A Qualified Mechanism shall promptly inform the Consumer Protection Division of any changes in the information submitted in its application pursuant to Sections 3.1.1, 3.1.3, 3.1.4, and 3.1.5, and supply copies of such changes or requisite information.

6.2 A Qualified Mechanism shall submit to the Consumer Protection Division, annually, copies of its budget, the annual audit required by the Legislative Rule, Series 3, Section 5.5, and an annual cross-section of opinions as required by Section 3.1.11 of this Rule.

6.3 A Qualified Mechanism shall supply for review, upon request of the Director, any additional statistics, records or documents which must be compiled or prepared pursuant to the Legislative Rule, Series 3.

Section 7. Revocation of Qualification

7.1 In the event that the Director has probable cause to believe that a Qualified or a Provisionally Qualified Mechanism is operating in contravention of the requirements of the Act, the Legislative Rule, Series 3, or this Rule, written notification shall be sent to the Mechanism, outlining the perceived deficiencies, fixing a time within which to respond and identifying any additional information which may be required.

7.2 Upon receipt of the Qualified or Provisionally Qualified Mechanism's reply, the Director shall determine whether the approval granted should be revoked, continued as before or continued for a period contingent upon compliance with such conditions as may be set forth in the declaratory ruling. This ruling will be reflected in a report, as provided in Section 4.3. Failure of the Mechanism to comply with

Attorney General
Procedural Rule, 46A-6A
Series __, Sec. 7

conditions so stated shall result in the automatic revocation of approval, as of the date provided in the declaratory ruling.

7.3 After revocation of approval, a Mechanism may reapply, pursuant to the application procedures in Section 3 of this Rule, following one year after the date of such revocation.

Section 8. Unqualified Mechanisms

8.1 There is no obligation on the part of a consumer with a warranty dispute governed by the Act to refer such dispute to a Mechanism under W. Va. Code § 46A-6A-8(b) if the Mechanism has not obtained Qualified or Provisionally Qualified status, or has had such status revoked.



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OFFICE OF THE ATTORNEY GENERAL
CHARLESTON 25305

CHARLIE BROWN
ATTORNEY GENERAL

January 21, 1987

FILED
1987 JAN 23 PM 5:08
SHEPHERD

The Honorable Ken Hechler
Secretary of State
Suite 157-K
State Capitol
Charleston, West Virginia 25305

Re: Filing of Proposed Procedural Rule

Dear Secretary Hechler:

Enclosed for filing in the State Register please find a copy of the Attorney General's Proposed Procedural Rule pertaining to the qualification and approval of motor vehicle manufacturers' informal dispute settlement mechanisms. Also enclosed are the Fiscal Note and the Notice of Public Hearing and Comment Period.

If you have questions about the materials herein or the Rule, please contact me at any time.

Sincerely,

THOMAS L. HINDES, Director
Deputy Attorney General
Consumer Protection Division

TLH/lp