



## Ohio Administrative Code

### Rule 109:4-4-04 Minimum requirements of the board.

Effective: December 30, 1991

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#### (A) Board organization

(1) The board shall be funded and competently staffed at a level sufficient to ensure fair and expeditious resolution of all disputes, and shall not charge consumers any fee for use of the board.

(2) The warrantor, the sponsor of the board (if other than the warrantor), and the board shall take all steps necessary to ensure that the board and its arbitrators and staff are sufficiently insulated from the warrantor and the sponsor, so that the decisions of the arbitrators and the performance of the staff are not influenced by either the warrantor or the sponsor. Necessary steps shall include, at a minimum, committing funds in advance of submission of disputes, basing personnel decisions solely on merit, and not assigning conflicting warrantor or sponsor duties to board staff persons. The board shall collect and maintain detailed information relating to any interest and involvement of the arbitrators in the manufacture, distribution, sale or service of any motor vehicle.

(3) The board shall impose any other reasonable requirements necessary to ensure that the arbitrators and staff act fairly and expeditiously in each dispute.

#### (B) Qualification of arbitrators

(1) No arbitrator shall be:

(a) A party to the dispute or an employee or agent of a party other than for purposes of deciding disputes; or

(b) A person who is or may become a party in any pending legal action, including but not limited to class actions, relating to the product or complaint in dispute or an employee or agent of such persons other than for purposes of deciding disputes. For purposes of this paragraph, a person shall not be considered 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.

(2) The composition of the arbitration panel(s) shall be as follows:

(a) If a panel consists of less than three arbitrators, all shall be persons having no direct involvement in the manufacture, distribution, sale or service of any motor vehicle.

(b) If a panel consists of three or more arbitrators, at least two-thirds shall be persons having no direct involvement in the manufacture, distribution, sale or service of any motor vehicle.

(3) "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.

(4) Notwithstanding paragraph (B)(2) of this rule, any arbitrator selected to hear a dispute shall, immediately upon notification of such selection, disclose to the board any investment he or she has, in any company which is involved in the manufacture, distribution, sale or service of any motor vehicle. If, during the pendency of any dispute, any arbitrator acquires such an interest, he or she shall immediately disclose such acquisition to the board. Any disclosure shall be in writing and the board shall deliver a copy to each party. Upon receipt of such disclosure, a party may elect to disqualify the arbitrator from hearing the dispute.

(5) Nothing contained in paragraph (B) of this rule shall prevent the arbitrators from consulting with any neutral persons knowledgeable in the technical, commercial or other area relating to motor vehicles which is the subject of the dispute.

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

(C) Operation of the board

(1) The board shall establish written operating procedures which shall include at least those items



specified in paragraphs (C)(2) to (C)(12) of this rule and the information required by paragraph (F)(3) of this rule. Copies of the written procedures shall be made available to any person upon request.

(2) Upon written notification of a dispute, the board shall immediately inform both the warrantor and the consumer of receipt of the dispute by a written notice which includes the following disclosure which must be in bold face ten point type:

**"OHIO LAW REQUIRES YOU TO USE A QUALIFIED ARBITRATION PROGRAM BEFORE SUING THE MANUFACTURER OVER NEW CAR WARRANTY DISPUTES. FAILURE TO ARBITRATE YOUR CLAIM MAY PRECLUDE YOU FROM MAINTAINING A LAWSUIT UNDER SECTION 1345.75 OF THE REVISED CODE."**

(3) The board shall investigate, gather and organize all information necessary for a fair and expeditious decision on each issue in dispute. When information submitted by any source tends to contradict facts submitted by any party, and the information will or may be used in the decision, the board 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. All written documents relating to or accounts of the transaction or services in dispute shall be signed by the person who makes it. Nothing contained herein shall prevent or discourage the board from attempting to settle disputes prior to a hearing. Disputes which are settled after written notification to the board but prior to a hearing shall be reported to the attorney general on forms to be approved by the attorney general, which shall contain, at a minimum, the following information:

- (a) The date the complaint was received;
- (b) The relief requested by the consumer;
- (c) The nature of the settlement; and
- (d) The date the settlement was implemented.



(4) Prior to the hearing, the board shall provide the arbitrators with copies of the information collected under paragraph (C)(3) of this rule and shall further provide a conspicuous statement indicating that a neutral technician is available (if the board does not provide one at all hearings) and whom to contact should the arbitrators deem it necessary to have such consultation provided either prior to, or at, the hearing.

(5) If the dispute has not been settled, the board shall, as expeditiously as possible but at least within forty days of notification of the dispute, except as provided in paragraph (C)(8) of this rule:

(a) Render a fair decision signed by all arbitrators making the decision, and conforming with paragraph (C)(6) of this rule, based on the information gathered as described in paragraph (C)(3) of this rule, and on any information submitted at an oral presentation which conforms to the requirements of paragraph (C)(9) of this rule. A decision shall include any remedies ordered by the panel, including repair, replacement, refund, reimbursement for expenses, 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;

(b) Disclose to the warrantor, and the consumer, its decision, the reasons, therefor, and the information described in paragraph (C)(7) of this rule.

For purposes of this paragraph, a dispute shall be deemed settled when the board has ascertained from the consumer his or her acceptance of the offer and that the settlement has been fully implemented.

(6) The board's arbitration decision shall be disclosed to the attorney general on forms to be approved by the attorney general, which shall contain, at a minimum, the following information:

(a) Date the complaint was received;

(b) Relief requested by the consumer;

(c) Decision of the arbitrator(s) and reasons therefor;



- (d) Date of the decision;
  - (e) A specific date for completion of the transactions necessary to carry out the decision of the board;
  - (f) A statement that the decision is binding upon the warrantor and not the consumer, unless the consumer elects to accept the decision;
  - (g) The time within which the consumer must respond;
  - (h) Determination of whether the decision was accepted or rejected by the consumer.
- (7) The board shall inform the consumer at the time of disclosure required in paragraph (C)(5) of this rule that:
- (a) If he or she is dissatisfied with its decision or if the warrantor, its agent, or its authorized dealer fails to promptly fulfill the terms of the board's decision, the consumer may seek redress by other rights and remedies, including asserting a cause of action under section 1345.75 of the Revised Code.
  - (b) The consumer may obtain, at reasonable cost, copies of all board records relating to the consumer's dispute.
- (8) The board may delay the performance of its duties under paragraph (C)(5) of this rule beyond the forty-day time limit:
- (a) Where the period of delay is due solely to the failure of a consumer to provide promptly his or her name and address, make, model and vehicle identification number of the motor vehicle involved, and a statement as to the nature of the defect or other complaint;
  - (b) For a seven-day period in those cases where the consumer has made no attempt to seek redress directly from the warrantor;
  - (c) For a fourteen-day period for delays due solely to compliance with the requirement contained in



paragraph (C)(3) of this rule that the board provide the parties with an opportunity to explain or rebut contradictory information;

(d) For a fourteen-day period for delays due to consumer requests for hearing postponement, consumer failure to submit adequate information which the arbitrator(s) feel(s) is needed to render a decision, arbitrator unavailability, or acts of God.

(e) For a fourteen-day period at the discretion of the arbitrator(s). The reason for any such discretionary delay shall be disclosed and reported with the other information required by paragraphs (C)(5) and (C)(6) of this rule.

(f) Where the dispute is settled but the settlement is not fully implemented.

(9) The board must allow an oral presentation at the request of the consumer. If the consumer elects an in-person oral presentation, the warrantor may make its presentation in person, by telephone conference call, or by written submission. If the consumer elects an oral presentation by telephone conference call, the warrantor may make its presentation by telephone conference call, or by written submission. If the consumer does not request an oral presentation the warrantor shall make its presentation by written submission. Upon receipt of the dispute the board shall fully disclose to the parties the following information:

(a) That an oral presentation either in person or by telephone conference call will take place if requested by the consumer, but that, once requested, if one party fails to appear or give an oral presentation at the agreed-upon time and place, the presentation by the other party shall be allowed; and

(b) That the arbitrators will decide the dispute based upon written presentations if an oral presentation is not requested;

(c) That each party is permitted to be represented by a person of his or her choice;

(d) That the date, time and place for the presentation will be arranged to accommodate, where possible, the geographic and time-of-day needs of the parties;



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

(f) That each party has the right to either be present during the other party's oral presentation or, in lieu of attending, to submit a written presentation.

Nothing contained in paragraph (C)(9) of this rule shall preclude the board from allowing an oral presentation by one party, if the other party fails to appear or give an oral presentation at the agreed-upon time and place, as long as all of the requirements of paragraph (C)(9) of this rule have been satisfied.

(10) If the warrantor has agreed to perform any obligations as part of a settlement agreed to after notification to the board of the dispute or has been ordered to perform any obligations as a result of a decision under paragraph (C)(5) of this rule, the board shall ascertain from the consumer within ten working days of the date for performance whether performance has occurred and the board's finding shall be noted in its records.

(11) A requirement that a consumer resort to the board prior to commencement of an action under the act shall be satisfied forty days after notification to the board of the dispute or when the board completes all of its duties under paragraph (C)(5) of this rule, whichever occurs sooner. Except that, if the board delays performance of its duties required by paragraph (C)(5) of this rule, as allowed by paragraph (C)(8) of this rule, the requirements that the consumer initially resort to the board shall not be satisfied until the period of delay allowed by paragraph (C)(8) of this rule has ended.

(12) Decisions of the board shall be legally binding on the warrantor, which must perform its obligations pursuant to any such decisions if the consumer so elects.

#### (D) Recordkeeping

(1) The board shall maintain records on each dispute referred to it which shall include:



- (a) Name, address and telephone number of the consumer;
  - (b) Name, address, and telephone number of the contact person designated by the warrantor under paragraph (F)(1) of rule 109:4-4-03 of the Administrative Code;
  - (c) Makes, models and vehicle identification numbers of the motor vehicles;
  - (d) The date of receipt of the dispute and the date of disclosure to the consumer of the decision;
  - (e) All letters or other written documents submitted by either party;
  - (f) All other evidence collected by the board relating to the dispute, including summaries of relevant and material portions of telephone calls and meetings between the board and any other person (including neutral consultants described in paragraph (B)(4) or (C)(4) of this rule);
  - (g) A summary of any relevant and material information presented by either party at an oral presentation;
  - (h) The decision of the arbitrators, including information as to date, time and place of meeting and the identity of arbitrators voting, or information on any other resolution;
  - (i) A copy of the disclosure to the parties of the decision;
  - (j) Copies of follow-up letters (or summaries of relevant and material portions of follow-up telephone calls) to the consumer and responses thereto; and
  - (k) Any other documents and communications (or summaries of relevant and material portions of oral communications) relating to the dispute.
- (2) The board shall maintain an index of each warrantor's disputes grouped under make and subgrouped under model.
- (3) The board shall maintain an index for each warrantor which will show:





- (a) All disputes in which the warrantor has agreed to perform any obligations as part of a settlement reached after notification of the dispute or has been ordered to perform any obligations as the result of a decision under paragraph (C)(5) of this rule and has failed to comply; and
- (b) All disputes in which the warrantor has refused to abide by an arbitration decision.
- (4) The board shall maintain an index that will show all disputes delayed beyond forty days.
- (5) The board shall compile semiannually and, maintain and file with the attorney general a compilation of the semiannual statistics which show the number and per cent of the total number of warranty disputes received in each of the following categories (which shall total one hundred per cent of the total number of warranty disputes received):
  - (a) Resolved by staff of the board without arbitration and the warrantor has complied;
  - (b) Resolved by staff of the board, without arbitration, time for compliance has expired, and the warrantor has not complied;
  - (c) Resolved by staff of the board without arbitration, and time for compliance has not yet expired;
  - (d) Decided by arbitration and the party required to perform has complied, specifying whether the party required to perform is the consumer or the warrantor or both;
  - (e) Decided by arbitration, time for compliance has expired, and the party required to perform has not complied, specifying whether the party required to perform is the consumer or the warrantor or both;
  - (f) Decided by arbitration and time for compliance has not yet expired;
  - (g) Decided by arbitration in which neither party was awarded anything;
  - (h) No jurisdiction;



- (i) Decision delayed beyond forty days under paragraph (C)(8)(a) of this rule;
- (j) Decision delayed beyond forty days under paragraph (C)(8)(b) of this rule;
- (k) Decision delayed beyond forty days under paragraph (C)(8)(c) of this rule;
- (l) Decision delayed beyond forty days under paragraph (C)(8)(d) of this rule;
- (m) Decision delayed beyond forty days for any other reason; and
- (n) Decision is pending and the forty-day limit has not expired.

In addition, the board shall compile semiannually and maintain and file with the attorney general a compilation of the semiannual statistics which show the number and per cent of the total number of disputes received (which need not add up to one hundred per cent of all disputes received) in which:

- (o) Consumer requested a refund or replacement for a motor vehicle within the first year or eighteen thousand miles of operation;
- (p) Vehicle refund or replacement was awarded, specifying whether the award was made by arbitration or through settlement;
- (q) Vehicle refund or replacement decisions complied with by the manufacturer, specifying whether the decision was made by arbitration or through settlement;
- (r) Decisions in which additional repairs were the most prominent remedy, specifying whether the decision was made by arbitration or through settlement;
- (s) Decisions in which a warranty extension was the most prominent remedy, specifying whether the decision was made by arbitration or through settlement;
- (t) Decisions in which reimbursement for expenses or compensation for losses was the most



prominent remedy, specifying whether the decision was made by arbitration or through settlement;

(u) Vehicle refund or replacement arbitration awards accepted by the consumer; and

(v) Nonrepurchase or replacement arbitration decisions accepted by the consumer.

(6) The board shall compile semiannually and maintain and file with the attorney general a listing of all vehicle identification numbers of all vehicles for which decisions or settlements entitled the consumer to a refund or replacement.

(7) The board shall retain all records specified in paragraphs (D)(1) to (D)(6) of this rule at least four years after final disposition of the dispute.

(E) Audits

(1) The board shall have an audit conducted at least annually to determine whether the board and its dispute resolution processes are in compliance with this chapter. All records of the board required to be kept under paragraph (D) of this rule shall be available for audit.

(2) Each audit provided for in paragraph (E)(1) of this rule shall include at a minimum the following:

(a) Evaluation of warrantor's efforts to make consumers aware of the board's existence as required by paragraph (E) of rule 109:4-4-03 of the Administrative Code;

(b) Review of the indices maintained pursuant to paragraph (D) of this rule; and

(c) Analysis of a random sample of disputes handled to determine the following: (i) adequacy of the board's complaint and other forms, investigation, mediation and follow-up efforts and other aspects of complaint handling; and (ii) accuracy of the board's statistical compilations under paragraph (D) of this rule. (For purposes of this paragraph, "analysis" shall include oral or written contact with the consumers involved in each of the disputes in the random sample.)

(3) A report of each audit under paragraph (E) of this rule shall be submitted to the attorney general



and shall be made available to any person at reasonable cost. The board may direct its auditor to delete names of parties to disputes from the audit report.

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

(F) Openness of records and proceedings

(1) The statistical summaries specified in paragraphs (D)(2), (D)(3), (D)(4), (D)(5) and (D)(6) of this rule shall be available to any person for inspection and copying.

(2) Except as provided under paragraphs (E)(3), (F)(1) and (F)(5) of this rule, all records of the board may be kept confidential or made available only on such terms and conditions, or in such form, as the board shall permit and to the extent that Ohio law will allow.

(3) The policy of the board with respect to records made available at the board's option shall be set out in the written procedures required by paragraph (C)(1) of this rule. The policy shall be applied uniformly to all requests for access to or copies of such records.

(4) Meetings of the arbitrators to hear disputes shall be open to observers on reasonable and nondiscriminatory terms, as long as the consumer does not object. The identity of the parties involved in disputes need not be disclosed at meetings.

(5) Upon request, the board shall provide to either party to a dispute: (a) access to all records relating to the dispute; and (b) copies of any records relating to the dispute at reasonable cost.

(6) The board shall make available to any person, upon request, information relating to the qualifications of board staff, arbitrators, and neutral technicians or consultants and detailed information relating to any interest and involvement of the arbitrators in the manufacture, distribution, sale, or service of any motor vehicle.