

CR 87-3

CERTIFICATE

RECEIVED

STATE OF WISCONSIN)
) ss.
DEPARTMENT OF TRANSPORTATION)

MAY 19 1988
2:25 pm
Revisor of Statutes
Bureau

TO ALL WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, RONALD R. FIEDLER, Secretary of the Wisconsin Department of Transportation and custodian of the official records do hereby certify that the annexed rule Trans 143, relating to standards for the certification of motor vehicle manufacturers' informal dispute settlement procedures was duly approved and adopted by this department on May 18th, 1988.

I further certify that the annexed copy has been compared by me with the original on file in this department and that the same is a true copy thereof, and of the whole of such original.



IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department of Transportation, in the City of Madison, this 18th day of May, 1988.


RONALD R. FIEDLER, P.E.
Secretary

8-1-88

PART 2

TEXT OF PROPOSED RULE

Pursuant to the authority vested in the Wisconsin Department of Transportation by s. 218.015 (4) (a), Stats., the Department of Transportation hereby proposes to create rules interpreting s. 218.015 (4) (a), Stats., as follows:

SECTION 1. Chapter Trans 143 is created to read:

CHAPTER TRANS 143

STANDARDS FOR CERTIFICATION OF

MOTOR VEHICLE MANUFACTURERS' INFORMAL

DISPUTE SETTLEMENT PROCEDURES

Chapter Trans 143

Trans 143.01 PURPOSE AND SCOPE. (1) STATUTORY AUTHORITY. As authorized by s. 218.015 (4) (a) Stats., the purpose of this chapter is to specify the process and requirements for the certification of informal dispute settlement procedures by the Department of Transportation as specified by s. 218.015(4)(a), Stats.

(2) APPLICABILITY. This chapter applies to any motor vehicle, as defined in s. 218.015 (1) (d), Stats., with respect to which the contract to purchase was entered into on or after April 22, 1986.

Trans 143.02 DEFINITIONS. Words and phrases defined in ch. 340, Stats., have the same meaning in this chapter unless a different definition is specified. In this chapter:

(1) "Certified Mechanism" is a manufacturer's informal dispute settlement procedure for resolving consumer allegations of non-conformities in motor vehicles covered under the provisions of s. 218.015 (2) (b) Stats., which has been reviewed and approved by the Department of Transportation as meeting the requirements specified in this chapter.

(2) "Consumer" means any of the following:

(a) The purchaser of a new motor vehicle, if the motor vehicle was purchased from a motor vehicle dealer for purposes other than resale;

(b) A person to whom the motor vehicle is transferred for purposes other than resale, if the transfer occurs before the expiration of an express warranty applicable to the motor vehicle;

(c) A person who may enforce the warranty;

(d) A person who leases a motor vehicle from a motor vehicle lessor under a written lease.

(3) "Demonstrator" has the meaning set forth in s. 218.015 (1) (bd), Stats.

(4) "Decision maker" means the person or persons within a certified mechanism actually deciding disputes.

(5) "Dispute" means an unresolved complaint initiated by a consumer which alleges a non-conformity in a motor vehicle covered under the provisions of s. 218.015 (2) (b), Stats.

(6) "Executive" has the meaning set forth in s. 218.015 (1) (bp), Stats.

(7) "Manufacturer" means a manufacturer as defined by s. 218.01 (1) (1), Stats. and agents of the manufacturer, including an importer, a distributor, factory branch, distributor branch and any warrantors of the manufacturer's motor vehicles, but not including a motor vehicle dealer.

(8) "Mechanism" means an informal dispute settlement procedure of a manufacturer.

(9) "Motor Vehicle" has the meaning set forth in s. 218.015 (1) (d), Stats.

(10) "Nonconformity" has the meaning set forth in s. 218.015 (1) (f), Stats.

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

(a) The page on which the warranty text begins, 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; or,

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

(c) The first page of a supplemental document issued by the manufacturer for the purpose of complying with this chapter.

(12) "Reasonable attempt to repair" has the meaning set forth in s. 218.015 (1) (h), Stats.

(13) "Warrantor" means any person with the authority to give or offer to give a written warranty which incorporates a certified mechanism.

(14) "Written Warranty" means any written affirmation of fact or written promise made in connection with the sale of a motor vehicle.

Trans 143.03 DUTIES OF THE MANUFACTURER. (1) Manufacturers subscribing to a certified mechanism for resolving consumer allegations of nonconformities in motor vehicles covered under the provisions of s. 218.015 (2) (b), Stats. shall not incorporate into a written warranty terms which fail to comply with the requirements of this chapter. This paragraph does not prohibit a manufacturer 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 other warranty claims.

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

(a) A statement of the availability of a certified mechanism;

(b) The name and address of the certified mechanism, or the name and telephone number of the certified mechanism which consumers may use without charge;

(c) A statement of the requirement that the consumer resort to a certified mechanism before initiating a legal action under s. 218.015 (7), Stats.; and,

(d) A statement indicating where further information on the certified mechanism can be found in materials accompanying the motor vehicle, as provided in sub. (3).

(3) The manufacturer shall include in the written warranty or in a separate section of materials accompanying the motor vehicle, the following information:

(a) Either:

1. A form addressed to the certified mechanism containing spaces requesting the information which the certified mechanism may require for prompt resolution of disputes; or

2. A telephone number of the certified mechanism which consumers may use without charge;

(b) The name and address of the certified mechanism;

(c) A brief description of the certified mechanism's procedures;

(d) The time limits adhered to by the certified mechanism;
and

(e) The types of information which the certified mechanism may require for prompt resolution of disputes.

(4) The manufacturer shall take steps reasonably calculated to make consumers aware of the certified mechanism's existence at the time consumers experience warranty complaints. Nothing contained in paragraphs (2), (3), or (4) of this section shall limit the manufacturer's option to encourage consumers to seek redress directly from the manufacturer as long as the manufacturer does not expressly require consumers to seek redress directly from the manufacturer. The manufacturer shall proceed fairly and expeditiously to attempt to resolve all warranty complaints submitted directly to the manufacturer.

(5) Whenever a consumer submits a warranty complaint directly to a manufacturer, the manufacturer shall decide whether, and to what extent, it will satisfy the consumer.

(a) If the consumer's warranty complaint is submitted to the manufacturer orally, the manufacturer may respond orally, unless the consumer requests a written response; or,

(b) If the consumer's warranty complaint is submitted to the manufacturer in writing, the manufacturer shall respond in

writing. In its written response to the consumer of its decision, the manufacturer shall include the information required in paragraphs (2) and (3) of this section.

(6) The manufacturer shall:

(a) Respond fully and promptly to reasonable requests by the certified mechanism for information;

(b) Abide by and perform any obligations ordered in decisions of the certified mechanism; and,

(c) Comply with requirements imposed by the certified mechanism.

Trans 143.04 CERTIFIED MECHANISM ORGANIZATION. (1) The certified mechanism 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 certified mechanism.

(2) The manufacturer and the certified mechanism shall assure that decision makers are sufficiently insulated so that their decisions are independent of the manufacturer.

Trans 143.05 QUALIFICATIONS OF DECISION MAKERS.

(1) No decision maker deciding a dispute shall be:

(a) A party to the dispute;

(b) An employee or agent of a party, except if employed or retained for the sole purpose of deciding disputes;

(c) A person who is a party in any legal action relating to the motor vehicle in dispute.

(2) The composition of the decision maker panel shall be as follows:

(a) When one or two decision makers are deciding a dispute, all shall be persons having no direct involvement in the manufacture, distribution, or retail sale of any motor vehicle.

(b) When three or more decision makers are deciding a dispute, at least two thirds of the decision makers shall be persons having no direct involvement in the manufacture, distribution, or retail sale of motor vehicles.

(3) Decision makers deciding disputes under the guidelines of a certified mechanism shall be trained by the manufacturer or the certified mechanism in the application of s. 218.015, Stats. prior to hearing any dispute.

(4) Certified mechanisms shall make available to any person upon demand, at reasonable cost, information relating to the general qualifications of decision makers.

Trans 143.06 OPERATION OF THE CERTIFIED MECHANISM. (1) The certified mechanism shall establish written operating procedures which shall include at least those items specified in paragraphs (2) through (11) of this section. Copies of the written procedures shall be made available to any person upon request, at reasonable cost.

(2) Upon notification of a dispute, the certified mechanism shall immediately inform both the manufacturer and the consumer of receipt of the dispute.

(3) The certified mechanism or decision maker shall investigate, gather and organize all information necessary for a fair and expeditious decision. When information which will or may be used in the decision, submitted by one party, or a representative of one of the parties, or any other source, tends to contradict information submitted by the other party, the certified 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 certified mechanism shall not require any information not reasonably necessary to decide the dispute.

(4) Except as provided in paragraph (7) of this section, if the dispute has not been settled, the certified mechanism shall, as expeditiously as possible but at least within 40 calendar days of notification of the dispute:

(a) If no oral presentation is scheduled for the day of the hearing, make available to the decision maker(s), copies of information submitted by both parties and information gathered under paragraph (3) of this section, at least 5 calendar days prior to the hearing date.

(b) Based upon the information gathered, render the following decisions:

1. Determine if the motor vehicle has a nonconformity, and
2. Determine if the manufacturer has made a reasonable attempt to repair the motor vehicle.

(c) Based upon the determinations made in paragraph (4)(b) 1. and 2. of this section, the certified mechanism shall award relief to the consumer consistent with s. 218.015 (2)(b), Stats.

(d) Render a written decision to both parties and the department including the following:

1. Basis for the decision which shall include a summary of any relevant and material information presented by either party.

2. Specific financial or other compensation awarded to either party.

3. A specific date for completion of the transactions necessary to carry out the decision of the certified mechanism.

4. A statement that the decision is binding upon the warrantor and not the consumer.

5. A statement that the consumer has the option of rejecting the decision of the certified mechanism and may seek redress by other rights and remedies, including those provided by s. 218.015 (7), Stats.

6. A statement that the consumer has 45 calendar days from receipt of the decision to inform the certified mechanism in writing of the consumer's intent to accept or reject the decision of the certified mechanism.

7. A statement that the decision of the certified mechanism may be introduced in evidence in court.

8. A statement that both parties may obtain, at reasonable cost, copies of all documents held by the certified mechanism relating to the dispute.

(5) If the consumer fails to respond within 45 calendar days, it will be assumed that the consumer has rejected the decision of the certified mechanism.

(6) The dispute shall be considered closed when:

(a) The consumer or consumer's representative accepts or rejects the decision of the certified mechanism; or

(b) The decision of the certified mechanism is rejected under the provisions of par. (4) (d) 6 or par. (5) of this section.

(7) The certified mechanism may delay the performance of its duties under paragraph (4) of this section beyond the 40 day limit:

(a) Where the period of delay is due solely to failure of a consumer to provide his or her name and address, manufacturer make, model and vehicle identification number of the motor vehicle involved, and a statement as to the nature of the defect or other problem;

(b) For a 7 calendar day period in those cases where the consumer has made no attempt to seek redress directly from the manufacturer; or,

(c) If the certified mechanism attempts to mediate the dispute, but only if the certified mechanism clearly and conspicuously discloses to the consumer the following information:

1. That mediation is voluntary on the part of the consumer and may be terminated by the consumer at any time, and

2. That a conclusive decision shall be rendered within 60 calendar days from the date of original receipt of the dispute by the certified mechanism, in the event that mediation fails to settle the dispute.

(8) The certified mechanism may allow an oral presentation by a consumer or a consumer's representative only if:

(a) Both manufacturer and consumer expressly agree to the presentation;

(b) A date, time, means and location convenient to both parties can be arranged; and,

(c) Prior to agreement the certified mechanism fully discloses to both parties the following information:

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

2. That the decision makers will decide the dispute whether or not an oral presentation is made;

3. The proposed date, time, means and place for the presentation; and

4. A brief description of what will occur at the presentation including both parties' rights to bring witnesses and/or counsel.

(d) Each party has the right to be present during the other party's oral presentation.

(9) If the manufacturer has been directed to perform any obligations, either as part of a settlement agreed to after notification to the certified mechanism of the dispute or as a result of a decision under paragraph (4) of this section, the certified mechanism shall ascertain from the consumer within 10

working days of the date for performance whether performance has occurred.

(10) A requirement that a consumer resort to a certified mechanism prior to commencement of an action under section s. 218.015 (7), Stats. shall be satisfied 40 calendar days after notification to the certified mechanism of the dispute or when the certified mechanism completes its duties under paragraph (4) of this section, whichever occurs sooner. Except that, if the certified mechanism delays performance of its duties under paragraph (4) of this section, as allowed by paragraph (7) of this section, the requirement that the consumer initially resort to the certified mechanism shall not be satisfied until the period of delay allowed by paragraph (7) of this section has ended.

(11) Decisions of the certified mechanism shall be legally binding on the manufacturer.

Trans 143.07 RECORDKEEPING. (1) The certified mechanism shall maintain records on each dispute referred to it. The records shall include:

(a) Name, address and telephone number of the consumer; if available,

(b) Name, address, telephone number and contact person of the manufacturer;

(c) Make and vehicle identification number of the motor vehicle involved;

(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 relating to the dispute collected by the certified mechanism and available to the decision maker;

(g) The decision issued including information as to date, time, means and place of meeting, and the identity of decision makers;

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

(i) Copies of follow up letters (or summaries of relevant and material portions of follow-up telephone calls) to both parties, and responses thereto; and

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

(2) The certified mechanism shall submit an annual report to the department. The report shall include, but not be limited to, the following:

(a) Statistics which show the number and percent of disputes in each of the following categories:

1. No jurisdiction;
2. Motor vehicles, by vehicle make and vehicle identification number, determined to be nonconforming;
3. Disputes resolved by awarding the consumer a replacement motor vehicle.
4. Disputes resolved by awarding a financial refund to the consumer or the holder of a perfected security interest;
5. Number of resolutions where the consumer was awarded nothing;
6. Number of awards accepted by consumers;

7. Number of awards rejected by consumers;

8. Number of awards the manufacturer failed to abide by;

9. Decisions delayed beyond 60 calendar days under
s. Trans 143.06 (7) (a), (b) and (c);

10. Decisions delayed beyond 60 calendar days for any other
reason; and

11. Pending decisions.

(b) The amount of financial compensation awarded the
consumer under s. 218.015 (2) (b), Stats.

(c) Amount of reasonable use compensation awarded to the
manufacturer under s. 218.015 (2) (b), Stats.;

(d) The name, address and telephone number of the certified
mechanism;

(e) The written operating procedures of the certified
mechanism;

(f) The general qualifications of persons the certified
mechanism utilizes as decision makers;

(g) The vehicle makes and models for which the certified mechanism is authorized to hear disputes;

(h) A statement certifying that the certified mechanism will continue to apply and abide by the requirements of s. 218.015, Stats.

(3) The certified mechanism shall retain all records specified in paragraphs (1) and (2) of this section for at least 4 years after final disposition of the dispute.

Trans 143.08 AUDITS. (1) Pursuant to s. 218.015 (4) (d), Stats., the certified mechanism shall submit an annual independent audit at the certified mechanism's expense to the department which shall include at a minimum the following:

(a) An evaluation of the manufacturer's efforts to make consumers aware of the certified mechanism's existence as required in s. Trans 143.03 (4);

(b) A review of the records maintained pursuant to s. Trans 143.07 (1) and (2);

(c) An analysis of a random sample of disputes handled by the certified mechanism during the period of time subject to the audit to determine the certified mechanism's compliance with the provisions of this chapter.

(2) In each audit provided for in paragraph (1) of this section the department may require additional documentation of compliance with this chapter.

(3) The department, at its discretion, may audit a certified mechanism for compliance with this chapter.

Trans 143.09 OPENNESS OF RECORDS AND PROCEEDINGS. (1) The statistical summaries specified in s. Trans 143.07 (2) shall be available to any person for inspection and copying.

(2) The policy of the certified mechanism with respect to records availability shall be set out in the procedures under s. Trans 143.06 (1); the policy shall be applied uniformly to all such requests for access to or copies of such records.

(3) Meetings of the decision makers to hear and decide disputes shall be open to observers on reasonable and nondiscriminatory terms.

(4) Upon request the certified mechanism 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.

(5) All records pertaining to a certified mechanism under the care and control of the department shall be subject to the provisions of the Wisconsin Open Records Law, ss. 19.31 to 19.39, Stats.

Trans 143.10 CERTIFICATION PROCESS. (1) The Department of Transportation shall have sole authority to review and certify mechanism procedures in the State of Wisconsin for compliance with s. 218.015, Stats. and this chapter.

(2) Any manufacturer seeking certification of a mechanism under this chapter shall submit an application to the department for review. The department, at its discretion, may require additional information from a manufacturer to certify compliance with this chapter. The application shall include the following:

(a) Name, address and telephone number of the mechanism;

(b) The written operating procedures of the mechanism;

(c) The general qualifications of persons the mechanism utilizes as decision makers;

(d) The vehicle makes and models for which the mechanism is authorized to hear disputes;

(e) A statement certifying that the mechanism will apply and abide by the requirements of s. 218.015, Stats.

(3) The department shall review the manufacturer's application to determine whether the proposed mechanism complies with this chapter and shall:

(a) Inform the manufacturer, in writing, if the proposed mechanism meets the certification standards of this chapter and issue a certificate to the manufacturer and the proposed mechanism indicating:

1. The proposed mechanism is recognized as a certified mechanism under this chapter.

2. The motor vehicle makes and models on which the certified mechanism is authorized to hear disputes.

3. The certification remains valid unless revoked by further action of the department.

(b) Inform the manufacturer, in writing, if the mechanism fails to meet the standards of this chapter and the reasons for failure;

(c) Inform the manufacturer that the department's decision may be appealed under Chapter 227 of the Wisconsin Statutes.

Trans 143.11 REVOCATION OF CERTIFICATION. (1) The department may revoke the certification of a manufacturer's mechanism for cause.

(2) The department shall notify the manufacturer, in writing, of the following:

(a) The reason for revoking certification under this chapter;

(b) The effective date of the revocation of certification;

(c) The decision of the department may be appealed under Chapter 227, Stats.

(3) The mechanism shall notify all consumers with disputes pending that:

(a) After the effective date of the revocation of certification, the mechanism is no longer certified to hear disputes under s. 218.015, Stats.

(b) The consumer is no longer required to resort to the manufacturer's informal dispute settlement procedure; and

(c) The consumer may initiate a legal action under

s. 218.015 (7), Stats.

(4) The manufacturer shall modify all warranty information which indicates that the manufacturer subscribes to a certified mechanism.

(5) The manufacturer may apply for mechanism recertification under s. Trans 143.10.

(END OF RULE TEXT)

This rule shall take effect upon the first day of the month following publication in accordance with s. 227.22 (2), Stats.

Signed at Madison, Wisconsin this
18th day of May, 1988.



RONALD R. FIEDLER, P.E.

Secretary

Wisconsin Department of
Transportation



State of Wisconsin \ DEPARTMENT OF TRANSPORTATION



DIVISION OF MOTOR VEHICLES
4802 Sheboygan Avenue
P.O. Box 7949
Madison, WI 53707-7949

May 19, 1988

Mr. Gary Poulson
Assistant Revisor of Statutes
30 On the Square
Suite 702
Madison, Wisconsin 53702

Re: Clearinghouse Rule 87-3
Relating to standards for the certification of motor vehicle
manufacturers' informal dispute settlement procedures;
TRANS 143.

Dear Mr. Poulson:

Enclosed for filing, pursuant to sec. 227.20, Wis. Stats., is a certified copy of CR 87-3, an administrative rule relating to standards for the certification of motor vehicle manufacturers' informal dispute settlement procedures. This rule is submitted by the Wisconsin Department of Transportation.

Sincerely,

Deborah Jaeger
Policy Analyst

Enclosures

cc: Thomas Walker
Transportation Information Office
Attorney James Thiel