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Division 33.1. Arbitration Certification Program

Article 1.

3396.1. Definitions

(a) "Applicable law" means the portions of the Song-Beverly Consumer Warranty Act (Civil Code Sections 1790-1795.7) that pertain to express and implied warranties and remedies for breach; the portions of Division 2 (commencing with Section 2101) of the Commercial Code that pertain to express and implied warranties and remedies for breach; the portions of Sections 43204, 43205 and 43205.5 of the Health and Safety Code that pertain to automobile emissions warranties; Chapter 9 of Division 1 of the Business and Professions Code, pertaining to certification of dispute resolution processes, and this subchapter.

(b) "Applicant" means a manufacturer seeking certification of an arbitration program sponsored and used by the manufacturer, or an arbitration program and a manufacturer jointly seeking certification of an arbitration program used by the manufacturer.

(c) "Arbitration program" means a "dispute resolution process," as that term is used in Civil Code Sections 1793.22 (c)-(d) and 1794(e), and Business and Professions Code Section 472, established to resolve disputes involving written warranties on new motor vehicles. The term includes an "informal dispute settlement procedure," as that term is used in Section 703.1(e) of Title 16 of the Code of Federal Regulations, established to resolve disputes involving written warranties on new motor vehicles. The term includes an "informal dispute settlement mechanism," as that term is used in 15 U.S.C. 2310(a)(1), and an informal dispute settlement procedure," as that term is used in Section 703.1(e) of Title 16 of the Code of Federal Regulations, established to resolve disputes involving written warranties on new motor vehicles. The term includes those components of a program for which the manufacturer has responsibilities under Article 2 of this subchapter.

(d) "Arbitrator" means the person or persons within an arbitration program who actually decide disputes.

(e) "Arbitration Certification Program" means the Arbitration Certification Program of the Department of Consumer Affairs.

(f) "Certification" means a determination by the Arbitration Certification Program, made pursuant to this subchapter, that an arbitration program is in substantial compliance with Civil Code Section 1793.22(d), Chapter 9 of Division 1 of the Business and Professions Code, and this subchapter.

(g) "Consumer" means any individual who buys or leases a new motor vehicle from a person (including any entity) engaged in the business of manufacturing, distributing, selling, or leasing new motor vehicles at retail. The term includes a lessee for a term exceeding four months, whether or not the lessee bears the risk of the vehicle's depreciation. The term includes any individual to whom the vehicle is transferred during the duration of a written warranty or under applicable state law to enforce the obligations of the warranty. The name of the registered owner or class of motor vehicle registration does not by itself determine the purpose or use.

(h) "Days" means calendar days unless otherwise stated.

(i) "Independent automobile expert" means an expert in automotive mechanics who is certified in the pertinent area by the National Institute for Automotive Service Excellence (NIASE). The expert may be a volunteer, or may be paid by the arbitration program or the manufacturer for his or her services, but in all other respects shall be in both fact and appearance independent of the manufacturer.

(j) "Manufacturer" means a new motor vehicle manufacturer, manufacturer branch, distributor or distributor branch, required to be licensed pursuant to Article 1 (commencing with Section 11700) of Chapter 4 of Division 5 of the Vehicle Code, or any other person (including any entity) actually making a written warranty on a new motor vehicle.

(k) "New motor vehicle" means a new motor vehicle which is used or bought for use primarily for personal, family or household purposes by a person. "New motor vehicle" also means a new motor vehicle with a gross vehicle weight under 10,000 pounds that is bought or used primarily for business purposes by a person, including a partnership, limited liability company, corporation, association, or any other legal entity, to which not more than five motor vehicles are registered in this state. The term includes a dealer-owned vehicle, a "demonstrator," and any other motor vehicle sold or leased with a manufacturer's new car warranty. The term does not include a motorcycle, or a motor vehicle which is not registered under the Vehicle Code because it is to be operated or used exclusively off the highways. The term "new motor vehicle" also includes the chassis and chassis cab of the motor home, and that portion of a motor home devoted to its propulsion, but does not include any portion of a motor home designed, used or maintained primarily for human habitation. A "motor home" is a vehicular unit built on, or permanently attached to, a self-propelled motor vehicle chassis, chassis cab or van, which becomes an integral part of the completed vehicle, designed for human habitation for recreational or emergency occupancy. A "demonstrator" is a vehicle assigned by a dealer for the purpose of demonstrating qualities and characteristics common to vehicles of the same or similar model and type.

(l) "Nonconformity" means any defect, malfunction or failure to conform to the written warranty.

(m) "Substantial nonconformity" means any defect, malfunction or failure to conform to the written warranty which substantially impairs the use, value or safety of the new motor vehicle to the consumer.

(n) "Written warranty" means either:

- (1) any written affirmation of fact or written promise made by a manufacturer to a consumer in connection with the sale or lease of a new motor vehicle 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;
- (2) any undertaking in writing made by a manufacturer to a consumer in connection with the sale or lease of a new motor vehicle to refund, repair, replace, or take other remedial action with respect to the vehicle in the event that the vehicle fails to meet the specifications set forth in the undertaking, which written affirmation, promise or undertaking becomes part of the basis of the bargain.

Note: Authority cited: Sections 472, et seq., 472.1(b) and 472.4(f) Business and Professions Code. Reference: Sections 1791(a), (b) and (g), 1791.2, 1793.2(a)-(d), 1793.22(b), 1794 and 1795.4, Civil Code; Sections 472(b), 472.1(c), 472.2(b), Business and Professions Code; 15 USC 2304(a); and 16 CFR Sections 701(d), 703.1(f) and (g).

Article 2. Minimum Standards for Manufacturers

3397.1. General Duties

(a) The manufacturer shall fund and staff the arbitration program at a level sufficient to ensure fair and expeditious resolution of all disputes.

(b) The manufacturer shall take all steps necessary to ensure that the arbitration program, and its arbitrators and staff, are sufficiently insulated from the manufacturer and the sponsor (if other than the manufacturer), so that the decisions of the arbitrators and the performance of the staff are not influenced by either the manufacturer or the sponsor.

(c) The manufacturer shall comply with any reasonable requirements imposed by the arbitration program to fairly and expeditiously resolve warranty disputes, and shall perform all obligations to which it has agreed concerning the handling and resolution of disputes.

(d) The manufacturer shall comply with the provisions of both this part and Article 3 of this subchapter insofar as they impose obligations on the manufacturer.

Note: Authority cited: Sections 472.1(b) and (c) and 472.4(f), Business and Professions Code. Reference: 16 CFR Sections 703.2(f)(3) and (h), 16 CFR 703.3(a) and (b); Section 1793.22(d)(1), Civil Code; and Sections 472.1(b) and 472.4(f), Business and Professions Code.

3397.2. Disclosures by Manufacturer to Consumer

(a) The manufacturer shall include together, either in its written warranty or in a separate section of materials accompanying each vehicle sold or leased in California, in clear and readily understood language, the following information about the manufacturer's arbitration program and how to use it:

(1) Either:

(A) a form addressed to the arbitration program containing spaces requesting the information which the program may require for prompt resolution of warranty disputes, or

(B) a telephone number of the arbitration program which consumers may use without charge.

(2) The name and address of the arbitration program.

(3) A brief description of the arbitration program's procedures and how to use them. The Arbitration Certification Program may reproduce such materials to inform the public about each program.

(4) The time limits adhered to by the arbitration program.

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

(6) If applicable, a clear statement explaining any requirement imposed by the manufacturer that the consumer resort to the arbitration program before invoking rights or remedies conferred by 15 USC Section 2310 or Civil Code Section 1793.22(b), together with a disclosure that the consumer is not required to resort to the program if the consumer chooses to seek redress by pursuing rights and remedies not created by those laws.

(7) Any limits on the scope of the decision, if authorized by Section 3398.10(d).

(8) A statement that if the consumer accepts the decision of the arbitration program, the manufacturer will be bound by the decision, and will comply with the decision within a reasonable time not to exceed 30 days after the manufacturer receives notice of the consumer's acceptance of the decision.

(9) A statement that the consumer may reject the decision and go to court, and that the decision and any findings will be admissible in any court action.

(b) The form described in subdivision (a)(1)(A) of this section may request any information reasonably necessary to decide the dispute including:

- (1) The consumer's name, address and telephone number.
- (2) The brand name and vehicle identification number (VIN) of the vehicle.
- (3) The approximate date of the consumer's acquisition of the vehicle.
- (4) The name of the selling dealer or the location where the vehicle was acquired.
- (5) The current mileage.
- (6) The approximate date and mileage at the time the problem was first brought to the attention of the manufacturer or any of its repair facilities.
- (7) A brief statement of the nature of the problem and whether the problem is continuing.
- (8) The names if known of any other dealers where the vehicle was serviced.
- (9) A statement of the relief that is sought.

Note: Authority cited: Sections 472.1(b) and 472.4(f), Business and Professions Code.
Reference: 16 CFR Sections 703.2(b)(3), 703.2(c)(1)-(5), 703.5(e)(1); Sections 1793.22(c) and 1793.22(d)(1)-(3), Civil Code.

3397.3. Resolution of Disputes Directly by Manufacturer

(a) The manufacturer shall take steps reasonably calculated to make consumers aware of the arbitration program's existence at the time consumers experience warranty disputes.

(b) Nothing contained in this subchapter 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 disputes submitted directly to the manufacturer.

(c) Whenever a dispute is submitted directly to the manufacturer, the manufacturer shall, within a reasonable time, decide whether and to what extent it will attempt to satisfy the consumer, and shall inform the consumer of its decision. In its notification to the consumer of its decision, the manufacturer shall include the information specified in subdivision (a) of Section 3397.2.

(d) Disputes settled after the arbitration program has received notification of the dispute shall be subject to Sections 3398.9(b) and 3398.12(b).

Note: Authority cited: Sections 472.1(b) and 472.4(f), Business and Professions Code.
Reference: 16 CFR Sections 703.2(d) and (e), 703.5(d)(4), 703.5(h); and Section 1793.22(d)(1), Civil Code.

3397.4. Manufacturer's Duty to Aid in Investigation

(a) The manufacturer shall respond fully and promptly to reasonable requests by the arbitration program for information relating to disputes.

(b) The manufacturer shall fully and promptly respond to reasonable requests by the arbitration program for any pertinent documents in its possession or under its control, such as: (1) technical service bulletins; (2) recall or parts replacement notices; (3) U.S. Department of Transportation publications; (4) repair records for a particular vehicle; and (5) any other documents which it is reasonable that the manufacturer should provide.

Note: Authority cited: Sections 472.1(b) and 472.4(f), Business and Professions Code.
Reference: 16 CFR Sections 703.2(f)(1), 703.2(h) and 703.5(c); and Section 1793.22(d)(1), Civil Code.

3397.5. Manufacturer's Duties Following Decision

(a) The decision shall be binding on the manufacturer if the consumer elects to accept the decision.

(b) The manufacturer shall perform any decision of an arbitration program within the time prescribed by the decision, which shall be a reasonable time not to exceed 30 days after the manufacturer is notified that the consumer has accepted the decision. Delays caused by reasons beyond the control of the manufacturer or its representatives, including any delay directly attributable to any act or omission of the consumer, shall extend the period for performance, but only while the reason for the delay continues.

(c) When the decision of the arbitration program provides that the nonconforming motor vehicle be replaced or that restitution be made to the consumer, and the decision is subject to Civil Code Section 1793.2(d), the manufacturer shall either replace the vehicle if the consumer consents to this remedy or make restitution, and shall do so in accordance with Civil Code Section 1793.2(d)(2)(A), (B) and (C).

(d) The manufacturer shall not attempt to negotiate a settlement with the consumer between the time a decision of an arbitration program is disclosed to the manufacturer and the time the decision is disclosed to the consumer.

Note: Authority cited: Sections 472.1(b) and 472.4(f), Business and Professions Code.
Reference: Section 1793.2(d) and 1793.22(b), Civil Code.

Article 3. Minimum Standards for Arbitration Programs

3398.1. *Organization of Arbitration Program*

(a) The arbitration program shall be funded and competently staffed at a level sufficient to ensure fair and expeditious resolution of all disputes.

(b) The arbitration program shall not charge consumers any fee for use of the program.

(c) The manufacturer, and the sponsor of the arbitration program (if other than the manufacturer), shall take all steps necessary to ensure that the arbitration program, and its arbitrators and staff, are sufficiently insulated from the manufacturer and the sponsor, so that the decision of the arbitrators and the performance of the staff are not influenced by either the manufacturer or the sponsor.

(d) Steps necessary to insulate the arbitration program from influence by the manufacturer or sponsor shall include, at a minimum: (1) committing funds in advance, (2) basing personnel decisions solely on merit, and (3) not assigning conflicting manufacturer or sponsor duties to program staff persons.

(e) Steps necessary to insulate the arbitration program from influence by the manufacturer or sponsor also shall include steps necessary to insulate the program's arbitrators from influence. At the very least, no employee, agent or dealer of the manufacturer shall communicate directly or otherwise participate substantively regarding the merits of any dispute with the arbitrator who is to decide that dispute, except: (1) the information that is communicated is disclosed to the consumer and the consumer is afforded an opportunity to explain or rebut the information and to submit additional information before a decision is rendered, or (2) as permitted by Section 3398.8.

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

(g) An arbitration program shall maintain both the fact and appearance of impartiality.

Note: Authority cited: Sections 472.1(b) and 472.4(f), Business and Professions Code.
Reference: 16 CFR Sections 703.3(a), (b) and (c); and Section 1793.22(d)(1), (6) and (8), Civil Code.

3398.2. Qualification, Selection and Training of Arbitrators

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

(b) No arbitrator 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.

(c) No arbitrator deciding a dispute shall be a person who is or may become a party in any legal action, including but not limited to a class action in which the arbitrator is a representative of the class that relates to the product or complaint in dispute, or an employee or agent of such person other than for purposes of deciding disputes.

(d) For purposes of subdivisions (b) and (c) of this section, 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 of ownership of an interest which is offered to the general public shall be prima facie evidence of its acquisition or ownership solely for investment.

(e) When one or two arbitrators are deciding a dispute, all shall be persons having no direct involvement in the manufacture, distribution, sale or service of any product. When three or more arbitrators are deciding a dispute, at least two-thirds 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.

(f) A person who is otherwise qualified to serve as an arbitrator under subdivisions (a) through (e) of this section shall not be disqualified solely because the person is a dealer of the manufacturer.

(g) Where arbitrators are selected from a list of arbitrators, selection shall be on a random basis.

(h) The arbitration program shall provide each arbitrator who is assigned to decide disputes with the text and an explanation of the applicable law (Section 3396.1(a)).

(i) The arbitration program shall provide each arbitrator with relevant training, including periodic updates and refresher courses, which shall include training in the principles of arbitration; training in the applicable law including the rights and responsibilities of arbitrators under this subchapter (including the right to request an inspection or other action under Section 3398.5(f)); and training in what a decision must and may include (Sections 3398.9 and 3398.10).

(j) An arbitrator who does not meet the qualifications in this section or who cannot demonstrate both the fact and appearance of fairness and impartiality in deciding disputes shall disqualify himself or herself.

Note: Authority cited: Sections 472.1(b) and 472.4(f), Business and Professions Code.
Reference: 16 CFR Sections 703.3(a) and (b) and 703.4(a), (b) and (c); and Section 1793.22(d)(1), (4), and (8), Civil Code.

3398.3. *Written Operating Procedures*

(a) The arbitration program shall establish written operating procedures which shall include all of the arbitration program's policies and procedures that implement the standards set forth in this subchapter. The written procedures shall be updated at reasonable intervals to reflect the procedures in effect.

(b) The arbitration program shall provide one copy of the written operating procedures without charge to a consumer who (1) has notified the program of a dispute and (2) either has requested more information about the arbitration program or has requested a copy of the program's written operating procedures, and also to each of the program's arbitrators.

(c) The arbitration program shall provide one copy of the written operating procedures for a reasonable charge to any other person upon request.

Note: Authority cited: Sections 472.1(b) and 472.4(f), Business and Professions Code.
Reference: 16 CFR Section 703.5(a); and Section 1793.22(d)(1), Civil Code.

3398.4. *Duties on Receipt of Dispute*

(a) Upon notification of a dispute, including a dispute over which the program believes it does not have jurisdiction, the arbitration program shall immediately notify both the manufacturer and the consumer of its receipt of the dispute.

(b) Notification shall be deemed to have occurred when the arbitration program has received notice of the consumer's name and address, the brand name and vehicle identification number of the vehicle (if requested by the program), and a statement of the nature of the problem or other complaint.

(c) At the time the arbitration program notifies the consumer of its receipt of the dispute, the program shall provide the consumer with the following information in clear and readily understood language:

(1) The information specified in Section 3397.2(a) on how to use the arbitration program.

(2) A statement of any other steps that the consumer must take, including the submission of additional information or materials, to enable the arbitration program to investigate and decide the dispute.

(3) A statement of the kinds of additional information and materials, such as copies of repair invoices, reports of inspection, technical service bulletins and other relevant information and documents, that the arbitration program will consider in investigating and deciding the dispute, and of the consumer's right to provide additional information or materials.

(4) A statement of the consumer's right to obtain a copy of the arbitration program's written operating procedures upon request and without charge.

(5) A description of the steps the arbitration program will take and the time periods within which those steps normally are taken.

(6) Any limits on the scope of the decision, if authorized by Section 3398.10(d).

(7) A toll-free telephone number to obtain information on the status of the dispute.

(d) If authorized by the arbitration program's written operating procedures (Section 3398.3(a)), the staff of the arbitration program may decide that the program does not have jurisdiction to decide a dispute. In this event, the program: (1) shall explain to the consumer in writing the reasons that the program has so decided, (2) shall inform the consumer that an arbitrator will consider a written appeal of this decision made by the consumer within 30 days after the date the written notification of the decision was transmitted to the consumer, and (3) shall explain how to file a written appeal.

Note: Authority cited: Sections 472.1(b) and 472.4(f), Business and Professions Code.

Reference: 16 CFR Sections 703.4(b), 703.5(c) and (e)(1); and Section 1793.22(d)(1), Civil Code.

3398.5. *Investigation of Facts*

(a) The arbitration program shall investigate, gather and organize all information necessary for a fair and expeditious decision in each dispute.

(b) The arbitration program shall not require from any party any information not reasonably necessary to decide the dispute.

(c) When the consumer's complaint, or the manufacturer's response, or any evidence gathered by or submitted to the arbitration program, raises any of the following issues, the program shall investigate those issues:

(1) Whether the program has jurisdiction to decide the dispute.

(2) Whether there is a nonconformity (Section 3396.1(l)).

(3) Whether the nonconformity is a substantial nonconformity (Section 3396.1(m)).

(4) The cause or causes of a nonconformity.

(5) Whether the causes of a nonconformity include unreasonable use of the vehicle.

(6) The number of repair attempts.

(7) The time out of service for repair.

(8) Whether the manufacturer has had a reasonable opportunity to repair the vehicle.

(9) Factors that may affect the reasonableness of the number of repair attempts.

(10) Other factors that may affect the consumer's right to a replacement of the vehicle or restitution under Civil Code Section 1793.2(d)(2).

(11) Facts that may give rise to a presumption under Civil Code Section 1793.2(d)(2).

(12) Factors that may rebut any presumption under Civil Code Section 1793.22(b).

(13) Whether a further repair attempt is likely to remedy the nonconformity.

(14) The existence and amount of any incidental damages, including but not limited to sales taxes, license fees, registration fees, other official fees, prepayment penalties, early termination charges, earned finance charges, and repair, towing and rental costs, actually paid, incurred or to be incurred by the consumer.

(15) Factors that may affect the manufacturer's right to an offset for mileage under Civil Code Section 1793.2(d).

(16) Facts for determining the amount of any offset for mileage under Civil Code Section 1793.2(d) if an offset is appropriate.

(17) Factors that may affect any other remedy under the applicable law.

(18) Any other issue that is relevant to the particular dispute.

(d) The investigation required by this section may be conducted by the arbitrator or arbitrators who decide the dispute, or by other program staff, or by the arbitrator or the arbitrators and other program staff.

(e) If the arbitration program determines that the program does not have jurisdiction to decide the dispute, the program's investigation of the dispute need not include other issues.

(f) The arbitrator or a majority of the arbitrators may at any time request of the arbitration program any or all of the following at no cost to the consumer:

(1) An inspection and written report on the condition of the vehicle by an independent automobile expert (Section 3396.1(i)).

(2) Consultation with any other person or persons knowledgeable in the technical, commercial or other areas relating to the vehicle, provided that the consultation does not violate Sections 3398.1(c) and (e).

(3) An opportunity for the arbitrator, or one or more of the arbitrators, to personally inspect and test drive the vehicle.

(4) Further investigation and report by the arbitration program on any issue relevant to a fair and expeditious decision.

(g) The staff of the arbitration program may arrange for a visual inspection and test drive of the vehicle or an inspection and report on the vehicle by an independent automotive expert or a consultation with any other expert at no cost to the consumer.

Note: Authority cited: Sections 472.1(b) and 472.4(f), Business and Professions Code.
Reference: 16 CFR Sections 703.4(b), 703.5(c); and Sections 1793.22(d)(1), (6), and (7), Civil Code.

3398.6. Resolution of Contradictory Information

(a) When information which will or may be used in the decision, submitted by one party or by a consultant, independent automobile expert or any other source, tends to contradict facts submitted by the other party, the arbitration program shall clearly, accurately, and completely disclose to both parties the contradictory information (and its source), and shall provide to both parties an opportunity to explain or rebut the information and to submit additional information or materials.

(b) If it appears to the arbitrator at a meeting held to decide a dispute that one party to the dispute or a consultant, independent automobile expert or any other person has submitted information that contradicts facts submitted by the other party (whether submitted prior to the meeting or at the meeting), and that this fact has not been disclosed to that other party, the arbitrator may (and at the request of the other party shall) defer any decision until the arbitration program has complied with subdivision (a) of this section and both parties have had a reasonable opportunity to explain or rebut the information and to submit additional information or materials.

(c) The arbitration program shall develop and implement fair procedures by which any party may correct an error in the proceeding, provided that the other party has a reasonable opportunity to comment on the correction.

(d) The time limit for deciding disputes (Section 3398.9(a)) shall not be extended during any exchange, rebuttal or explanation of contradictory information under subdivision (a) of this section, but the Arbitration Certification Program may take into account circumstances leading to reasonable delays.

Note: Authority cited: Sections 472.1(b) and 472.4(f), Business and Professions Code.
Reference: 16 CFR Sections 703.3(b), 703.5(c); and Section 1793.22(d)(1) and (8), Civil Code.

3398.7. Meetings to Decide Disputes

(a) Meetings of the arbitrator or panel of arbitrators held 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 these meetings.

(b) The arbitration program shall give the consumer and the manufacturer at least five days advance notice of the date, time and location of any meeting at which their dispute will or may be decided.

(c) The arbitration program shall furnish to each arbitrator, at least five days before the meeting, a copy of all of the program's records pertaining to the dispute that are available to the program at that time. Upon the Arbitration Certification Program's request, the program also shall furnish a copy of those records to the Arbitration Certification Program.

(d) Upon request by the Arbitration Certification Program, the arbitration program shall notify the Arbitration Certification Program of the date, time and location of the meeting or meetings held to decide particular disputes or classes of disputes.

(e) Only the arbitration program's staff and the arbitrator may participate in a meeting held to hear and decide disputes, except that the parties to the dispute or their representatives may make oral presentations or correct errors when permitted under Section 3398.8.

(f) If a request is made under Section 3398.5(f), the meeting may be continued for a reasonable period not to exceed 30 days; the arbitration program, as part of its investigation of the facts (Section 3398.5(a)), shall take all steps reasonable and necessary to comply with the request, and shall gather and organize the resulting information for use by the arbitrator in deciding the dispute.

Note: Authority cited: Sections 472.1(b) and (c) and 472.4(f), Business and Professions Code. Reference: 16 CFR Sections 703.2(h), 703.3(a)-(c), 703.5(c), 703.5(d)(1), 703.5(f) and 703.8(d); Section 472.4(c), Business and Professions Code; and Section 1793.22(d)(1), Civil Code.

3398.8. Oral Presentations by Parties to Disputes

(a) The arbitration program may allow an oral presentation by a party to a dispute (or a party's representative) only if:

(1) Both the manufacturer and the consumer expressly agree to the presentation.

(2) Prior to the agreement, the arbitration program fully discloses to the consumer the following information:

(A) 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.

(B) That the arbitrator will decide the dispute whether or not an oral presentation is made.

(C) The proposed date, time and place for the presentation.

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

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

(b) Nothing contained in this section shall preclude the arbitration program 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 subdivision (a) of this section have been satisfied. In that event, the arbitrator may either decide the dispute or give the absent party an opportunity to explain or rebut any contradictory information and submit additional materials before a decision is made.

(c) Notwithstanding subdivision (a) of this section, a party may correct an error at a meeting if all parties are personally present or represented and all parties expressly consent.

Note: Authority cited: Sections 472.1(b) and 472.4(f), Business and Professions Code. Reference: 16 CFR Sections 703.3(a) and (c), 703.5(f)(2) and (3); and Section 1793.22(d)(1), Civil Code.

3398.9. *Decision-Making Timelines and Procedures*

(a) If the dispute has not been settled (subdivision (b) of this section), the arbitration program shall, as expeditiously as possible but at least within 40 days after receiving notification of the dispute, and except where extensions are permitted under subdivision (c) of this section, disclose to the consumer and the manufacturer its decision and the reasons therefore (Section 3398.10(e)).

(b) For purposes of subdivision (a) of this section, a dispute shall be deemed settled when the arbitration program has ascertained from the consumer that: (1) the manufacturer and the consumer have entered into an agreement settling the dispute, (2) the consumer is satisfied with the terms of the settlement agreement, and (3) the agreement contains a specified reasonable time for performance. Section 3398.12(b) on the program's duty to verify performance shall apply in the event of a settlement made after the program has received notification of the dispute.

(c) The arbitration program may delay the performance of its duties under subdivision (a) of this section beyond the 40-day standard in the following situations:

(1) For a seven-day period in those disputes in which the consumer has made no attempt to seek redress directly from the manufacturer.

(2) If and to the extent that the delay is due solely to failure of a consumer to provide promptly his or her name and address, the brand name and vehicle identification number (VIN) of the vehicle, and a statement of the nature of the defect or other complaint.

(3) For a reasonable period not to exceed 30 days to enable the arbitration program to respond to a request made under subdivision (f) of Section 3398.5.

Note: Authority cited: Sections 472.1(b) and 472.4(f), Business and Professions Code.
Reference: 16 CFR Sections 703.2(e)(3)(F), 703.3(c), 703.4(b), 703.5(d)(2) and (4), and 703.5(e)(1) and (2); and Section 1793.22(d)(1) and (6), Civil Code.

3398.10. *Content of Decision*

(a) The arbitrator shall render a fair decision based upon the information gathered by the arbitration program in its investigation of the facts (Section 3398.5) and upon any information submitted by the parties under Section 3398.8 at the meeting to decide disputes.

(b) The decision shall take into account all legal and equitable factors, including but not limited to the written warranty, the applicable law, and any other equitable considerations appropriate in the circumstances.

(c) The decision shall include any remedies which the arbitrator finds 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 applicable law, and need not be limited to the specific relief sought by the consumer.

(d) Nothing in this section requires that decisions must consider or provide remedies in the form of awards of punitive damages or multiple damages under Civil Code Section 1794(c), attorney's fees under Civil Code Section 1794(d), or consequential damages other than (1) incidental damages to which the consumer is entitled under Civil Code Section 1793.2(d)(2), or (2) any other remedies provided under Civil Code Section 1794(a) and (b), provided that any limit on the scope of the remedies, pursuant to this subdivision, shall be limited to those authorized in this subdivision, and shall be disclosed with the information required under Sections 3397.2(a) and 3398.4(c).

(e) The decision shall be in writing and shall include a brief statement of the reasons therefor. The statement of reasons shall include the arbitrator's determination of each issue identified in Section 3398.5(c) relevant to the particular dispute.

(f) The decision shall prescribe a reasonable time, not to exceed 30 days after the manufacturer (or its agents) is notified that the consumer has accepted the decision, within which the manufacturer or its agents must perform the terms of the decision.

(g) No agreement to arbitrate shall limit an arbitrator's authority to provide any remedies, except as authorized by this section.

Note: Authority cited: Sections 472.1(b) and 472.4(f), Business and Professions Code.
Reference: 16 CFR Section 703.5(d)(1); and Sections 1793.2(d)(2), 1792.22(d)(3), (5), (6) and (7), Civil Code.

3398.11. *Replacement and Refund*

(a) If the dispute involves the fact or allegation of a substantial nonconformity (Section 3396.1(m)) that has not been rectified, this section shall apply.

(b) In determining whether the consumer is entitled to a replacement or refund, the arbitrator shall take into account the standards expressed in Civil Code Section 1793.2(d) and 1793.22, if those standards are applicable under the circumstances of the dispute. For purposes of this section, "take into account" means to be aware of the standards; to understand how they might apply to the circumstances of the particular dispute; and to apply them if it is legally proper and fair to both parties to do so.

(c) If the decision provides for a replacement or refund, and is subject to Civil Code Section 1793.2(d), the decision shall require the manufacturer to replace the motor vehicle or make restitution in accordance with Civil Code Sections 1793.2(d)(2)(A), (B) and (C). The decision shall include payment of incidental damages to the extent authorized by the applicable law including Commercial Code Sections 2711 to 2715 inclusive, and Civil Code Sections 1793.2(d)(2) and 1794(a) and (b); and shall include all reasonable repair, towing and rental car costs, any sales or use tax, license fees, registration fees, other official fees, prepayment penalties, early termination charges and earned finance charges, if actually paid, incurred or to be incurred by the consumer (but need not include charges for which the consumer is justly responsible). If the arbitrator decides that the manufacturer is entitled to an offset for mileage, the offset shall be calculated in conformance with Civil Code Section 1793.2(d)(2)(C).

(d) The arbitration program may adopt procedures by which the staff of the program may calculate the exact amount of the mileage offset and any damages in conformance with the decision of the arbitrator and Civil Code Section 1793.2(d)(2)(A), (B) and (C). In the exercise of these duties, the staff may only act in a clerical or ministerial capacity, and may not exercise any decision-making function, which shall be performed by the arbitrator only.

Note: Authority cited: Sections 472.1(b) and 472.4(f), Business and Professions Code.
Reference: Sections 1793.2(d)(2), 1793.22(c), 1793.22(d)(5) and (7) and 1794 (a) and (b), Civil Code.

3398.12. *Acceptance and Performance of Decision*

(a) The arbitration program shall inform the consumer, at the time of the disclosure of the decision (Section 3398.9(a)), in clear and readily understood language, of each of the following:

- (1) The consumer may either accept or reject the decision.
- (2) If the consumer accepts the decision, the manufacturer is bound by the decision.
- (3) If the consumer rejects the decision, or accepts the decision and the manufacturer does not promptly perform the terms of the decision, the consumer may seek redress by pursuing his or her legal rights and remedies, including use of the small claims court.
- (4) The consumer has 30 calendar days after the arbitration program transmits the notification described in Section 3398.9(a) in which to accept the decision. If no decision is made within that period, the consumer's failure to accept the decision will be considered a rejection of the decision and the manufacturer shall not be bound to perform it.
- (5) If the decision provides for a further repair attempt or any other action by the manufacturer, the program will ascertain from the consumer whether performance has occurred.
- (6) The arbitration program's decision and findings are admissible in evidence in any court action.
- (7) The consumer may obtain a copy of the arbitration program's written operating procedures upon request and without charge.
- (8) The consumer may obtain copies of all of the arbitration program's records relating to the dispute, at a reasonable cost.
- (9) The consumer may regain possession without charge of all documents which the consumer has submitted to the program, except where good accounting practice requires that the manufacturer retains original documents upon which disbursements have been made.

(10) If the consumer has a complaint regarding the operation of the arbitration program, the consumer may register a complaint with the Arbitration Certification Program.

(11) The address and telephone number of the Arbitration Certification Program.

(b) If the manufacturer is required to perform any obligations as part of a settlement, or if the manufacturer is obligated to take any action to implement a decision, the program shall ascertain from the consumer, within 10 days after the date set for performance, whether such performance has occurred.

(c) If the consumer asserts that the manufacturer's performance of a further repair attempt has not occurred to the consumer's satisfaction, the arbitration program shall promptly inform the arbitrator who decided the dispute of all of the pertinent facts. In that event the arbitrator (or a majority of the arbitrators) may decide to reconsider the decision. A decision under this subdivision to reconsider a decision may be made at any time and need not be made at a meeting to decide disputes (Section 3398.7).

(d) If the arbitrator decides to reconsider the decision, the decision to reconsider shall be deemed to constitute notification of the dispute (Section 3398.4), and the program shall investigate the dispute and in all respects treat it as a new dispute, except that the program shall expedite all phases of the process, and the same arbitrator or arbitrators, if reasonably possible, shall decide the dispute.

Note: Authority cited: Sections 472.1(b) and 472.4(f), Business and Professions Code.
Reference: Sections 1793.22(c) and 1793.22(d)(2) and (3), Civil Code; 16 CFR Sections 703.3(a), 703.5(a), 703.5(d)(1), 703.5(g)(1)-(3), 703.5(h); and Section 472.4(c)(2) Business and Professions Code.

3398.13. Recordkeeping by Arbitration Programs

(a) The arbitration program shall maintain records on each dispute of which it has received notification, which shall include all of the following:

- (1) Name, address and telephone number of the consumer.
- (2) Name, address, and telephone number of contact person of the manufacturer.
- (3) Make and vehicle identification number of the vehicle involved.
- (4) The date of receipt of the dispute and the date of disclosure to the consumer of the decision.
- (5) All letters and other written documents submitted by either party.

(6) All other evidence collected by the arbitration program relating to the dispute, including summaries of relevant and material portions of telephone calls and meetings between the program and any other person (including any experts or consultants described in Section 3398.5(f), and any letter and summaries of any oral communication by the program to the parties to resolve contradictory information (Section 3398.6).

(7) A summary of any relevant and material information presented by either party at an oral presentation under Section 3398.8.

(8) The decision of the arbitrator, with information as to date, time and place of meeting, the identity of arbitrators voting, and the reasons for the decision, with the reasons for any dismissal for lack of jurisdiction or decision to reconsider, and information on any voluntary settlement.

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

(10) The fact and date of completion of any performance required by the decision or by any settlement made after the program has received notification of the dispute.

(11) Copies of follow-up letters (or summaries of relevant and material portions of follow-up telephone calls) to the manufacturer and the consumer and responses thereto.

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

(b) The arbitration program shall maintain a current index of each manufacturer's disputes grouped under brand name and subgrouped under product model.

(c) The arbitration program shall maintain a current index for each manufacturer which shows:

(1) All disputes in which the manufacturer has promised some performance (either by settlement or in response to a program decision) and has failed to comply.

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

(3) All disputes in which the consumer has registered a complaint regarding the decision, its performance by the manufacturer, or the operation of the program.

(d) The arbitration program shall maintain a current index which shows all disputes delayed beyond the time allowed under Section 3398.9.

(e) The arbitration program shall compile semiannually and maintain statistics which show the number and percentage of disputes in each of the following categories:

- (1) Resolved by staff of the arbitration program and manufacturer has complied.
- (2) Resolved by staff of the arbitration program, time for compliance has occurred, and manufacturer has not complied.
- (3) Resolved by staff of the arbitration program and time for compliance has not yet occurred.
- (4) Decided by arbitrator and manufacturer has complied.
- (5) Decided by arbitrator, time for compliance has occurred, and manufacturer has not complied.
- (6) Decided by arbitrator and time for compliance has not yet occurred.
- (7) Decided by arbitrator with no relief to the consumer.
- (8) No jurisdiction.
- (9) Decision delayed beyond 40 days under Section 3398.9(c)(1).
- (10) Decision delayed beyond 40 days under Section 3398.9(c)(2).
- (11) Decision delayed beyond 40 days under Section 3398.9(c)(3).
- (12) Decision delayed beyond 40 days for any other reason.
- (13) Decision still pending.
- (14) Decision accepted by consumer.
- (15) Decision rejected by consumer.
- (16) Reconsideration requested by consumer per Section 3398.12(d) granted, and the results.
- (17) Reconsideration requested by consumer per Section 3398.12(d) not granted.

(f) The individual dispute records, indexes and statistics required by this section shall be organized and maintained so as to facilitate ready access and review by the Arbitration Certification Program at any time, including access to and review of individual dispute files and other program materials.

(g) The arbitration program shall retain all records specified in subdivisions (a)-(c) of this section for at least four years after final disposition of the dispute.

Note: Authority cited: Sections 472.1(b) and 472.4(f), Business and Professions Code.
Reference: Sections 472.4(b) and (c), Business and Professions Code; 16 CFR Sections 703.5(h) and 703.6; and Section 1793.22(d)(1), Civil Code.

3398.14. Confidentiality of Records

(a) The statistical summaries specified in Section 3398.13(e) shall be available to any person for inspection and copying.

(b) Except as provided under subdivisions (a), (d) and (e) of this section and Sections 3398.7(a) and 3399.5, all records of the arbitration program may be kept confidential, or made available only on such terms and conditions, or in such form, as the arbitration program shall permit.

(c) The policy of the arbitration program with respect to records made available at the program's option shall be set out in the program's written operating procedures (Section 3398.3); the policy shall be applied uniformly to all requests for access to or copies of such records.

(d) Upon request, the arbitration program shall provide to either party to a dispute:

(1) Access to all records relating to the dispute.

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

(e) The arbitration program shall make available to any person, upon request, information relating to the qualifications of program staff and the qualifications and method of selection of arbitrators.

(f) Nothing in this section affects the right of any party under any applicable statute to subpoena any records relating to the dispute.

Note: Authority cited: Sections 472.1(b) and 472.4 Business and Professions Code.
Reference: 16 CFR 703.8; and Section 1793.22(d)(1), Civil Code.

3398.15. *Compliance by Program*

(a) An arbitration program shall promptly take reasonable action to correct violations of the minimum standards prescribed in this subchapter whenever violations become known to the program.

(b) An arbitration program shall:

(1) Investigate each complaint concerning the operation of the program, whether directed to the program by or for a consumer or by the Arbitration Certification Program;

(2) Furnish the Arbitration Certification Program with a copy of every written complaint concerning the operation of the program; and

(3) Inform both the Arbitration Certification Program and the consumer of the facts of the complaint, the results of the investigation, and any corrective steps taken.

(c) The manufacturer and the arbitration program shall establish written policies and procedures for referring unresolved complaints from consumers regarding the operation of the program to the Arbitration Certification Program.

(d) An arbitration program shall cooperate in good faith with the Arbitration Certification Program and its staff in all matters within the purview of this subchapter.

Note: Authority cited: Sections 472.1(b) and 472.4(f), Business and Professions Code.
Reference: Sections 472.3(c) and 472.4, Business and Professions Code.

Article 4. Certification Procedure

3399.1. *Application for Certification*

(a) Upon receiving a request for an application for certification, the Arbitration Certification Program will inform the prospective applicant that the Arbitration Certification Program is available to confer with the prospective applicant in advance of the filing of an application for the purpose of discussing questions relating to the application. However, no application shall be decided in advance of filing.

(b) An applicant seeking certification of an arbitration program shall file with the Arbitration Certification Program an application with all information and materials required by this subchapter. The application shall consist of (1) a completed "Application for Certification" following in the format prescribed in Appendix A, signed by or on behalf of each party to the application, and (2) the materials required by Section 3399.2 and Appendix A. The application need not include any confidential or proprietary data; provided, however, that the applicant shall have the burden of demonstrating that the arbitration program is in substantial compliance with Civil Code Section 1793.22(d), Chapter 9 of Division 1 of the Business and Professions Code, and this subchapter.

(c) Within 30 days after receipt of the application, the Arbitration Certification Program will both acknowledge receipt of the application and notify the applicant whether or not the application is complete. If the application is not complete, the Arbitration Certification Program will state what additional information or materials must be provided. If the applicant does not provide the information and materials requested by the Arbitration Certification Program within 30 days, the Arbitration Certification Program may deem the application as withdrawn.

(d) After receipt of the application, the Arbitration Certification Program may, in its discretion, schedule an informal conference with the applicant to discuss the application, the accompanying materials and information, and any additional materials and information that may be required by this subchapter. The informal conference is not an evidentiary hearing or a forum for the determination whether certification is appropriate.

(e) After the Arbitration Certification Program has accepted the application for certification as complete, the Arbitration Certification Program will conduct a review of the arbitration program described in the application, which will include one or more on-site inspections of any program that is already operating, to determine whether the certification which is requested should be granted.

(f) The Arbitration Certification Program will make a determination whether to certify an arbitration program or to deny certification not later than 90 days after the date the Arbitration Certification Program accepts the application for certification as complete.

(g) If the Arbitration Certification Program determines that the arbitration program is in substantial compliance with Civil Code Section 1793.22(d), Chapter 9 of Division 1 of the Business and Professions Code, and this subchapter, the Arbitration Certification Program will certify the arbitration program.

(h) If the Arbitration Certification Program determines that the arbitration program is not in substantial compliance with Civil Code Section 1793.22(d), Chapter 9 of Division 1 of the Business and Professions Code, or this subchapter, the Arbitration Certification Program will deny certification, and will state, in writing, the reasons for the denial and the modifications in the operation of the program that are required in order for the program to be certified.

(i) If the Arbitration Certification Program denies certification of the arbitration program, the applicant may either reapply for certification or request a hearing. A request for a hearing shall be filed with the Arbitration Certification Program within 30 days after service of the notice of denial.

Note: Authority cited: Sections 472.1(b) and (c), and 472.4(f), Business and Professions Code. Reference: Sections 472.1(a) and (c), and 472.2 Business and Professions Code; and Sections 360.5 and 363, Financial Code.

3399.2. *Materials to Accompany Application*

(a) The application shall be accompanied by the following materials:

- (1) The arbitration program's written operating procedures (Section 3398.3(a)).
- (2) All other written manuals, publications and documents prepared by or for the manufacturer or the arbitration program, or either of them, which constitute or describe the arbitration program's operating procedures in whole or in part, including but not limited to the policies and procedures that implement this subchapter.
- (3) All written agreements between the manufacturer and the arbitration program (including exchanges of correspondence) which define the relationship between the manufacturer and the arbitration program, including but not limited to agreements relating to handling and referring disputes; responding to requests from the program, the manufacturer or the consumer for information; implementing the decisions of the program; and responding to complaints about the decision or the operation of the arbitration program.
- (4) All written warranties on new motor vehicles offered by the manufacturer for sale or lease in California at the time the manufacturer has applied for certification; and all owner's manuals, books, pamphlets and other materials provided by the manufacturer to consumers which describe the manufacturer's current written warranties, the protections and benefits they provide to consumers, the steps which consumers must follow to obtain warranty service, or the procedures used by the manufacturer for handling complaints from consumers regarding vehicles sold or leased in California. Where documents are substantially similar for several models of vehicles, the applicant need only submit one example of each document, provided that the applicant clearly identifies the models to which the exemplar applies.
- (5) All published descriptions of the arbitration program, its purposes, or its availability and use, provided to consumers by either the manufacturer or the arbitration program.
- (6) Examples of the notices, disclosures and other documents prescribed by Sections 3397.2(a), 3398.2(h), 3398.4(c), and 3398.12(a), and of any disclosures given pursuant to Civil Code Sections 1793.22(b) or (c).

(b) The application shall include an index of the materials that accompany the application.

Note: Authority cited: Sections 472.1(c) and 472.4(f), Business and Professions Code.
Reference: 16 CFR Section 703.5(a).

3399.3. *Audits of Arbitration Programs* - REPEALED JULY 1996

3399.4. Reports to the Arbitration Certification Program by Arbitration Programs

(a) The arbitration program shall notify the Arbitration Certification Program in writing of any material changes in the information or materials submitted in or with the application for certification or subsequently at the request of the Arbitration Certification Program, and shall do so either before or within a reasonable time after the change becomes effective.

(b) The arbitration program shall provide to the Arbitration Certification Program, six months after certification and annually thereafter, a report on disputes closed during the reporting period, which shall contain the following information in the case of each dispute (including disputes over which the program did not exercise jurisdiction):

- (1) The name, address, and telephone number of the consumer.
- (2) The name of the manufacturer of the vehicle.
- (3) The office where the dispute was processed.
- (4) The number or other identification of the dispute used by the process, if one exists.
- (5) With respect to each dispute:
 - (A) the date when notification of the dispute was received by the program;
 - (B) the dates of all meetings held to decide the dispute;
 - (C) the date of decision of the arbitrator;
 - (D) the fact and date of performance of the decision by the manufacturer; and
 - (E) the elapsed time in days between (A) and (C).
- (6) The nature of the consumer's request for relief categorized by one or more of the following:
 - (A) repair;
 - (B) replacement;
 - (C) return and restitution;
 - (D) either replacement or return and restitution;
 - (E) reimbursement of expenses;
 - (F) other.

(7) The nature of the decision or decisions categorized by one or more of the following:

- (A) repair;
- (B) replacement;
- (C) return and restitution;
- (D) either replacement or return and restitution;
- (E) reimbursement of expenses;
- (F) no relief;
- (G) other.

(8) Any report of any information required by this subchapter (other than the annual audit required under Section 3399.3), or any portion thereof, may be submitted in electronic form compatible with the Arbitration Certification Program's computer system.

(c) The period covered by the annual report required by subdivision (b) of this section may coincide with the same period covered by the annual audit required by Section 3399.3, and the two reports may be submitted separately or as a single document.

Note: Authority cited: Sections 472.1(c) and (d), 472.3(a), and 472.4(f), Business and Professions Code. Reference: Sections 472.1(b) and 472.4(f), Business and Professions Code; 16 CFR Section 703.6.

3399.5. Review of Program Operations by the Arbitration Certification Program

(a) The Arbitration Certification Program will conduct a review of the operation and performance of each certified program at least once annually. The review may consist of:

- (1) An examination of updates of all information and materials required in the application and periodic reports.
- (2) One or more on-site inspections of the program's facilities, records and operations, including the records of individual disputes, interviews of the program's staff and arbitrators, and attendance at meetings held to decide disputes.
- (3) Evaluation of the qualifications, training, and performance of arbitrators.
- (4) Investigation and analysis of complaints from any source regarding the operation of the program.
- (5) An evaluation of consumer satisfaction based on the results of an annual random mail or telephone survey by the Arbitration Certification Program.
- (6) An evaluation of other information obtained through the Arbitration Certification Program's monitoring and inspection or which is relevant to continuing certification.

(b) All of the statistical summaries and other records of the arbitration program shall be available for inspection and copying by the Arbitration Certification Program.

(c) The arbitration program, on request by the Arbitration Certification Program, shall forward to the Arbitration Certification Program, without charge, a copy of all or any portion of the records of any individual dispute or disputes.

(d) The Arbitration Certification Program may, in its discretion, schedule an informal conference with an arbitration program to discuss an apparent lack of compliance with Civil Code Section 1793.22(d), Chapter 9 of Division 1 of the Business and Professions Code, or this subchapter, and any modifications in the operation of the program that the Arbitration Certification Program believes may be required in order for the program to be in substantial compliance. The informal conference is not an evidentiary hearing or a forum for the determination whether certification or decertification is appropriate.

Note: Authority cited: Sections 472.1(b), 472.3(a), and 472.4(f), Business and Professions Code. Reference: Sections 472.3(a) and 472.4(a), Business and Professions Code; Section 363, Financial Code.

3399.6. *Decertification*

(a) If it appears to the Arbitration Certification Program that an arbitration program is not in substantial compliance with Civil Code Section 1793.22(d), Chapter 9 of Division 1 of the Business and Professions Code, or this subchapter, the Arbitration Certification Program may issue a written notice of causes for decertification. The notice will specify the reasons for the notice and prescribe the modifications in the operation of the arbitration program which, if timely made, will enable the program to retain its certification. The written notice will be served on the party or parties to the original application designated to receive notices from the Arbitration Certification Program.

(b) No arbitration program shall be decertified unless and until either: (1) a decision to decertify is made by the Arbitration Certification Program pursuant to the notice of causes for decertification after a hearing under subdivision (c) of this section, or (2) the expiration of 180 days after service of the notice of causes for decertification as provided in subdivision (d) of this section.

(c) The entity or entities on whom service of the notice of causes for decertification is made, or any of them, shall have a right to a hearing upon written request filed with the Arbitration Certification Program within 30 days after service of the notice. The date of service shall be deemed to be the date of transmittal by the Arbitration Certification Program. If a request is made, the program will be decertified only if a decision to decertify the program is made by the Arbitration Certification Program after a hearing. The Arbitration Certification Program will conclude the decertification proceedings within 180 calendar days after service of its written notice of causes for decertification.

(d) The decertification shall become effective 180 days after the notice is served. However, the Arbitration Certification Program will withdraw the notice prior to its effective date if the Arbitration Certification Program determines, after a public hearing, that the entity or entities have made the modifications in the operation of the program required in the notice of decertification, and the program is in substantial compliance with the requirements of Civil Code Section 1793.22(d), Chapter 9 of Division 1 of the Business and Professions Code, and this subchapter.

(e) Any person may request copies of all notices and decisions issued by the Arbitration Certification Program under this section.

Note: Authority cited: Section 472.4(f), Business and Professions Code. Reference: Section 472.3(c), Business and Professions Code; Federal Constitution, 14th Amendment; California Constitution, Art. I, Section 7; see Witkin, Calif. Proc., Const. Law, Sections 518-577, and Kash v. Los Angeles (1977) 19 Cal. 3d 294, 138 Cal. Rptr. 53.

Appendix A

Arbitration Certification Program
Department of Consumer Affairs

Application for Certification

Pursuant to Title 16, California Code of Regulations, Section 3399.1, the undersigned submit(s) to the Arbitration Certification Program of the California Department of Consumer Affairs, this application for certification of the arbitration program described below, accompanied by the materials described in Title 16, California Code of Regulations, Section 3399.2.

1.0. General Information

1.1 Please provide the names or titles, with the addresses and telephone numbers, of:

1.11 The manufacturer's principal administrator in charge of the arbitration program.

1.12 The administrator in charge of each area or office of the arbitration program located within California.

1.13 The manufacturer's and the arbitration program's agent to whom all communications and notices from the Arbitration Certification Program may be directed.

1.14 The arbitration program's principal place of business, and all other places of business of the arbitration program within California.

1.15 The custodian or custodians of the records which are required to be maintained under Section 3398.13 of this subchapter.

1.2 Please provide the names or titles, with addresses and telephone numbers, of the person or persons to whom consumers should give notice of a dispute when consumers are required to directly notify the manufacturer of a dispute, if the manufacturer elects to require that notice under Civil Code Section 1793.22(b)(1).

2.0. Arbitration Program

2.1 Please indicate where, in the written operating procedures (Section 3399.2(a) (1)) or other materials accompanying this application (Section 3399.2(a) (2)), the applicant has set forth the policies and procedures that will implement each of the requirements of this subchapter respectively. Please organize the response to this question by section and subdivision numbers that correspond to each of the sections and subdivisions in Articles 2 and 3 of this subchapter.

2.2 Please describe the steps the applicant has taken and will take to reasonably assure that the policies and procedures to which reference is made in the response to question 2.1 will be implemented.

2.3 Please describe the factors that the applicant requests the Arbitration Certification Program to consider in determining whether the arbitration program is competently staffed at a level sufficient to ensure fair and expeditious resolution of disputes.

2.4 Please describe any methods or amounts of payment by the manufacturer to the arbitration program that are affected by the method by which the dispute is resolved (for instance, by mediation, arbitration, or voluntary settlement) or by the nature of the decision (for instance, payment of money, further repair, or replacement or restitution). Specific dollar amounts need not be provided.

2.5 Please describe how arbitrators are selected and trained.

2.6 Please describe the procedure and criteria for the selection of independent automobile experts so as to ensure their independence.

2.7 Please state the date of your most recent application, and indicate in what respects this application is identical with, or differs from, that application.

2.8 Please identify any other applications submitted by the same sponsor and please indicate in what respects this application is identical with, or differs from those applications.

Dated:

(NAME OF APPLICANT)

(Signature)

Dated:

(NAME OF APPLICANT)

(Signature)