§ 465. Procedures relating to warranties and sales incentives. 1. Every franchisor shall properly fulfill any warranty agreement and/or franchisor's service contract, including but not limited to all warranty repairs, extended warranty repairs, factory compensated repairs, recalls, diagnostics, parts and other voluntary stop-sell repairs, and shall compensate each of its franchised motor vehicle dealers for all warranty, recall, diagnostic labor operations and parts where applicable in amounts which reflect reasonable compensation for such work. For purposes of this section, reasonable compensation shall be the reasonable labor time allowances defined by the retail labor time guide reasonably utilized by a franchised motor vehicle dealer for non-warranty customer paid labor operations. All warranty claims and/or claims under a franchisor's service contract made by franchised motor vehicle dealers shall be paid within thirty days following their approval. For diagnosis work, parts reimbursement, other than components, systems, fixtures, appliances, furnishings, accessories and features of a house coach that are designed, used and maintained primarily for nonvehicular residential purposes, and for labor reimbursement, reasonable compensation shall not be less than the price and rate charged by the franchised motor vehicle dealer for like services to non-warranty and/or non-service contract customers. For purposes of this section, the price and rate charged by the franchised motor vehicle dealer for parts may be established by submitting to the franchisor one hundred sequential nonwarranty customer-paid service repair orders or the number of sequential nonwarranty customer-paid service repair orders written within a ninety day period, whichever is less, covering repairs made no more than one hundred eighty days before the submission, and declaring the price and rate, including average markup for the franchised motor vehicle dealer as its reimbursement rate. The reimbursement rate so declared shall go into effect thirty days following the declaration and shall be presumed to be reasonable, however a franchisor may rebut such presumption by showing that such rate so established is unreasonable in light of the practices of all other franchised motor vehicle dealers in the vicinity offering the same line make. The franchised motor vehicle dealer shall not request a change in the reimbursement rate more often than once in each calendar year. In establishing the labor reimbursement rate, the franchisor shall

not require a franchised motor vehicle dealer to establish said rate by a methodology, or by requiring information, that is unduly burdensome or time consuming to provide, including, but not limited to, a transaction by transaction calculation. For the purposes of this section, the following parts or types of repairs shall be excluded from the parts and/or labor calculations and the franchisor's reimbursement requirements under this section: (a) parts sold at wholesale; (b) tires; (c) routine maintenance not covered under any retail customer warranty such as fluids, filters and belts not provided in the course of repairs; (d) vehicle reconditioning; and (e) batteries replaced as part of a routine maintenance operation. If the franchisor rejects the declaration or attempts to rebut the declaration because of an error in the dealer's submission, the franchisor shall identify with specificity the reason for rejection and identify the error or errors within the submission. In the event the franchisor rejects or rebuts the dealer's initial declaration, the dealer shall have the opportunity, within sixty days to resubmit the full and corrected declaration addressing the alleged error or errors identified by the franchisor. The franchisor shall respond within sixty days. The one hundred eighty day requirement for the repair orders shall be stayed from the date of initial submission. In any action or proceeding held pursuant to this subdivision, the franchisor shall have the burden of proving that the rate declared by the dealer was unreasonable as described in this subdivision and that the proposed adjustment of the average percentage markup or rejection of the submission is reasonable pursuant to the provisions of this subdivision. A warranty claim timely made shall not be deemed invalid solely because unavailable parts cause additional use and mileage on the vehicle.

2. All warranty or sales incentive claims shall be either approved or disapproved within thirty days after their receipt. When any such claim is disapproved the franchised motor vehicle dealer shall be notified in writing of its disapproval within said period. Each such notice shall state the specific grounds upon which the disapproval is based. Failure to disapprove a claim within thirty days shall be deemed approval.

3. No franchisor shall conduct an audit or charge back any warranty payment, or any sales, advertising or marketing incentive payment

("incentive payments") or otherwise hold a franchised motor vehicle dealer liable for charges more than one year, or five years in the case of fraud, after the date the franchisor made such payment to the dealer, without providing a notice to a franchised motor vehicle dealer of, or a mechanism that makes available to a franchised motor vehicle dealer, information regarding errors or issues regarding such dealer's warranty, sales, advertising or marketing incentive claims that are the subject of the audit or chargeback. Nothing in this section shall be deemed to grant a dealer the right to access any file held by the manufacturer evaluating such dealer. In connection with a claim for warranty reimbursements, the dealer's failure to document properly one part of a warranty repair that contains more than one part shall not be the sole basis to charge back the entire repair. A manufacturer shall not deny a claim submitted under this section based solely on a dealer's incidental failure to comply with a specific claim processing requirement, a clerical error, or other administrative technicality, provided that the failure does not call into question the legitimacy of the claim and that the dealer corrects the claim according to franchisor guidelines.

4. A franchisor shall not charge a dealer back subsequent to the payment of a warranty, sales, advertising or marketing incentive claim unless a representative of the franchisor has met in person at the dealership, or by telephone, with an officer or employee of the dealer designated by the dealer and explained in detail the basis for each of the proposed charge backs and thereafter given the dealer's representative a reasonable opportunity at the meeting, or during the telephone call, to explain the dealer's position relating to each of the proposed charge backs. In the event the dealer was selected for audit or review on the basis that some or all of the dealer's claims were viewed as excessive in comparison to average, mean or aggregate data accumulated by the franchisor, or in relation to claims submitted by a group of other franchisees, the franchisor shall, at or prior to the meeting or telephone call with the dealer's representative, provide the dealer with a written statement containing the basis or methodology upon which the dealer was selected for audit or review.

5. A franchisor shall not deny or charge back a payment for warranty

work claimed by the dealer unless the franchisor satisfies its burden of proof that the dealer did not make a good faith effort to comply with the reasonable written procedures of the franchisor or that the dealer did not actually perform the work.

6. A franchisor shall not deny or charge back a sales, advertising or marketing incentive payment made to a dealer unless the claim was materially false or fraudulent or the dealer failed to reasonably substantiate the claim in accordance with the manufacturer's reasonable procedures.

7. After all internal dispute resolution processes provided through the franchisor have been resolved, the franchisor shall give notice to the dealer of the final amount of a proposed warranty, sales, advertising or marketing incentive charge back. If the dealer institutes an action pursuant to this article within thirty days of receipt of such notice, the proposed charge back shall be stayed, without bond, during the pendency of such action and until the final judgment has been rendered in an adjudicatory proceeding or action as provided in section four hundred sixty-nine of this article. The franchisor shall not impose the chargeback, debit the dealer's account, or otherwise seek to obtain all or any part of the chargeback funds from the dealer during the thirty-day period in which the dealer has the opportunity to file an action as set forth above.