



**RULE-MAKING ORDER**  
**(RCW 34.05.360)**

**CR-103 (7/10/97)**

**Agency:** Washington Attorney General's Office

- Permanent Rule
- Emergency Rule
- Expedited Adoption
- Expedited Repeal

**(1) Date of adoption:** March 31, 2000

**(2) Purpose:**

New Motor Vehicle Warranties Act, RCW 19.118 - amend chapter 44-10 WAC to implement Chapter 298, Laws of 1998. Make editorial and minor procedural revisions to reflect attorney general resale disclosure forms.

**(3) Citation of existing rules affected by this order:**

**Repealed:**

**Amended:** WAC 44-10-010; WAC 44-10-170; WAC 44-10-200

**Suspended:**

**(4) Statutory authority for adoption:** RCW 19.118.808(2); RCW 19.118.061; and Chapter 298, §6, Laws of 1998

**PERMANENT RULE ONLY (Including EXPEDITED ADOPTION)**

Adopted under notice filed as WSR 99-19-109 on 09-20-99 (date).

Describe any changes other than editing from proposed to adopted version:

WAC 44-10-010: no changes

WAC 44-10-170(1)(f): minor clarification in response to submitted comments

WAC 44-10-170(2): minor clarification in response to submitted comments

**EMERGENCY RULE ONLY** WAC 44-10-200(3): redrafted for clarification in response to

Under RCW 34.05.350 the agency for good cause finds: submitted comments.

- (a) That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
- (b) That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding:

**EXPEDITED REPEAL ONLY**

Under Preproposal Statement of Inquiry filed as WSR \_\_\_\_\_ on \_\_\_\_\_ (date).

**(5.3) Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?**

- Yes  No
- If Yes, explain:

**(6) Effective date of rule:**

**Permanent Rules  
or Expedited Rule Making**

- 31 days after filing
- Other (specify) \_\_\_\_\_\*

\*(If less than 31 days after filing, specific finding in 5.3 under RCW 34.05.380(3) is required)

**Emergency Rules**

- Immediately
- Later (specify) \_\_\_\_\_

**NAME (TYPE OR PRINT)**

Paul N. Corning

**SIGNATURE**

**TITLE** Lemon Law Administrator  
Attorney General's Office

**DATE** 03-31-00

**CODE REVISER USE ONLY**

CODE REVISER'S OFFICE  
STATE OF WASHINGTON  
FILED

APR 3 2000

TIME 11:09 AM  
WSR 00-08-068 PM

(COMPLETE REVERSE SIDE)

**Note: If any category is left blank, it will be calculated as zero.  
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.  
A section may be counted in more than one category.**

**The number of sections adopted in order to comply with:**

<b>Federal statute:</b>	New _____	Amended _____	Repealed _____
<b>Federal rules or standards:</b>	New _____	Amended _____	Repealed _____
<b>Recently enacted state statutes:</b>	New _____	Amended _____	Repealed _____

**The number of sections adopted at the request of a nongovernmental entity:**

New \_\_\_\_\_ Amended \_\_\_\_\_ Repealed \_\_\_\_\_

**The number of sections adopted on the agency's own initiative:**

New \_\_\_\_\_ Amended 3 Repealed \_\_\_\_\_

**The number of sections adopted in order to clarify, streamline, or reform agency procedures:**

New \_\_\_\_\_ Amended 2 Repealed \_\_\_\_\_

**The number of sections adopted using:**

<b>Negotiated rule making:</b>	New _____	Amended <u>3</u>	Repealed _____
<b>Pilot rule making:</b>	New _____	Amended _____	Repealed _____
<b>Other alternative rule making:</b>	New _____	Amended _____	Repealed _____



AMENDATORY SECTION (Amending WSR 96-03-155, filed 1/24/96, effective 2/24/96)

**WAC 44-10-010 Definitions.** Terms, when used in this chapter, shall have the same meaning as terms used in chapter 19.118 RCW. The following definitions shall supplement or aid in the interpretation of the definitions set forth in chapter 19.118 RCW.

~~((1) The phrase)~~ "Arbitration special master" means the individual or group of individuals selected by the board to hear and decide special issues timely brought before the board ~~((by the parties))~~.

~~((2) The terms)~~ "Attorney general" or "attorney general's office" means the person duly elected to serve as attorney general of the state of Washington and delegates authorized to act on his or her behalf.

~~((3) The phrase)~~ "Intervening transferor" means any person or entity which receives, buys or otherwise transfers the returned new motor vehicle prior to the first retail transfer, sale or lease subsequent to being repurchased or replaced by the manufacturer.

~~((4) The phrase)~~ "Lemon Law resale documents" refers to the following:

~~((a))~~ (1) "Lemon Law resale windshield display" means a document created and provided by the attorney general which identifies that: ~~((i))~~ (a) The vehicle was reacquired by the manufacturer after a determination, settlement or adjudication of a dispute; ~~((ii))~~ (b) the vehicle has one or more nonconformities or serious safety defects, or was out-of-service thirty or more days due to diagnosis or repair of one or more nonconformities; and ~~((iii))~~ (c) the defects or conditions causing the vehicle to be reacquired by the manufacturer.

~~((b))~~ (2) "Lemon Law resale disclosure": Means a document created and provided by the attorney general which identifies that: ~~((i))~~ (a) The vehicle was reacquired by the manufacturer after a settlement, determination or adjudication of a dispute; ~~((ii))~~ (b) the vehicle has one or more nonconformities or serious safety defects, or was out-of-service thirty or more days due to diagnosis or repair of one or more nonconformities; and ~~((iii))~~ (c) the defects or conditions causing the vehicle to be reacquired by the manufacturer. The document will provide space for the manufacturer to indicate if each nonconformity or serious safety defect has been corrected and is warranted by the manufacturer.

~~((c) "Notice of correction and warranty" means a document created and provided by the attorney general which identifies each nonconformity or serious safety defect which was the basis of the settlement, determination or adjudication of the dispute. The document will provide space for the manufacturer to indicate whether each nonconformity or serious safety defect has been~~

~~corrected and is warranted by the manufacturer.~~

~~(d)~~) (3) "Notice of out-of-state disposition of a reacquired vehicle" refers to a document created and provided by the attorney general which requires the manufacturer, agent or dealer to identify the destination state and the dealer, auction, other person or entity to whom the manufacturer sells or otherwise transfers the reacquired vehicle when the vehicle is taken to another state for any disposition, including: resale, transfer or destruction.

~~((5) The term)~~) "Person" includes every natural person, firm, partnership, corporation, association, or organization.

~~((6))~~) "Settlement" means the resolution of a dispute, under chapter 19.118 RCW, between the consumer and manufacturer after the new motor vehicle arbitration board has accepted the consumer's request for arbitration and which results in the manufacturer reacquiring the new motor vehicle directly or indirectly through an agent or a motor vehicle dealer.

~~((7))~~) "Similar law of another state" refers to the law of another state which creates remedies for a manufacturer's failure to conform a vehicle to its warranty and under which the vehicle was reacquired by the manufacturer.

AMENDATORY SECTION (Amending WSR 96-03-155, filed 1/24/96, effective 2/24/96)

**WAC 44-10-170 Powers and duties of arbitrators.** (1) Arbitrators shall have the duty to conduct fair and impartial hearings, to take all necessary actions to avoid delay in the disposition of proceedings, to maintain order, and to meet the sixty day time frame required by RCW 19.118.090 for the rendering of a decision. They shall have all powers necessary to meet these ends including, but not limited to, the power:

(a) To consider any and all evidence offered by the parties which the arbitrator deems necessary to an understanding and determination of the dispute;

(b) To regulate the course of the hearings and the conduct of the parties, their representatives and witnesses;

(c) To schedule vehicle inspection by the technical experts, if deemed necessary, at such time and place as the arbitrator determines;

(d) To continue the arbitration hearing to a subsequent date if, at the initial hearing, the arbitrator determines that additional information is necessary in order to render a fair and accurate decision. Such continuance shall be held within ten calendar days of the initial hearing;

(e) To impose sanctions for failure of a party to comply with a subpoena pursuant to RCW 19.118.080 (2)(b);

(f) To calculate and order the joint liability for compliance

obligations of motor home manufacturers, when applicable, as part of an arbitration decision when ordering repurchase or replacement of a new motor vehicle.

(2) The board shall maintain an adequate pool of trained arbitrators and is responsible for the assignment of arbitrators to arbitration hearings. The selection and assignment of arbitrators is not subject to the approval of either party.

(3) Arbitrators must not have a personal interest in the outcome of any hearing, nor be acquainted with any of the participants except as such acquaintance may occur in the hearing process, nor hold any prejudice toward any party. Arbitrators shall not be directly involved in the manufacture, distribution, sale, or warranty service of any motor vehicle. Arbitrators shall maintain their impartiality throughout the course of the arbitration proceedings.

(a) An arbitrator shall sign a written oath prior to the commencement of each arbitration hearing to which he or she has been assigned, attesting to his or her impartiality in that case.

(b) There shall be no direct communication between the parties and the arbitrators other than at the arbitration hearing. Any other oral or written communications between the parties and the arbitrators shall be channeled through the board. Any prohibited contact shall be reported by the arbitrators to the board and noted in the case record.

AMENDATORY SECTION (Amending WSR 96-03-155, filed 1/24/96, effective 2/24/96)

**WAC 44-10-200 The arbitration decision.** (1) The arbitration board shall send the decision to the parties in each case within sixty calendar days of acceptance of the request for arbitration:

(a) All decisions shall be written, in a form to be provided by the attorney general, dated and signed by the arbitrator, and sent by certified mail to the parties;

(b) The date of mailing of the arbitration decision shall determine compliance with the sixty day requirement to issue an arbitration decision;

(c) The written decision shall contain findings of fact and conclusions of law as to whether the motor vehicle meets the statutory standards for refund or replacement;

(i) If the consumer prevails and has elected repurchase of the vehicle, the decision shall include the statutory calculations used to determine the monetary award;

(ii) If the consumer prevails and has elected replacement of the vehicle, the decision shall identify or describe a reasonably equivalent replacement vehicle and any refundable incidental costs;

(iii) If the consumer prevails and the manufacturer is represented by counsel, the decision shall include a description of

the awarded reasonable costs and attorneys' fees incurred by the consumer in connection with board proceedings.

Reasonable costs and attorneys' fees shall be determined by the arbitrator based on an affidavit of costs and fees prepared by the consumer's attorney and submitted no later than the conclusion of the arbitration hearing. The affidavit may be amended for post-hearing costs and fees. The amended affidavit of costs and fees must be delivered to the manufacturer's designated representative by certified mail or personal service and a copy submitted to the arbitration board by the consumer's attorney within thirty days of the consumer's acceptance of the decision but in no case after a manufacturer's compliance with a decision.

(2) Upon request of a party, an arbitrator shall make factual findings and modify the offset total where the wear and tear on those portions of the motor home designated, used, or maintained primarily as a mobile dwelling, office, or commercial space is significantly greater or significantly less than that which could be reasonably expected based on the mileage attributable to the consumer's use of the motor home in an arbitration decision awarding repurchase or replacement of a new motor vehicle originally purchased or leased at retail after June 30, 1998. An arbitrator will consider the actual amount of time that portions of the motor home were in use as dwelling, office or commercial space. The arbitrator shall not consider wear and tear resulting from:

(a) Defects in materials or workmanship in the manufacture of the motor home including the dwelling, office or commercial space;

(b) Damage due to removal of equipment pursuant to RCW 19.118.095 (1) (a); or

(c) Repairs.

The modification to the reasonable offset for use may not result in the addition or reduction of the offset for use calculation by more than one-third. The modification shall be specified as a percentage for reduction or addition to the offset calculation. The modification to the reasonable offset for use shall apply to the offset calculation at the time of repurchase or replacement of the motor home.

(3) (a) If a motor home manufacturer:

(i) Has met or exceeded the reasonable number of attempts to diagnose or repair the vehicle as set forth in RCW 19.118.041 (3) (a) or (b); or

(ii) Is responsible for sixty or more applicable days out of service by reason of diagnosis or repair as set forth in RCW 19.118.041 (3) (c), the motor home manufacturer is independently liable for compliance with a decision awarding repurchase or replacement of the motor home.

(b) If a motor home manufacturer has not met the criteria set forth in (a) (i) and (ii) of this subsection, but has contributed to the combined total of sixty or more days out of service by reason of diagnosis or repair as set forth in RCW 19.118.041 (3) (c), the manufacturer is jointly liable with the other liable motor home manufacturers for compliance with a decision awarding repurchase or replacement of the motor home.

(c) If a motor home manufacturer has met or exceeded the

reasonable number of attempts to diagnose or repair the vehicle as set forth in RCW 19.118.041 (3)(a) or (b), and the manufacturer, together with one or more other motor home manufacturers, contributed to a combined total of sixty or more days out of service by reason of diagnosis or repair as set forth in RCW 19.118.041 (3)(c), the motor home manufacturer is jointly and severally liable for compliance with a decision awarding repurchase or replacement of the motor home.

(d) In a decision awarding repurchase or replacement of a motor home, and that allocates compliance liability, an arbitrator will identify the motor home manufacturer's minimum percentage of contribution to compliance with the award. In determining the allocation of liability among jointly liable motor home manufacturers, the arbitrator will consider a motor home manufacturer's contribution to the total number of applicable days out of service as a factor.

(e) When applicable as set forth in RCW 19.118.090(5), the arbitrator must allocate liability for the consumer's costs and attorneys' fees among the liable motor home manufacturers represented by counsel. The arbitrator will specify the liable motor home manufacturer's minimum percentage of contribution to compliance with the award. The motor home manufacturer's minimum percentage of contribution for the consumer's costs and attorneys' fees may be different from the minimum percentage of contribution of the motor home manufacturer's compliance obligation due to other liable motor home manufacturers' lack of representation by counsel.

(f) An arbitrator must specify in the decision that the lack of compliance, late or delayed compliance, or the filing of an appeal by another liable motor home manufacturer will not affect a motor home manufacturer's independent liability for compliance with a decision awarding repurchase or replacement of the motor home.

(g) At the conclusion of the arbitration hearing regarding a motor home purchased or leased after June 30, 1998, a motor home manufacturer may present testimony and other evidence regarding the allocation of liability for compliance with arbitration decisions awarding repurchase or replacement of the motor home. If the motor home manufacturers agree amongst themselves to terms for the allocation of liability for compliance obligations, the arbitrator must include the terms in the arbitration decisions awarding repurchase or replacement of the motor home if the terms are consistent with the arbitration decisions, specific, complete and not otherwise contrary to chapter 19.118 RCW.

(4) Included with the copy of the arbitration decision sent to the consumer shall be a form to be completed by the consumer, indicating acceptance or rejection of the decision. The board shall forward general information to the consumer explaining the consumer's right to appeal the decision to superior court. The consumer must return the form to the board within sixty calendar days from the date of the consumer's receipt of the decision.

((+3)) (5) The consumer shall have one hundred twenty calendar days from the date of the rejection of the decision to file a petition of appeal in superior court. At the time of filing an appeal, the consumer shall deliver by certified mail or by

personal service a conformed copy of the petition to the attorney general.

~~((4))~~ (6) If the consumer accepts a decision which awards repurchase or replacement, the board shall send a copy of the form completed by the consumer indicating acceptance by certified mail to the manufacturer and shall include a manufacturer's intent form.

A verification of compliance form shall be sent to the consumer by the attorney general's office. The verification of compliance form shall be completed and returned to the attorney general by the consumer upon the manufacturer's compliance with the decision.