



RULE-MAKING ORDER
(RCW 34.05.360)

CR-103 (7/1/89)

Agency: OFFICE OF THE ATTORNEY GENERAL Permanent Rule
 Emergency Rule

(1) Date of adoption: August 10, 1990

(2) Purpose:
See Attachment 1.

(3) Citation of existing rules affected by this order:
Repealed:
Amended: See Attachment 1.
Suspended:

(4) Authority for adoption:
Statute: RCW 19.118.080 and 19.118.090
Other Authority:

(5.1) **PERMANENT RULE ONLY**
Pursuant to notice filed as WSR 90-11-034 on ^{JBH May 10} June 6, 1990 (date).
Describe any changes other than editing from proposed to adopted version: None

(5.2) **EMERGENCY RULE ONLY**
Pursuant to RCW 34.05.350 the agency for good cause finds:
 (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:

(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 30 days after filing Other (specify) _____*
Emergency Rules Immediately Later (specify) _____
*(If less than 30 days after filing, specific finding in 5.3 under RCW 34.05.380(3) is required)

CODE REVISER USE ONLY
DATE REVISER'S OFFICE STATE OF WASHINGTON FILED
9/11/1990
HR 3:58
WSR 90-19-024

NAME (TYPE OR PRINT) KENNETH O. EIKENBERRY
SIGNATURE *Kenneth O. Eikenberry*
TITLE ATTORNEY GENERAL
DATE 9/11/90

Attachment 1
Rule-Making Order CR-103

(1) **Purpose:**

AMENDATORY SECTION 44-10-090: provides for the collection of a five dollar arbitration fee; amended to specifically include lease vehicles and motorcycles with 750 and greater cubic centimeter engine displacements;

AMENDATORY SECTION 44-10-160: provides for use of technical experts; amended to include motorcycle technical experts;

AMENDATORY SECTION 44-10-200: provides for the procedural steps and format of an arbitration decision; amended to provide procedures to award allowable costs and attorneys' fees to prevailing consumers where the manufacturer is represented by counsel;

REPEALER SECTION 44-10-215: provides for delivery of resale information to manufacturers; section repealed;

NEW SECTION 44-10-235: provides for approved use of substitute resale disclosure forms; proposed to allow a manufacturer to use substitute resale disclosure forms.

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

AMENDATORY SECTION 44-10-090

AMENDATORY SECTION 44-10-160

AMENDATORY SECTION 44-10-200

REPEALER SECTION 44-10-215

AMENDATORY SECTION (Amending Order 87-02, filed 11/13/87)

WAC 44-10-090 ARBITRATION FEE. (1) A five dollar arbitration fee shall be collected by the new motor vehicle dealer from the consumer at completion of the sale or lease agreement, except that such fee shall not be collected in the following instances:

(a) Where the consumer is a business purchasing the new motor vehicle as part of a fleet of ten or more vehicles from the same new motor vehicle dealer at the same time for the direct use by the consumer in the consumer's business;

(b) Where the new motor vehicle is a moped, ((a)) motorcycle which has an engine displacement of less than 750 cubic centimeters or a truck with nineteen thousand pounds or more gross vehicle weight rating;

(c) Where the sale is between a new motor vehicle dealer and another new motor vehicle dealer both of which have valid written agreements for the sale and service of vehicles with the same manufacturer.

(2) Upon collection of the arbitration fee by the new motor vehicle dealer, the arbitration fee shall be forwarded to the department of licensing with the assigned certificate of ownership and application for title.

(3) For purposes of this rule:

(a) "Consumer" shall include any person, association, company, corporation or business entity.

(b) "Fleet" shall not include ten or more vehicles purchased by a consumer who has executed a lease agreement as lessor or intends to solicit a lease agreement as lessor of any such vehicles.

(c) "Lease agreement" shall not include a rental agreement executed in the normal course of the consumer's business.

AMENDATORY SECTION (Amending Order 89-4, filed 7/24/89, effective 8/24/89)

WAC 44-10-160 USE OF TECHNICAL EXPERT. (1) An adequate pool of automotive and motorcycle technical experts shall be maintained by the arbitration service for assignment as advisors and consultants to each arbitrator if such services are deemed necessary. Technical experts shall not be directly involved in the manufacture, distribution, sale, or warranty service of any motor vehicle.

(2) Either party may request that a technical expert be assigned to a dispute. Such assignment, however, shall be at the discretion of the arbitrator or the arbitration service. The arbitrator or the arbitration service may upon their own volition assign a technical expert to a dispute. Any request for a technical expert must be made within a time frame that will allow for reasonable inspection by the expert.

(3) If a technical expert is assigned to a dispute, and intends to perform an inspection of the vehicle prior to the hearing, a notice of the time, date and location of the technical expert's inspection of the vehicle will be provided to both parties. This section does not confer a right, for either party, to be present during the inspection of the vehicle, however, either party may be present. (4) Said expert may be present as advisor and consultant at the arbitration hearing, if he or she has been requested to be present by the arbitrator or arbitration service.

(5) The expert shall sign a written oath attesting to his or her impartiality prior to the commencement of each arbitration hearing to which he or she has been assigned.

AMENDATORY SECTION (Amending Order 89-4, filed 7/24/89, effective 8/24/89)

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 to both parties and the attorney general;

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

(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 calculations used to determine the monetary award as set forth in RCW 19.118.090, 19.118.041 and 19.118.021;

(ii) If the consumer prevails and has elected replacement of the vehicle, the decision shall include the information used to identify a reasonably equivalent replacement vehicle and the costs associated with such vehicle and a description of the vehicle as set forth in RCW 19.118.090, 19.118.041 and 19.118.021;

(iii) If the consumer prevails, the decision shall include provisions for the return of the vehicle upon compliance by the manufacturer at a reasonable time and place;

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

(2) Included with the copy of the arbitration decision sent to the consumer shall be a form to be completed by said consumer, indicating acceptance or rejection of the decision. The consumer must return said form to the arbitration service within sixty calendar days from the date of the consumer's receipt of the decision. If the consumer has not responded within thirty days, the attorney general's office shall send a notice requesting a response and informing the consumer that failure to respond shall be deemed a rejection of the arbitration decision.

(3) If the consumer rejects the decision, the arbitration service shall forward general information to the consumer explaining the consumer's right to appeal the decision to superior court. 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) If the consumer accepts the decision, the arbitration service shall send a notice of acceptance by certified mail to the manufacturer and shall include a manufacturer's intent form. The intent form shall be returned to the attorney general by the manufacturer within thirty calendar days, of the manufacturer's receipt of notice of consumer's acceptance and shall indicate whether the manufacturer intends to comply with the decision or appeal the decision to superior court.

(5) 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.

(6) After forty calendar days from the date of the notice of acceptance to the manufacturer, the attorney general shall determine whether the manufacturer has complied with the arbitration decision or appealed to superior court. If the manufacturer has not complied or appealed, the attorney general may impose fines authorized by RCW 19.118.090.

NEW SECTION

WAC 44-10-235 SUBSTITUTE RESALE DISCLOSURE FORMS. (1) A manufacturer may submit to the attorney general for approval a proposed substitute form(s) for the consumer disclosure notice and certification of repair and warranty as required for resale of a vehicle.

(2) A substitute form must include:

(a) A disclosure that the manufacturer was required to repurchase or replace the vehicle from the previous owner pursuant to the Motor Vehicle Warranties Act, chapter 19.118 RCW, due to specified defects, conditions, or serious safety defects in the vehicle;

(b) A certification of repair and warranty for at least twelve months or twelve thousand miles, whichever occurs first, of any representation of correction or repair for each defect, condition, or serious safety defect;

(c) A disclosure that the title of ownership issued by the department of licensing will have permanent notations that the vehicle was returned pursuant to chapter 19.118 RCW and which will indicate whether or not the defect or condition has been corrected by the manufacturer;

(d) Directions for the distribution of the form copies and that the substitute form must be signed by the subsequent retail purchaser;

(e) A copy of the substitute form which is to be provided to the subsequent retail purchaser;

(f) Two copies of the substitute form which are to be immediately sent to the attorney general and the department of licensing upon retail sale of the vehicle.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 44-10-215 RECEIPT OF RESALE INFORMATION.