



RULE-MAKING ORDER

(RCW 34.05.360)

CR-103 (7/22/01)

Agency: Attorney General's Office

- Permanent Rule
- Emergency Rule
- Expedited Rule Making

(1) Date of adoption: 06-04-02

(2) Purpose: (1) Amend definition of "Settlement" to include the category of vehicle reacquired by manufacturers through dispute resolution program other than that established by statute when the program uses standards equivalent to Chapter 19.118 RCW. (2) & (3) Make editorial and procedural revisions to reflect procedural changes regarding activities of the New Motor Vehicle Arbitration Board and the Lemon Law Administration.

(3) Citation of existing rules affected by this order: WAC 44-10

Repealed: None

Amended: WAC 44-10-010; 44-10-050; 44-10-060; 44-10-070; 44-10-080; 44-10-100; 44-10-110; 44-10-120; 44-10-130; 44-10-140; 44-10-150; 44-10-160; 44-10-170; 44-10-180; 44-10-200; 44-10-210; 44-10-221; 44-10-222; 44-10-300; 44-10-310.

Suspended: None

(4) Statutory authority for adoption: RCW 19.118.080(2); RCW 19.118.061.

Other Authority:

PERMANENT RULE ONLY (Including Expedited Rule Making)

Adopted under notice filed as WSR 02-10-065 on 4/26/02 (date). *PA*
Describe any changes other than editing from proposed to adopted version:

EMERGENCY RULE ONLY

Under 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

- 31 days after filing
- Other (specify) _____ *

Emergency Rules

- Immediately
- Later (specify) _____

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

Name (Type or Print)

Paul N. Corning

Signature

Title
Administrator
Lemon Law Administration

Date
06-04-02

CODE REVISER USE ONLY

STATE OF WASHINGTON
DEPARTMENT OF REVENUE

JUN 4 2002

2:51 PM
02-12-093

(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: None

Federal statute:	New	_____	Amended	_____	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____
Recently enacted state statutes:	New	_____	Amended	_____	Repealed	_____

The number of sections adopted at the request of a nongovernmental entity: None

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted in the agency's own initiative:

New	_____	Amended	<u>20</u>	Repealed	_____
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	_____	Amended	<u>19</u>	Repealed	_____
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The number of sections adopted using:

Negotiated rule making:	New	_____	Amended	<u>20</u>	Repealed	_____
Pilot rule making:	New	_____	Amended	_____	Repealed	_____
Other alternative rule making:	New	_____	Amended	_____	Repealed	_____

AMENDATORY SECTION (Amending WSR 00-08-068, filed 4/3/00, effective 5/4/00)

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.

"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.

"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.

"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.

"Lemon Law administration" means the section within the attorney general's office, consumer protection division, designated by the attorney general to be responsible for the implementation of chapter 19.118 RCW and related rules.

"Lemon Law resale documents" refers to the following:

(1) "Lemon Law resale windshield display" means a document created and provided by the attorney general which identifies that: (a) The vehicle was reacquired by the manufacturer after a determination, settlement or adjudication of a dispute; (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 (c) the defects or conditions causing the vehicle to be reacquired by the manufacturer.

(2) "Lemon Law resale disclosure": Means a document created and provided by the attorney general which identifies that: (a) The vehicle was reacquired by the manufacturer after a settlement, determination or adjudication of a dispute; (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 (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.

(3) "Notice of out-of-state disposition of a reacquired vehicle" refers to a document created and provided by the (~~attorney general~~) Lemon Law administration 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.

"Person" includes every natural person, firm, partnership, corporation, association, or organization.

"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. Settlement includes a consumer's acceptance of a decision or award for repurchase or replacement of a vehicle issued by a manufacturer sponsored dispute resolution program where the basis of the program's standards decision making are specifically related to, or identified as, some or all of the provisions of chapter 19.118 RCW and which results in the manufacturer reacquiring the new motor vehicle directly, through an agent or a motor vehicle dealer.

"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 44-10-050 Assignment to board. (1) After initial screening by the attorney general, all requests for arbitration which appear to be timely, complete and to have met the jurisdictional requirements of chapter 19.118 RCW shall be assigned to the board which will record the date it receives the assignment in the request for arbitration file.

(2) The board must determine if it will accept the request for arbitration or reject the request for arbitration, for the reasons set forth in RCW 19.118.090, within three business days after the attorney general has forwarded the request for arbitration to the board.

(3) The board shall record the date of acceptance or rejection of the request for arbitration. The acceptance of the request shall commence the running of the forty-five calendar day period in which a hearing must be conducted.

(4) Upon acceptance of a request, the board shall immediately (~~send~~) notify the Lemon Law administration. A notice of acceptance for arbitration will be sent to the consumer and manufacturer by certified mail/return receipt requested and shall inform the parties that a hearing shall be held within forty-five calendar days. The parties shall be sent formal notice of the actual hearing date by certified mail/return receipt requested, at

least ten calendar days before the hearing. The designated manufacturer contact shall be sent a copy of the consumer's request and a manufacturer's statement form with the notice of acceptance.

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

WAC 44-10-060 Powers and duties of arbitration special master. (1) An arbitration special master may be appointed by the arbitration board to hear and decide preliminary and post-hearing issues which are within the arbitration board's authority. Requests for an arbitration special master may be made (~~to the board by either party~~) in writing by either party to the Lemon Law administration. The request will be reviewed to determine whether issues identified in the special master request will be forwarded to the board or denied. Post-hearing arbitration special masters shall not resolve matters previously presented in the arbitration hearing and addressed in the arbitration decision, or extend the time for compliance beyond the time necessary to hear and notify the parties of a decision about the issues in dispute or requiring clarification.

(2) Issues which may be decided by the arbitration special master include but are not limited to: Motions to quash subpoenas, disputes related to requests to view the vehicle, (~~requests to set aside default determinations,~~) disputes relating to an arbitration award including specification of the award amounts which could not have been or were not resolved at the arbitration hearing or matters necessary for compliance with the arbitration decision such as: time and place for compliance, condition of the vehicle to be returned, clarification or recalculation of refund amounts or a determination that an offered vehicle is reasonably equivalent to the vehicle being replaced. The arbitration special master may conduct telephonic conferences with a party or parties, as appropriate, and may request additional written information in order to rule on issues.

(3) An arbitration special master shall not extend the forty day period during which the manufacturer must comply with the arbitration decision except where the arbitration special master makes a finding that:

(a) The dispute could not have been brought to the board allowing sufficient time to conclude compliance within the forty day compliance period; and

(b) The manufacturer's position in the dispute is supported by the special master's decision.

(4) Arbitration special masters shall sign a written oath prior to their appointment as arbitration special master attesting to their impartiality. There shall be no ex parte communication initiated by a party with an arbitration special master.

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

WAC 44-10-070 Manufacturer's statement. (1) The manufacturer shall provide information relevant to the resolution of the dispute to the consumer and board on a form created by the (~~attorney general~~) Lemon Law administration. The manufacturer's statement form shall be completely answered and shall include, but not be limited to, the following information:

(a) A statement of any affirmative defenses, and any legal or factual issues to be raised at the hearing. Any issues or affirmative defenses not raised in documents filed prior to the hearing may be excluded or limited by the arbitrator at the hearing; except as provided in WAC 44-10-080(6).

(b) The name, title, and business address of any person(s) the manufacturer plans to call as witnesses or from whom affidavits or written testimony will be presented;

(c) A statement identifying the year, make, model, options, color and any other significant information pertaining to the vehicle or vehicles it intends to offer as a reasonably equivalent replacement vehicle if the consumer prevails and requests replacement. If the manufacturer believes in good faith that replacement is impossible, or unreasonable, or cannot be provided timely pursuant to compliance requirements the manufacturer must raise such issue in its statement.

(2) The manufacturer must exercise its option to request a viewing of the consumer's motor vehicle by including a request to view the vehicle in the manufacturer's statement.

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

WAC 44-10-080 Manufacturer's option to request a viewing of motor vehicle. (1) A manufacturer may request a viewing of the vehicle to aid in preparation of its defense. The request for a viewing of the vehicle must be indicated in the manufacturer's statement.

(2) The manufacturer and the consumer shall attempt to arrange a mutually agreeable time and location for such viewing. If after reasonable good faith attempts to arrange a viewing, a mutually agreeable time and location is not established, the manufacturer may request (~~from~~) the (~~board that a arbitration special master~~) Lemon Law administration program manager to set a time and

location for viewing.

(3) (~~The arbitration special master, upon such request,~~) Upon receipt of a request to set a viewing, the Lemon Law administration program manager shall establish a time and location for viewing that is reasonably convenient for the parties. The location may be the consumer's residence if other locations are not reasonably convenient for the parties, The consumer must be present during the viewing, unless the consumer expressly waives in writing the right to be present.

(4) The viewing is not meant to be another attempt to repair the vehicle and no repair procedures shall be conducted.

(5) The manufacturer may perform limited nonrepair diagnostic examinations and inspection procedures, such as test driving the vehicle or attaching a testing device to the vehicle. The results of any diagnostic procedures or data gathered as a result of such procedures shall be supplied to the consumer as soon as it is available.

(6) If the viewing of the vehicle reveals any affirmative defenses or legal or factual issues not previously raised in the manufacturer's statement or consumer's request for arbitration, either party may file amendments with the Lemon Law administration within three business days of the viewing, or, no later than three business days prior to the hearing date, whichever is earlier.

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

WAC 44-10-100 Subpoenas. (1) A party's request for a subpoena to be issued on behalf of the board must be received by the (~~arbitration board no later than fourteen calendar days prior to the arbitration hearing date~~) Lemon Law administration with the consumer's request for arbitration or the manufacturer's statement to be considered. A consumer may submit a request for a subpoena within three business days of receipt of a manufacturer's statement. The board shall make a determination of whether the documents and records sought by the party are reasonably related to the dispute and notify the (~~attorney general~~) Lemon Law administration of the (~~request within two (2) business days of receiving the request~~) determination.

(2) A subpoena issued by the attorney general shall identify the party causing the issuance of the subpoena, designate that the subpoena is issued by the attorney general pursuant to RCW 19.118.080, state the purpose of the proceeding, and command the person to whom it is directed to produce at the time and place set in the subpoena the designated documents or records under his or her control.

(3) Service of the subpoena may be made be certified mail, return receipt requested or by overnight express delivery.

(4) A person to whom a subpoena is directed may submit a written request to suspend or limit the terms of the subpoena to the ((board before the time specified in the subpoena for compliance)) Lemon Law administration within five business days of receipt of the subpoena and shall notify the party who requested the subpoena, of the request to suspend or limit it. The request must be accompanied by a short statement setting forth the basis for the request. ~~((Upon requests made to the board, the board shall notify the party who requested the subpoena.))~~ The ~~((board))~~ Lemon Law administration program manager may suspend or modify the subpoena or shall ((immediately)) assign the request to be heard at the arbitration hearing ~~((or before an arbitration special master who may suspend or modify the subpoena))~~.

(5) ~~((A party or nonparty subject to the subpoena must comply or submit a request to suspend or limit the subpoena within five business days of receipt of the subpoena. The request shall be heard within five business days to hear and rule on the request.~~

~~(6))~~ Where the ~~((arbitration special master))~~ Lemon Law administration program manager upholds or modifies the subpoena, the responding person or party shall comply with the date set in the subpoena or within five business days, whichever is greater.

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

WAC 44-10-110 Scheduling of arbitration hearings. The board has the authority to schedule the arbitration hearing at its discretion ~~((and))~~. The Lemon Law administration shall notify the parties of the date, time and place by certified letter mailed at least ten calendar days prior to the hearing. Hearings may be scheduled during business hours, Monday through Thursday evenings, or Saturdays. If for any reason an arbitration hearing must be rescheduled, the board or the Lemon Law administration shall promptly notify the parties by mail or telephone.

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

WAC 44-10-120 Withdrawal. A consumer may withdraw a request for arbitration at any time.

A withdrawal shall be granted without prejudice, although upon notice to the ~~((board))~~ Lemon Law administration of withdrawal, the thirty month period in which the consumer must submit a request for arbitration shall resume running. A consumer who has withdrawn may

resubmit the claim for arbitration. However, if the consumer withdraws the second request, the withdrawal shall be considered a withdrawal with prejudice and the consumer shall not be allowed to resubmit the claim for arbitration.

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

WAC 44-10-130 Defaults. (1) A party who fails to appear at the arbitration hearing will be considered in default.

(2) If a manufacturer defaults the arbitrator shall hold the hearing. The arbitrator shall make a decision based on the evidence presented by the consumer, and any files or documentation contained in the record including the manufacturer's statement and other evidence or documentation submitted by the manufacturer.

(3) If the consumer defaults it shall be considered a withdrawal with prejudice of the request for arbitration. The hearing shall be canceled if the consumer defaults.

(4) The default shall be final unless within twenty-four hours of the hearing time, the manufacturer or consumer contacts the ((board)) Lemon Law administration to request that the default be set aside. The request shall include evidence of an unforeseeable circumstance that resulted in the failure of the party to appear. Such request shall be considered by the ((arbitration special master)) Lemon Law administration program manager who will hear arguments from both parties on the request to set aside the default which may be conducted via telephone conference call. If the ((arbitration special master sets aside the)) default is set aside, a new hearing shall be scheduled within ten calendar days of the original hearing date, and the parties shall be informed of the new date and time at least five business days prior to the hearing date when possible.

(5) If both parties default, the disposition of the case shall be handled as if only the consumer defaulted pursuant to WAC 44-10-130(3).

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

WAC 44-10-140 Representation of parties. (1) Any party to the arbitration hearing may be represented by counsel. If either party opts to be so represented, said party shall immediately notify the ((board)) Lemon Law administration and the other party of the name and address of the attorney.

(2) The consumer may be represented by himself or herself or by legal counsel, but may not be represented by a nonattorney. However, a person, acting as an interpreter, may assist a party in the presentation of the case if such assistance is necessary because of a mental or physical handicap or language barrier which would preclude the party from adequately representing himself or herself.

(3) A manufacturer may be represented by legal counsel, authorized employee or agent.

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

WAC 44-10-150 Settlement of dispute. (1) Both parties shall notify the ((board)) Lemon Law administration of a resolution for settlement of the dispute after the request for arbitration has been accepted by the arbitration board. The ((attorney general)) Lemon Law administration shall verify the terms of the settlement or resolution. The disclosure of terms is for statutorily required record keeping only. The settlement or agreement to otherwise resolve the dispute is not subject to approval by the board or the attorney general.

(2) Notice of settlement or agreement to resolve the dispute shall be treated procedurally as if the consumer had withdrawn from the arbitration process, as set forth in WAC 44-10-120.

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

WAC 44-10-160 Use of technical expert. (1) ((An adequate pool of automotive and motorcycle technical experts shall be maintained by the board.)) A technical expert is assigned by the board to advise and consult with an arbitrator. 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 board. The board may upon their own volition assign a technical expert to a dispute.

(3) If a technical expert is assigned to a dispute, and is requested by the arbitrator to perform an inspection of the vehicle, other than as part of the arbitration 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. Any written report or results of the expert's inspection shall be supplied to the parties as soon as it is available. The technical expert shall be present at the hearing or shall be available by telephone at the time of hearing, and may be examined by either party or the arbitrator.

(4) 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 WSR 00-08-068, filed 4/3/00, effective 5/4/00)

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 00-08-068, filed 4/3/00, effective 5/4/00)

WAC 44-10-200 The arbitration decision. (1) The arbitration board shall (~~send~~) issue 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~~) Lemon Law administration, dated and signed by the arbitrator, and sent by certified mail to the parties;

(b) The date (~~of mailing of~~) on which the board provides the arbitration decision to the Lemon Law administration 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)) Lemon Law administration 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;

(d) Upon receipt of the board's decision, the Lemon Law administration will distribute it to the parties by certified mail.

(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)~~) and 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)) Lemon Law administration within sixty calendar days from the date of the consumer's receipt of the decision or the decision will be deemed to have been rejected as of the sixty-first day.

(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.

(6) If the consumer accepts a decision which awards repurchase or replacement, the ((board)) Lemon Law administration

shall send a copy of the form completed by the consumer indicating acceptance by certified mail for the board 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))~~ Lemon Law administration. The verification of compliance form shall be completed and returned to the ~~((attorney general))~~ Lemon Law administration by the consumer upon the manufacturer's compliance with the decision.

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

WAC 44-10-210 Technical corrections. (1) The board or the Lemon Law administration program manager may make "technical corrections" to an arbitration decision. "Technical corrections" shall generally be defined as computational corrections, typographical corrections, or other minor corrections.

(2) A party may submit ~~((to the board))~~ a written request for technical corrections to the Lemon Law administration setting forth the requested correction(s) and reason(s). Such request must be received ~~((by the board))~~ within ten calendar days of the ~~((mailing))~~ party's receipt of the ~~((arbitrator's written))~~ decision.

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

WAC 44-10-221 Resale documents--Attorney general procedures.

(1) When a vehicle has been determined by the new motor vehicle arbitration board, or has been adjudicated in a superior or appellate court of this state, as having one or more nonconformities or serious safety defects that have been subject to a reasonable number of attempts by the manufacturer to conform the vehicle to the warranty:

(a) The ~~((attorney general))~~ Lemon Law administration will provide the manufacturer with the "Lemon Law resale documents" necessary to resell or otherwise transfer the vehicle together with instructions regarding compliance with RCW 19.118.061 and applicable rules;

(b) The ~~((attorney general))~~ Lemon Law administration will provide the manufacturer with the required documents by certified mail at the conclusion of the period pursuant to RCW 19.118.090(9) for a manufacturer to file an appeal or upon notice from the

manufacturer of receipt of the vehicle, whichever occurs first.

(2) When a vehicle is the subject of a "settlement" under chapter 19.118 RCW:

(a) ~~The ((attorney general))~~ Lemon Law administration will provide the manufacturer with the "Lemon Law resale documents" necessary to resell or otherwise transfer the vehicle together with instructions regarding compliance with the RCW 19.118.061 and applicable rules;

(b) ~~The ((attorney general))~~ Lemon Law administration will provide the manufacturer with the required documents by certified mail upon notice of the settlement by the parties or upon receipt from a manufacturer sponsored dispute resolution program of a decision or award, and notice of the consumer's acceptance of the award for repurchase or replacement of a vehicle where the basis of the program's decision-making standards are specifically related to or identified as some or all of the provisions of chapter 19.118 RCW and which will result in the manufacturer reacquiring the new motor vehicle directly, through an agent or a motor vehicle dealer.

(3) When a vehicle is the subject of final determination, adjudication or settlement under a "similar law of another state":

(a) ~~The ((attorney general))~~ Lemon Law administration will provide the manufacturer, agent, motor vehicle dealer or other transferor with the resale documents necessary to resell or otherwise transfer the vehicle together with instructions regarding compliance with this section;

(b) ~~The ((attorney general))~~ Lemon Law administration will provide the manufacturer, agent, motor vehicle dealer or other transferor with the resale documents by certified mail upon receiving a written request for Lemon Law resale documents, which includes a description of the defects or conditions causing the vehicle to be reacquired by the manufacturer.

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

WAC 44-10-222 Manufacturer duties upon receipt of a returned vehicle. The manufacturer must:

(1) Notify the ~~((attorney general's office))~~ Lemon Law administration and the department of licensing upon receipt of the vehicle from the consumer due to a determination, adjudication or settlement pursuant to chapter 19.118 RCW and chapter 44-10 WAC.

(2) Attach the "Lemon law resale windshield display," as provided by the ~~((attorney general))~~ Lemon Law administration, to the lower center of the front windshield of the vehicle in a manner so as to be readily visible from the exterior of the vehicle.

(3) Correct and warrant a serious safety defect.

(4) Notify the ~~((attorney general's office))~~ Lemon Law administration and the department of licensing of correction of a

nonconformity or serious safety defect and execute ((a "notice of correction and warranty" as provided by the attorney general)) the appropriate section of the Lemon Law resale documents.

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

WAC 44-10-300 Imposition of fine for manufacturer noncompliance with an arbitration decision. (1) Pursuant to RCW 19.118.090, the ((attorney general)) Lemon Law administration program manager may impose a fine against a manufacturer if, after forty calendar days from the manufacturer's receipt of notice of consumer's acceptance of an arbitration decision, the manufacturer has not complied with the decision, notwithstanding any arbitration special master hearing or findings. Notice of the imposition of fine shall be to the manufacturer by certified mail or personal service.

(2) ((The attorney general may impose)) A fine against the manufacturer for noncompliance may be imposed according to the following schedule for each day after the forty day calendar period:

DAYS 1 THROUGH 10	\$ 300.00 PER DAY
DAYS 11 THROUGH 20	\$ 500.00 PER DAY
DAYS 21 THROUGH 30	\$ 700.00 PER DAY
DAYS 31 AND ON	\$1000.00 PER DAY

The foregoing fines shall accrue until the manufacturer complies or until one hundred thousand dollars has accrued, whichever occurs first.

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

WAC 44-10-310 Request for review of imposition of fine. (1) The manufacturer shall have ten days from the date of receipt of notice of imposition of fine to request a review of imposition of fine ((by the attorney general)). The manufacturer's request for review of imposition of fine shall be sent to the Lemon Law administration in writing and shall state the reasons for the manufacturer's noncompliance with the arbitrator's decision within the forty calendar day period.

(2) Upon receipt of a request for review of imposition of fine, the ((attorney general)) Lemon Law administration shall have ten days to conduct a review or request additional information from

the parties or other persons regarding manufacturer noncompliance.

(3) The review shall be limited to determining whether the manufacturer has shown by clear and convincing evidence that any delay or failure of the manufacturer to comply within forty calendar days following the manufacturer's receipt of notice of consumer's acceptance was beyond the manufacturer's control or was acceptable to the consumer as evidenced by a written statement signed by the consumer. No other issues shall be considered in the review.

(4) The (~~attorney general~~) Lemon Law administration shall issue a written review determination which shall be delivered to the manufacturer by certified mail or personal service.

(5) If (~~the attorney general determines~~) it is determined that the manufacturer's noncompliance was beyond the manufacturer's control or was acceptable to the consumer as evidenced by a written statement from the consumer, the imposition of fine shall be rescinded. The imposition of fine shall be affirmed (~~by the attorney general~~) where the manufacturer has failed to show clear and convincing evidence as required by WAC 44-10-310(3). If the imposition of fine is affirmed, the manufacturer shall be liable for a fine according to the schedule specified in WAC 44-10-300(2) including all days during the pendency of review under this section and until compliance with the arbitrator's decision or until one hundred thousand dollars has accrued, whichever comes first.

(6) If a fine is rescinded under WAC 44-10-310(5) the (~~attorney general~~) Lemon Law administration program manager may impose a fine against the manufacturer where the manufacturer fails to comply with the agreement between the manufacturer and the consumer, or when the manufacturer fails to comply immediately after the circumstances no longer exist which made compliance beyond the control of the manufacturer. Notice of such fine shall be by certified mail or personal service to the manufacturer and shall be imposed according to the schedule in WAC 44-10-300(2), and imposition of such fine is subject to review by the (~~attorney general~~) Lemon Law administration upon request of the manufacturer under WAC 44-10-310.