

Title 44 WAC

ATTORNEY GENERAL'S OFFICE

Chapters

44-10 Arbitration and the arbitration process.

Chapter 44-10 WAC

ARBITRATION AND THE ARBITRATION PROCESS

WAC

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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.

"Board" or "arbitration board" means the new motor vehicle arbitration board established by the attorney general pursuant to RCW 19.118.080.

"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:

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

(b) "Lemon Law resale disclosure": Means a document created and provided by the attorney general which identifies that: (i) The vehicle was reacquired by the manufacturer after a settlement, determination or adjudication of a dispute; (ii) 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) 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 out-of-state disposition of a reacquired vehicle" refers to a document created and provided by the 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.

"Manufacturer dispute program" means a program offered by a manufacturer to owners or lessees of vehicles covered by or previously covered by the manufacturer's warranty to resolve complaints or claims: (a) Established in substantial compliance with the applicable provision of Title 16, Code of Federal Regulations Part 703; (b) where the basis of the program's standards for decision making are substantially equivalent to chapter 19.118 RCW; (c) where the basis of the program's standards for decision making are identified as some or all of the provisions of chapter 19.118 RCW; or (d) references the "Lemon Law" in a manner suggesting or inferring that chapter 19.118 RCW is the program's basis for the decision making, determining remedies or has been approved by the attorney general.

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

"Settlement" means an agreement between a consumer and a manufacturer to resolve a claim under chapter 19.118 RCW after a request for arbitration has been assigned to the arbitration board and where the agreement results in the manufacturer reacquiring a new motor vehicle directly or indirectly, 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.

[Statutory Authority: RCW 19.118.080(2) and 19.118.061. 10-01-069, § 44-10-010, filed 12/11/09, effective 1/11/10; 02-12-093, § 44-10-010, filed 6/4/02, effective 7/5/02. Statutory Authority: RCW 19.118.808(2), 19.118.061, and 1998 c 298 § 6. 00-08-068, § 44-10-010, filed 4/3/00, effective 5/4/00. Statutory Authority: RCW 19.118.080 (2) and (7), 19.118.061 and 1995 c 254 § 4. 96-03-155, § 44-10-010, filed 1/24/96, effective 2/24/96. Statutory Authority: RCW 19.118.080 and 19.118.090. 92-11-037, § 44-10-010, filed 5/18/92, effective 6/18/92. Statutory Authority: RCW 19.118.080 (2) and (7). 88-01-093 (Order 87-4), § 44-10-010, filed 12/22/87.]

WAC 44-10-020 Designation of manufacturer contact. (1) A new motor vehicle manufacturer shall submit, in

writing, to the Attorney General's Office, Lemon Law administration the name, address, e-mail or electronic address and telephone number of an individual designated by the manufacturer to receive notices related to the arbitration program, service of subpoenas, and other correspondence from the attorney general related to the manufacturer's duties and responsibilities set forth in chapter 19.118 RCW.

(2) Where a manufacturer's production or distribution system is accomplished through more than one division or region, the manufacturer may designate an individual for a division or region for the purpose of receiving notices related to the arbitration program, service of subpoenas, and other correspondence from the attorney general related to the manufacturer's duties and responsibilities set forth in chapter 19.118 RCW.

(3) The manufacturer is responsible for providing written notice to the attorney general of its replacement of the designated individual or changes to the related address and telephone number.

(4) If no individual is designated or an insufficient address is provided all notices shall be sent to the corporate headquarters of the manufacturer.

[Statutory Authority: RCW 19.118.080(2) and 19.118.061. 10-01-069, § 44-10-020, filed 12/11/09, effective 1/11/10. Statutory Authority: RCW 19.118.080 (2) and (7), 19.118.061 and 1995 c 254 § 4. 96-03-155, § 44-10-020, filed 1/24/96, effective 2/24/96.]

WAC 44-10-031 Effect of request for arbitration filing. (1) A request for arbitration is deemed to have been received within the thirty month manufacturer mandatory arbitration participation period established in RCW 19.118.-090(3), if it:

(a) Is received by the Office of the Attorney General within thirty months from the date of original delivery of the new motor vehicle to a consumer at retail; and

(b) Identifies the consumer and the new motor vehicle which is the subject of the requested arbitration.

(2) The thirty month manufacturer mandatory arbitration participation period is extended by the number of days during which a consumer's request for arbitration is under review by the attorney general.

(3) The thirty month manufacturer mandatory arbitration participation period is extended by the number of days during the period after a consumer's request for arbitration accepted by the Lemon Law administration for assignment to the arbitration board, through the date when:

(a) The attorney general or the board is notified by the consumer that the request for arbitration is withdrawn;

(b) The attorney general or the board is notified by the consumer that the dispute has been resolved;

(c) The consumer rejects the arbitration decision; or

(d) Compliance occurs with an arbitration award that was accepted by the consumer.

(4) If the attorney general finds that a request is not complete, the thirty month manufacturer mandatory arbitration participation period will resume three business days after the date the attorney general mails notice of incompleteness to the consumer or the day following delivery of e-mail notice if requested by the consumer.

[Statutory Authority: RCW 19.118.080(2) and 19.118.061. 10-01-069, § 44-10-031, filed 12/11/09, effective 1/11/10. Statutory Authority: RCW

19.118.080 (2) and (7), 19.118.061 and 1995 c 254 § 4. 96-03-155, § 44-10-031, filed 1/24/96, effective 2/24/96.]

WAC 44-10-040 Attorney general screening of arbitration requests. (1) The attorney general will review a request for arbitration and supporting documentation for a statement of claim and appearance of jurisdiction within the authority established pursuant to chapter 19.118 RCW, timeliness, and completeness of the form and accompanying documents.

(2) The attorney general will reject a request for arbitration that is incomplete, untimely, or if there is reason to believe that the claim is frivolous, fraudulent, filed in bad faith, res judicata or beyond the authority of chapter 19.118 RCW.

A request for arbitration based on an alleged defect that does not manifest when inspected or tested, is intermittent or unconfirmed shall not preclude an attorney general determination of the appearance of jurisdiction and a statement of claim for purposes of initial screening.

(3) Nothing in this section precludes a party from raising jurisdictional or factual issues at the arbitration hearing or subsequent court proceedings.

(4) A request for arbitration will be considered complete when the information required by the request form is provided in full with copies of specified documents or if the consumer provides a reasonable explanation for the absence of any supporting documentation.

(5) If a request for arbitration is rejected, the attorney general will notify the consumer of the reason for the rejection and any procedures or information required to complete the request.

[Statutory Authority: RCW 19.118.080(2) and 19.118.061. 10-01-069, § 44-10-040, filed 12/11/09, effective 1/11/10. Statutory Authority: RCW 19.118.080 (2) and (7), 19.118.061 and 1995 c 254 § 4. 96-03-155, § 44-10-040, filed 1/24/96, effective 2/24/96. Statutory Authority: RCW 19.118.061, 19.118.080 and 19.118.090. 89-16-024 (Order 89-4), § 44-10-040, filed 7/24/89, effective 8/24/89. Statutory Authority: RCW 19.118.080 (2) and (7). 88-04-081 (Order 88-2), § 44-10-040, filed 2/3/88.]

WAC 44-10-050 Assignment to board. (1) Review by the attorney general, a request for arbitration appearing to be timely, complete and to have met the jurisdictional requirements of chapter 19.118 RCW will be assigned to the board.

(2) A notice that the request has been assigned to the board to be scheduled for an arbitration hearing will be sent to the consumer and manufacturer by certified mail or e-mail if requested by a party. The designated manufacturer contact will be sent a copy of the consumer's request for arbitration and a manufacturer's statement form with the notice of assignment.

(3) Upon receipt of a request for arbitration from the attorney general, the board will record the date it receives the assignment in the request for arbitration record and immediately notify the Lemon Law administration.

[Statutory Authority: RCW 19.118.080(2) and 19.118.061. 10-01-069, § 44-10-050, filed 12/11/09, effective 1/11/10; 02-12-093, § 44-10-050, filed 6/4/02, effective 7/5/02. Statutory Authority: RCW 19.118.080 (2) and (7), 19.118.061 and 1995 c 254 § 4. 96-03-155, § 44-10-050, filed 1/24/96, effective 2/24/96. Statutory Authority: RCW 19.118.061, 19.118.080 and 19.118.090. 89-16-024 (Order 89-4), § 44-10-050, filed 7/24/89, effective 8/24/89. Statutory Authority: RCW 19.118.080 (2) and (7). 88-04-081

(Order 88-2), § 44-10-050, filed 2/3/88; 88-01-093 (Order 87-4), § 44-10-050, filed 12/22/87.]

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 within the arbitration board's authority. Requests for an arbitration special master must be made in writing by a party to the Lemon Law administration. The request will be reviewed by the program manager to determine whether issues identified in the special master request will be resolved by the program manager, forwarded to the board or denied. Post-hearing arbitration special masters and the program manager shall not resolve matters previously presented in the arbitration hearing and addressed in the arbitration decision except for clarification, 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 program manager or arbitration special master include but are not limited to: Motions to quash or limit the scope of subpoenas, disputes related to requests to view the vehicle, 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 program manager or 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) The program manager or the arbitration special master shall not extend the forty day period during which the manufacturer must comply with the arbitration decision except where the program manager or arbitration special master makes a finding that:

(a) The issues identified in the special master request could not have been brought allowing sufficient time to conclude compliance within the forty day compliance period; and

(b) If the manufacturer made the request for a special master, 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.

[Statutory Authority: RCW 19.118.080(2) and 19.118.061. 10-01-069, § 44-10-060, filed 12/11/09, effective 1/11/10; 02-12-093, § 44-10-060, filed 6/4/02, effective 7/5/02. Statutory Authority: RCW 19.118.080 (2) and (7), 19.118.061 and 1995 c 254 § 4. 96-03-155, § 44-10-060, filed 1/24/96, effective 2/24/96. Statutory Authority: RCW 19.118.080 and 19.118.090. 92-11-037, § 44-10-060, filed 5/18/92, effective 6/18/92. Statutory Authority: RCW 19.118.061, 19.118.080 and 19.118.090. 89-16-024 (Order 89-4), § 44-10-060, filed 7/24/89, effective 8/24/89. Statutory Authority: RCW 19.118.080 (2) and (7). 88-04-081 (Order 88-2), § 44-10-060, filed 2/3/88.]

WAC 44-10-070 Manufacturer's statement. (1) The manufacturer shall provide information relevant to the reso-

lution of the dispute to the consumer and board on a form created by the 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 a timely manufacturer's statement or other documents not provided to the consumer and submitted to the board 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.

[Statutory Authority: RCW 19.118.080(2) and 19.118.061. 10-01-069, § 44-10-070, filed 12/11/09, effective 1/11/10; 02-12-093, § 44-10-070, filed 6/4/02, effective 7/5/02. Statutory Authority: RCW 19.118.080 (2) and (7), 19.118.061 and 1995 c 254 § 4. 96-03-155, § 44-10-070, filed 1/24/96, effective 2/24/96. Statutory Authority: RCW 19.118.080 (2) and (7). 88-04-081 (Order 88-2), § 44-10-070, filed 2/3/88.]

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 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 the Lemon Law administration program manager to set a time and location for viewing.

(3) 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.

[Statutory Authority: RCW 19.118.080(2) and 19.118.061. 10-01-069, § 44-10-080, filed 12/11/09, effective 1/11/10; 02-12-093, § 44-10-080, filed 6/4/02, effective 7/5/02. Statutory Authority: RCW 19.118.080 (2) and (7), 19.118.061 and 1995 c 254 § 4. 96-03-155, § 44-10-080, filed 1/24/96, effective 2/24/96. Statutory Authority: RCW 19.118.080 (2) and (7). 88-04-081 (Order 88-2), § 44-10-080, filed 2/3/88.]

WAC 44-10-090 Arbitration fee. A three dollar arbitration fee shall be collected by the new motor vehicle dealer or lease company from the consumer at completion of the sale or lease of a new motor vehicle except for a transaction with a consumer who is not a resident of this state and who does not intend to register the vehicle in this state. No fee shall be collected where the purchase, lease or transfer is made to a party other than a consumer.

[Statutory Authority: RCW 19.118.080(2) and 19.118.061. 10-01-069, § 44-10-090, filed 12/11/09, effective 1/11/10. Statutory Authority: RCW 19.118.080 (2) and (7), 19.118.061 and 1995 c 254 § 4. 96-03-155, § 44-10-090, filed 1/24/96, effective 2/24/96. Statutory Authority: RCW 19.118.080 and 19.118.090. 89-16-024, § 44-10-090, filed 9/11/90, effective 10/12/90. Statutory Authority: RCW 19.118.080(7). 87-23-030 (Order 87-2), § 44-10-090, filed 11/13/87.]

WAC 44-10-100 Subpoenas. (1) A party's request for a subpoena to be issued must be received by the 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 attorney general shall make a determination of whether the documents and records sought by the party are reasonably related to the dispute.

(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 by certified mail, return receipt requested, e-mail if requested by a party 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 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. The Lemon Law administration program manager may suspend or modify the subpoena or shall assign the request to be heard at the arbitration hearing.

(5) Where the 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.

[Statutory Authority: RCW 19.118.080(2) and 19.118.061. 10-01-069, § 44-10-100, filed 12/11/09, effective 1/11/10; 02-12-093, § 44-10-100, filed 6/4/02, effective 7/5/02. Statutory Authority: RCW 19.118.080 (2) and (7), 19.118.061 and 1995 c 254 § 4. 96-03-155, § 44-10-100, filed 1/24/96, effective 2/24/96. Statutory Authority: RCW 19.118.061, 19.118.080 and 19.118.090. 89-16-024 (Order 89-4), § 44-10-100, filed 7/24/89, effective 8/24/89. Statutory Authority: RCW 19.118.080 (2) and (7). 88-01-093 (Order 87-4), § 44-10-100, filed 12/22/87.]

WAC 44-10-110 Scheduling of arbitration hearings.

The board has the authority to schedule the arbitration hearing at its discretion. 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, e-mail if requested by a party or telephone.

[Statutory Authority: RCW 19.118.080(2) and 19.118.061. 10-01-069, § 44-10-110, filed 12/11/09, effective 1/11/10; 02-12-093, § 44-10-110, filed 6/4/02, effective 7/5/02. Statutory Authority: RCW 19.118.080 (2) and (7), 19.118.061 and 1995 c 254 § 4. 96-03-155, § 44-10-110, filed 1/24/96, effective 2/24/96. Statutory Authority: RCW 19.118.061, 19.118.080 and 19.118.090. 89-16-024 (Order 89-4), § 44-10-110, filed 7/24/89, effective 8/24/89. Statutory Authority: RCW 19.118.080 (2) and (7). 88-04-081 (Order 88-2), § 44-10-110, filed 2/3/88.]

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

A first withdrawal shall be granted without prejudice. Upon notice to the Lemon Law administration of withdrawal, the thirty month period manufacturer mandatory arbitration participation period 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.

[Statutory Authority: RCW 19.118.080(2) and 19.118.061. 10-01-069, § 44-10-120, filed 12/11/09, effective 1/11/10; 02-12-093, § 44-10-120, filed 6/4/02, effective 7/5/02. Statutory Authority: RCW 19.118.080 (2) and (7), 19.118.061 and 1995 c 254 § 4. 96-03-155, § 44-10-120, filed 1/24/96, effective 2/24/96. Statutory Authority: RCW 19.118.080. 89-06-026 (Order 89-2), § 44-10-120, filed 2/24/89. Statutory Authority: RCW 19.118.080 (2) and (7). 88-01-093 (Order 87-4), § 44-10-120, filed 12/22/87.]

WAC 44-10-150 Settlement of dispute. (1) Both parties shall notify the Lemon Law administration of a resolution for settlement of the dispute after the request for arbitration has been assigned to the arbitration board. The 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.

[Statutory Authority: RCW 19.118.080(2) and 19.118.061. 10-01-069, § 44-10-150, filed 12/11/09, effective 1/11/10; 02-12-093, § 44-10-150, filed 6/4/02, effective 7/5/02. Statutory Authority: RCW 19.118.080 (2) and (7), 19.118.061 and 1995 c 254 § 4. 96-03-155, § 44-10-150, filed 1/24/96, effective 2/24/96. Statutory Authority: RCW 19.118.061, 19.118.080 and

19.118.090, 89-16-024 (Order 89-4), § 44-10-150, filed 7/24/89, effective 8/24/89. Statutory Authority: RCW 19.118.080 (2) and (7), 88-01-093 (Order 87-4), § 44-10-150, filed 12/22/87.]

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 arbitration decisions when ordering repurchase or replacement of a new motor vehicle.

(2) The board 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.

[Statutory Authority: RCW 19.118.080(2) and 19.118.061, 10-01-069, § 44-10-170, filed 12/11/09, effective 1/11/10; 02-12-093, § 44-10-170, filed 6/4/02, effective 7/5/02. Statutory Authority: RCW 19.118.808(2), 19.118.061, and 1998 c 298 § 6, 00-08-068, § 44-10-170, filed 4/3/00, effective 5/4/00. Statutory Authority: RCW 19.118.080 (2) and (7), 19.118.061 and 1995 c 254 § 4, 96-03-155, § 44-10-170, filed 1/24/96, effective 2/24/96. Statutory Authority: RCW 19.118.061, 19.118.080 and 19.118.090, 89-16-024 (Order 89-4), § 44-10-170, filed 7/24/89, effective 8/24/89. Statutory Authority: RCW 19.118.080 (2) and (7), 88-01-093 (Order 87-4), § 44-10-170, filed 12/22/87.]

WAC 44-10-180 The arbitration hearing. (1) The conduct of the hearing shall encourage a full and complete disclosure of the facts.

(2) Arbitrators may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent people in the conduct of their affairs. They shall give effect to the rules of privilege recognized by law. They may exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence.

(3) The consumer shall present his or her evidence and witnesses, then the manufacturer shall present its evidence and witnesses.

(4) Each party may question the other after each presentation, and may question each witness after testimony. The arbitrator may question any party or witness at any time.

(5) The arbitrator shall ensure that a tape recording record of the hearing is maintained.

(6) The arbitrator shall administer an oath or affirmation to each individual who testifies.

(7) The hearing procedure contemplates that both parties will be present. However, either party may offer written testimony only if the board and other parties are in receipt of that evidence prior to the day of the hearing.

(8) A party may request presentation of its case by telephone.

[Statutory Authority: RCW 19.118.080(2) and 19.118.061, 10-01-069, § 44-10-180, filed 12/11/09, effective 1/11/10. Statutory Authority: RCW 19.118.080 (2) and (7), 19.118.061 and 1995 c 254 § 4, 96-03-155, § 44-10-180, filed 1/24/96, effective 2/24/96. Statutory Authority: RCW 19.118.061, 19.118.080 and 19.118.090, 89-16-024 (Order 89-4), § 44-10-180, filed 7/24/89, effective 8/24/89. Statutory Authority: RCW 19.118.080 (2) and (7), 88-04-081 (Order 88-2), § 44-10-180, filed 2/3/88.]

WAC 44-10-200 The arbitration decision. (1) The arbitration board shall issue the decision in each case to the Lemon Law administration within sixty calendar days of receipt of the request for arbitration:

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

(b) The date 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 and the consumer have been 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 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 or e-mail if requested by a party.

(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. 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) A motor home manufacturer is independently liable for compliance with a decision awarding repurchase or replacement of the motor home if the 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), (b), or (c) 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 manu-

facturer 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(6), 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 arbitration decision must specify 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) 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 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 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 Lemon Law administration shall send a copy of the form completed by the consumer indicating acceptance to the manufacturer by certified mail or e-mail if requested by the manufacturer and shall include a manufacturer's intent form.

A verification of compliance form shall be sent to the consumer by the Lemon Law administration. The verification of compliance form shall be completed and returned to the Lemon Law administration by the consumer upon the manufacturer's compliance with the decision.

[Statutory Authority: RCW 19.118.080(2) and 19.118.061. 10-01-069, § 44-10-200, filed 12/11/09, effective 1/11/10; 02-12-093, § 44-10-200, filed 6/4/02, effective 7/5/02. Statutory Authority: RCW 19.118.808(2), 19.118.-061, and 1998 c 298 § 6. 00-08-068, § 44-10-200, filed 4/3/00, effective 5/4/00. Statutory Authority: RCW 19.118.080 (2) and (7), 19.118.061 and 1995 c 254 § 4. 96-03-155, § 44-10-200, filed 1/24/96, effective 2/24/96. Statutory Authority: RCW 19.118.080 and 19.118.090. 90-19-024, § 44-10-200, filed 9/11/90, effective 10/12/90. Statutory Authority: RCW 19.118.-061, 19.118.080 and 19.118.090. 89-16-024 (Order 89-4), § 44-10-200, filed 7/24/89, effective 8/24/89. Statutory Authority: RCW 19.118.080 (2) and (7). 88-04-081 (Order 88-2), § 44-10-200, filed 2/3/88.]

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 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 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 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 Lemon Law administration will provide the manufacturer with the required documents by certified mail or express mail upon notice of the settlement by the parties;

(c) The Lemon Law administration will provide the manufacturer with the required "Lemon Law resale documents" and instructions regarding compliance with this section by certified or express mail upon notice of the consumer's acceptance of a decision or award for repurchase or replacement of the consumer's vehicle from a manufacturer dispute program.

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

(a) The 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 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.

[Statutory Authority: RCW 19.118.080(2) and 19.118.061. 10-01-069, § 44-10-221, filed 12/11/09, effective 1/11/10; 02-12-093, § 44-10-221, filed 6/4/02, effective 7/5/02. Statutory Authority: RCW 19.118.080 (2) and (7), 19.118.061 and 1995 c 254 § 4. 96-03-155, § 44-10-221, 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 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) Correct and warrant a serious safety defect and execute the appropriate section of the Lemon Law resale documents identifying corrections made to serious safety defect and nonconformities.

(3) Within sixty days of receipt of the vehicle submit a title application identifying corrections made to serious safety defect and nonconformities to the department of licensing in this state for title to the motor vehicle.

(4) Attach the "Lemon law resale windshield display," as provided by the Lemon Law administration, to the lower center of the front windshield or window on the driver's side of the vehicle in a manner so as to be readily visible from the exterior of the vehicle.

[Statutory Authority: RCW 19.118.080(2) and 19.118.061. 10-01-069, § 44-10-222, filed 12/11/09, effective 1/11/10; 02-12-093, § 44-10-222, filed 6/4/02, effective 7/5/02. Statutory Authority: RCW 19.118.080 (2) and (7), 19.118.061 and 1995 c 254 § 4. 96-03-155, § 44-10-222, 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 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, e-mail if requested by the manufacturer or personal service.

(2) 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.

[Statutory Authority: RCW 19.118.080(2) and 19.118.061. 10-01-069, § 44-10-300, filed 12/11/09, effective 1/11/10; 02-12-093, § 44-10-300, filed 6/4/02, effective 7/5/02. Statutory Authority: RCW 19.118.080 (2) and (7), 19.118.061 and 1995 c 254 § 4. 96-03-155, § 44-10-300, filed 1/24/96, effective 2/24/96. Statutory Authority: RCW 19.118.080 and 19.118.090(7). 91-02-080, § 44-10-300, filed 12/31/90, effective 1/31/91. Statutory Authority:

RCW 19.118.061 and 19.118.080. 89-06-025 (Order 89-1), § 44-10-300, filed 2/24/89.]

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. 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 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 Lemon Law administration shall issue a written review determination which shall be delivered to the manufacturer by certified mail, e-mail if requested by the manufacturer or personal service.

(5) If 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 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 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, e-mail if requested by the manufacturer 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 Lemon Law administration upon request of the manufacturer under WAC 44-10-310.

[Statutory Authority: RCW 19.118.080(2) and 19.118.061. 10-01-069, § 44-10-310, filed 12/11/09, effective 1/11/10; 02-12-093, § 44-10-310, filed 6/4/02, effective 7/5/02. Statutory Authority: RCW 19.118.080 (2) and (7), 19.118.061 and 1995 c 254 § 4. 96-03-155, § 44-10-310, filed 1/24/96, effective 2/24/96. Statutory Authority: RCW 19.118.080 and 19.118.090(7). 91-02-080, § 44-10-310, filed 12/31/90, effective 1/31/91. Statutory Authority: RCW 19.118.061 and 19.118.080. 89-06-025 (Order 89-1), § 44-10-310, filed 2/24/89.]