

FORM OF ORDER AND TRANSMITTAL BY AGENCY HAVING SINGLE HEAD

State of Washington

Washington State Attorney General's Office

(Agency name)

Administrative Order No. 87-3

(1) I, Kenneth O. Eikenberry, Attorney General

do promulgate and adopt at Olympia, Washington

(place)

the annexed rules relating to: Chapter 19.118 RCW
New Section 44-10-040 Attorney General Screening of Arbitration Requests
Amendatory Section 44-10-050(4) Assignment to Arbitration Service
New Section 44-10-055 Composition of Arbitration Panel
New Section 44-10-060 Powers and Duties of Arbitration Special Master
New Section 44-10-070 Manufacturer's Statement
New Section 44-10-080 Manufacturer's Right to Request Viewing of Vehicle
New Section 44-10-110 Scheduling of Arbitration Hearings (continued reverse)

(2) ALTERNATIVE A. Use only for Adoption of Permanent Rules.

side

This action is taken pursuant to Notice No. filed with the code reviser on These rules shall take effect:
thirty days after they are filed with the code reviser pursuant to RCW 34.04.040(2).
at a later date, such date being

(2) ALTERNATIVE B. Use only for Adoption of Emergency Rules.

I, Kenneth O. Eikenberry, find that an emergency exists and that this order is necessary for the preservation of the public health, safety, or general welfare and that observance of the requirements of notice and opportunity to present views on the proposed action would be contrary to public interest. A statement of the facts constituting the emergency is:

Chapter 19.118 RCW,

commonly known as the Lemon Law, becomes effective on January 1, 1988 and mandates the administration of arbitration hearings. Rules are necessary for the uniform conduct of the arbitration hearings.

These rules are therefore adopted as emergency rules to take effect upon filing with the code reviser.

(3) Pursuant to the requirements of RCW 34.04.026 that every agency shall incorporate the most specific, but in no case omit all, of the following language alternatives when adopting or amending rules fill in statement (a), (b), or (c) as appropriate:

(a) This rule is promulgated pursuant to RCW and is intended to administratively implement that statute.

(b) This rule is promulgated pursuant to RCW 19.118.080(2) and (7) which directs that the

Attorney General's Office

(agency)

has authority to implement the provisions of

Chapter 19.118 RCW

(name of act or RCW citation)

(c) This rule is promulgated under the general rule-making authority of the

(agency)

as authorized in RCW

(4) The undersigned hereby declares that the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

(5) This order, after being first recorded in the order register of this agency, is herewith transmitted to the Code Reviser for filing pursuant to chapter 34.04 RCW and chapter 1-12 WAC.

APPROVED AND ADOPTED December 22 19 87

STATE OF WASHINGTON FILED

By Kenneth O. Eikenberry

Washington State Attorney General Title

DEC 22 1987

[Form CR-7; Rev. 7/23/82]

CODE REVISER'S OFFICE WSR 88-01-092

NEW SECTION

WAC 44-10-040 ATTORNEY GENERAL SCREENING OF ARBITRATION REQUESTS. (1) A submitted Request For Arbitration form shall be date stamped upon receipt by the Attorney General.

(2) The Attorney General will screen the Request For Arbitration form and supporting documentation to determine if the request is timely, complete and complies with the jurisdictional requirements of chapter 19.118 RCW.

(a) A request will be considered timely if it is received within thirty months from the date of original delivery of the new motor vehicle to the original consumer.

(b) If a request is not timely or does not comply with the jurisdictional requirements of chapter 19.118 RCW the Attorney General will reject the request and then notify the consumer of the reason for the rejection.

(c) A request will be considered complete if the information required by the request form is provided in full or if the consumer can provide a reasonable explanation to the Attorney General why any supporting documentation may be absent.

(d) If a request is not complete, the Attorney General will notify the consumer of any procedures or information required to complete the request.

(3) If the Attorney General finds that a request is not complete, the statute of limitations, for purposes of chapter 19.118 RCW, will resume running two business days after the date the Attorney General mails notice of incompleteness to the consumer.

(4) A consumer request that is based on a problem which does not manifest itself, is intermittent or unconfirmed shall not preclude a Attorney General finding of jurisdiction for purposes of initial screening.

AMENDATORY SECTION (Amending Order 87-4, filed 12/22/87)

WAC 44-10-050 ASSIGNMENT TO ARBITRATION SERVICE. (1) After initial screening by the Attorney General, all timely and complete Request For Arbitration forms which have met the jurisdictional requirements of chapter 19.118 RCW shall be date stamped upon approval by the Attorney General and forwarded to the Arbitration Service which will date stamp the request upon receipt.

(2) The Arbitration Service 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 Arbitration Service.

(3) The Arbitration Service shall date stamp the Request For Arbitration immediately upon acceptance of the request. The acceptance of the request shall commence the running of the thirty calendar day period in which a hearing must be conducted.

(4) Upon acceptance of a request, the Arbitration Service shall immediately send a Notice of Arbitration to the consumer and manufacturer of its acceptance and shall inform the parties that a hearing shall be held within thirty 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 manufacturer shall be sent a copy of the consumer's request and a Manufacturer's Statement form with the Notice of Arbitration.

NEW SECTION

WAC 44-10-055 COMPOSITION OF ARBITRATION PANEL.

(1) Upon acceptance of the consumer's Request For Arbitration, the Arbitration Service shall inform the consumer and the manufacturer that the hearing will be conducted by an arbitrator appointed by the Arbitration Service unless either party requests that the hearing be conducted by a three member panel. Such request must be in writing and received by the Arbitration Service within five business days of the date the party received the Notice of Arbitration. The three member panel shall be appointed by the Arbitration Service and may include an automotive technical expert.

(2) The three member panel shall be subject to the provisions of WAC 44-10-170 and 44-10-180.

NEW SECTION

WAC 44-10-060 POWERS AND DUTIES OF ARBITRATION SPECIAL MASTER.

(1) One or more Arbitration Special Masters shall be appointed by the Arbitration Service to hear and decide preliminary and post-hearing issues that must be resolved, including but not limited to; motions to quash subpoenas, motions for telephone conference hearings, requests for continuances, requests to view the vehicle. 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.

(2) 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 between the parties and the Arbitration Special Master.

NEW SECTION

WAC 44-10-070 MANUFACTURER'S STATEMENT. (1) The

manufacturer shall be required, on a form prescribed by the Attorney General, to provide information relevant to the resolution of the dispute to the consumer and Arbitration Service. The manufacturer shall ensure that the completed Manufacturer's Statement form is received by the Arbitration Service and consumer within ten calendar days from the date of receipt of the Notice of Arbitration. 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 not be raised 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, the manufacturer must raise such issue in its statement.

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

NEW SECTION

WAC 44-10-080 MANUFACTURER'S RIGHT TO REQUEST A VIEWING OF MOTOR VEHICLE. (1) A manufacturer may request a viewing of the vehicle to aid in preparation of its defense. Such request 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 Arbitration Service that a Arbitration Special Master set a time and location for viewing.

(3) The Arbitration Special Master, upon such request, 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 to their pleadings within three business days of the viewing, or, no later than three business days prior to the hearing date, whichever is earlier.

NEW SECTION

WAC 44-10-110 SCHEDULING OF ARBITRATION HEARINGS. The Arbitration Service has the authority to schedule, at its discretion, the arbitration hearing and shall notify both 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.

NEW SECTION

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.

(3) If the consumer defaults it shall be considered a withdrawal with prejudice of the claim 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 Arbitration Service 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 who will hear arguments from both parties on the request to set aside the default. Arguments may be conducted via telephone conference call. If the Arbitration Special Master sets aside the default 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.

(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).

NEW SECTION

WAC 44-10-160 USE OF TECHNICAL EXPERT. (1) An adequate pool of automotive technical experts shall be maintained by the Arbitration Service for assignment as advisors and consultants to each arbitrator if such services are deemed necessary.

(2) Either party may request that a technical expert be assigned to a dispute. Such assignment, however, shall be at the discretion of the arbitrator or the Arbitration Service. The arbitrator or the Arbitration Service may upon their own volition assign a technical expert to a dispute. If a technical expert is assigned to a dispute, and intends to perform an inspection of the vehicle prior to the hearing, a notice of the time, date and location of the technical expert's inspection of the vehicle will be provided to both parties. This section does not confer a right, for either party, to be present during the inspection of the vehicle. Any request for a technical expert must be made within a time frame that will allow for reasonable inspection by the expert.

(3) Said expert may be present as advisor and consultant at the arbitration hearing, if he or she has been requested to be present by the arbitrator or Arbitration Service.

(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.

NEW SECTION

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. Either party may request that the arbitrator examine or ride in the vehicle. The arbitrator shall comply with such requests unless the arbitrator determines that such examination or ride is not reasonably practical, not reasonably safe, or not relevant to the issues to be considered at the hearing.

(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 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, as long as the Arbitration Service and the other party are informed of such and are in receipt of that evidence prior to the day of the hearing.

(8) A party may request presentation of its case by telephone. Such request must demonstrate that it is unreasonable to require the requesting person to attend the hearing in person. The request shall be directed to the Arbitration Service and will be decided by the Arbitration Special Master. If such request is granted the Arbitration Service shall immediately notify the other party. In such cases, the party requesting the telephonic hearing shall pay all costs associated therewith, including but not limited to, costs for long distance calls, conference calls, and rental of telephone amplification equipment.

(9) The Arbitration Service shall assign arbitrators to the pending cases. The choice of arbitrators is not subject to the approval of either party.

(10) 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 have no current connection to the sale or manufacturer of motor vehicles.

NEW SECTION

WAC 44-10-200 THE ARBITRATION DECISION. (1) The arbitrator shall send, by certified mail, a decision in each case within sixty calendar days of the Notice of Arbitration:

(a) All decisions shall be in writing, dated and signed by the arbitrator, and sent to both parties and the Attorney General;

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

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

(i) if the consumer prevails and has elected repurchase of the vehicle, the decision shall include the calculations used to determine the monetary award as set forth in RCW 19.118.090, 19.118.041 and 19.118.021;

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

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

(2) Included with the copy of the arbitration decision sent to the consumer shall be a form to be completed by said consumer, indicating acceptance or rejection of the decision. The consumer must return said form to the Arbitration Service within thirty

calendar days from the date of the consumer's receipt of said notice. If the consumer has not responded within thirty days, the Attorney General's Office shall send a second notice requesting response and informing the consumer that failure to respond within thirty days of receipt of the second notice shall be deemed a rejection of the arbitration decision.

(3) If the consumer rejects the decision, the Arbitration Service shall forward general information to the consumer explaining the consumer's right to appeal the decision to superior court. A form shall be included with the information, and if the consumer files an appeal, the consumer will be requested to return the form to the Attorney General indicating the cause number and county of the filing.

(4) If the consumer accepts the decision, the Arbitration Service shall send a Notice of Acceptance by certified mail to the manufacturer. A Manufacturer's Intent form shall also be sent. The Intent form shall be returned by the manufacturer within thirty calendar days, of the manufacturer's receipt of Notice of Consumer's Acceptance, to the Attorney General and shall indicate whether the manufacturer intends to comply with the decision or appeal the decision to superior court.

(5) A Verification of Compliance form shall be sent to the consumer by the Attorney General's Office. The Verification of Compliance form shall be completed and returned to the Attorney General by the consumer upon the manufacturer's compliance with the decision.

(6) After forty calendar days from the date of the Notice of Acceptance to the manufacturer, the Attorney General shall determine whether the manufacturer has complied with the arbitration decision or appealed to superior court. If the manufacturer has not complied or appealed, the Attorney General may impose fines authorized by RCW 19.118.090. Information regarding the manufacturer's right to contest the fines shall be provided by the Attorney General.

NEW SECTION

WAC 44-10-210 TECHNICAL CORRECTIONS. (1) The Arbitration Service or the Attorney General may make "technical corrections" to an arbitrator's decision. "Technical corrections" shall generally be defined as computational corrections, typographical corrections, or other minor corrections.

(2) A party may submit to the Arbitration Service a request for technical corrections, in writing, setting forth the requested correction(s) and reason(s). Such request must be received by the Arbitration Service within ten calendar days of the mailing of the arbitrator's written decision.