

Title 44 WAC

ATTORNEY GENERAL'S OFFICE

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Chapter 44-01 WAC

REGULATIONS FOR THE ADMINISTRATION OF CHARITABLE TRUSTS IN THE STATE OF WASHINGTON

WAC

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WAC 44-01-010 Promulgation. Under the provisions of chapter 53, Laws of 1967 ex. sess., hereinafter designated as the Washington Charitable Trust Act or Charitable Trust Act, the attorney general of the state of Washington hereby promulgates the following regulations to provide for the creation of the division of charitable trusts in the office of the attorney general of the state of Washington, to provide a register for the registration of all charitable trusts and trustees subject to said Charitable Trust Act, and to provide for the administration of that act.

[Order 101, Promulgation, § 44-01-010, filed 12/8/67, effective 1/8/68.]

WAC 44-01-020 General duties of the attorney general and of charitable trustees. It is the duty of the attorney general to enforce the provisions of all charitable trusts in this state and to enforce the proper application of funds held in trust in this state for public, charitable purposes. Except as otherwise provided, the trustees of all charitable trusts and similar relationships,

as defined in chapter 19.10 RCW and these regulations, are required to report the existence of their trust or other relationship and to report its administration on an annual or other basis thereafter, at the time and in the manner prescribed by said act and by these regulations.

[Order 103, § 44-01-020, filed 12/8/71; Order 101, § 44-01-020, filed 12/8/67, effective 1/8/68.]

WAC 44-01-030 Creation of charitable trust division--Register of trustees. There is established in the office of the attorney general of the state of Washington, a division of charitable trusts. The division of charitable trusts shall establish and maintain in the Office of the Attorney General, Charitable Trust Division, Olympia, Washington, a register of charitable trusts which shall contain a listing of all trustees subject to the provisions of the Washington Charitable Trust Act, and of the particular trust, foundation, or other relationship under which they hold property for charitable purposes.

[Order 101, § 44-01-030, filed 12/8/67, effective 1/8/68.]

WAC 44-01-040 To whom rules apply. Any trustee, as defined in RCW 19.10.020 and by these regulations, not otherwise expressly exempted in chapter 19.10 RCW, holding money or property of any kind whatsoever, is subject to and must comply with the Charitable Trust Act and with these regulations.

[Order 103, § 44-01-040, filed 12/8/71; Order 101, § 44-01-040, filed 12/8/67, effective 1/8/68.]

WAC 44-01-050 Definitions. The term "charitable trust" in the Charitable Trust Act and in these regulations unless otherwise limited is deemed to mean any relationship whereby real or personal property is held for a charitable purpose or purposes: *Provided*, Such term shall not include any such relationship which is established for the purpose of making distributions only to individuals or organizations who are expressly named in the governing instrument and for no other charitable purposes. It includes but is not limited to express trusts created by will or by deed, or the trust relationship which may be created by the articles of incorporation or other governing instrument of a charitable corporation, association or foundation. The term "trustee," unless otherwise limited, includes any legal entity, irrespective of its character, which holds a vested legal title to, and control over, real or personal property for any charitable purpose under the terms or provisions of a charitable trust.

The term "trustee" excludes any persons or legal entities who are mere titleholders or custodians or depositaries of property which is held for charitable purposes,

and who have no powers or duties relative to the administration of such property, except as otherwise provided in these regulations. The term "Charitable Trust Act" means the Washington Charitable Trust Act, chapter 53, Laws of 1967 ex. sess. and amendments thereto.

[Order 103, § 44-01-050, filed 12/8/71; Order 101, § 44-01-050, filed 12/8/67, effective 1/8/68.]

WAC 44-01-060 Exemptions and exclusions. The Charitable Trust Act does not apply to the following entities, each of which is exempt from the act:

(1) Governmental bodies. The United States, any state, territory or possession of the United States, the District of Columbia, Puerto Rico, or any of their agencies or governmental subdivisions;

(2) Religious bodies:

(a) Incorporated, bona fide tax-exempt religious organization;

(b) Charitable agencies and organizations affiliated with and forming an integral part of said religious body, or operated, supervised or controlled directly by such religious body;

(c) Any officer of any such religious body holding property for religious purposes.

If such organization is not at the time it receives property declared to be tax exempt, it is exempt from the Charitable Trust Act for two years or until it receives from the federal government a declaration of its tax-exempt status, whichever occurs first.

(3) Schools. Educational institutions, of a nonprofit and charitable nature, having a course of studies equivalent to that of a public school or college operated by the state of Washington or a school district of the state of Washington.

[Order 103, § 44-01-060, filed 12/8/71; Order 101, § 44-01-060, filed 12/8/67, effective 1/8/68.]

WAC 44-01-070 Trustees exempt from RCW 19.10.070--Reports required. The following trustees shall be exempt from the reporting requirements of RCW 19.10.070 and are required to comply with the reporting requirements contained in this section.

(1) A bank or trust company subject to examination by either the supervisor of banking of the state of Washington, the comptroller of the currency of the United States or the board of governors of the federal reserve system, which bank or trust company is acting as trustee, executor or court-appointed fiduciary: *Provided*, That a bank or trust company which is a cofiduciary of a trust shall be deemed to be the sole fiduciary of such trust under this section, if the bank or trust company is custodian of the books and records of the trust and has the responsibility for preparing the reports and returns which are filed with the internal revenue service;

(2) The governing body of a nonprofit community foundation or other nonprofit foundation incorporated for charitable purposes, contributions to which are currently allowed as charitable deductions under the United States income tax laws;

(3) The governing body of a hospital which is nonprofit and charitable, other than a hospital initially

formed as a trustee pursuant to or in connection with the terms of a charitable trust.

The trustees described in this section shall file with the attorney general a copy of the declaration of tax exempt status if such is required to be obtained under United States tax laws, or other basis of the claim for exemption from RCW 19.10.070; a copy of the instrument establishing the trustee's title, powers or duties; an inventory of the assets of such trust; and, annually a copy of its Internal Revenue Service Form 990 or 1041-A together with IRS Form 990-AR when required.

[Order 103, § 44-01-070, filed 12/8/71; Order 101, § 44-01-070, filed 12/8/67, effective 1/8/68.]

WAC 44-01-080 Registration--Time for registration. Except as provided by WAC 44-01-170, every trustee subject to the Charitable Trust Act shall register with the attorney general within two months after receiving property for charitable purposes. Registration shall consist of the filing of a registration statement, to which shall be attached a copy of the trust instrument, and containing the following information:

(1) Name and address of the charitable trust, foundation, or corporation or trustee subject to the act;

(2) Type of instrument creating or governing the organization, corporation, or trustee, date of instrument, and the location where it is filed;

(3) Names and addresses of trustees, or corporate officers and directors;

(4) Titles of instruments attached to the registration report;

(5) Description and value of charitable corporation or trust assets, including a statement of the current market value of such assets, and statement of liabilities of the corporation or trust;

(6) Purpose of the charitable corporation or trust;

(7) Names and addresses of beneficiaries or class or classes of beneficiaries designated by the instrument governing the charitable corporation or trust;

(8) A copy of the declaration of tax exempt status if such is obtained under the United States tax laws; and

(9) Designation of the fiscal year of the trust or corporation, if reports are to be filed on other than a calendar year basis.

Trustees of charitable trusts, as defined in the Charitable Trust Act and these regulations, holding or being in control of property for charitable purposes July 30, 1967, shall file the required registration statement on or before January 31, 1968. Trustees not required to report previously must file the required registration statement on or before February 9, 1972.

[Order 103, § 44-01-080, filed 12/8/71; Order 102, § 44-01-080, filed 5/8/69; Order 101, § 44-01-080, filed 12/8/67, effective 1/8/68.]

WAC 44-01-090 Annual reports. Every trust or trustee, as defined by the Washington Charitable Trust Act and these regulations, shall file an annual report under oath, in the Office of the Attorney General, Division of Charitable Trust, Olympia, Washington.

[Order 101, § 44-01-090, filed 12/8/67, effective 1/8/68.]

WAC 44-01-100 Annual reports--Substance--Form. The annual reports shall contain the information required by the United States Internal Revenue Service in its Form 990 or Form 1041-A if no Form 990 is filed; and such further information as may be required by these regulations as amended from time to time. The report shall specifically contain a statement of the current market value of assets of the charitable corporation or trust. Such report insofar as it contains the required information, may be submitted in the form of either:

(1) The Form 990, RETURN OF ORGANIZATION EXEMPT FROM INCOME TAX, filed with the United States Internal Revenue Service and Form 990-AR when required; or Form 1041-A or other tax return required to be filed under United States tax law and by these regulations; or

(2) A copy of the annual account filed by the trustee in any court having jurisdiction of the trust; or

(3) A copy of an audit certified as being true and correct and in accordance with generally accepted accounting principles by any certified public accountant and containing substantially the information required as an annual report by the attorney general; or

(4) A tax exempt organization required to file annual reports under chapter 19.10 RCW and not required to file federal tax returns because their gross receipts are not normally more than \$5,000 and which organizations are not annually audited by a certified public accountant shall submit under oath a statement showing that information required by IRS Form 990.

If any such alternative form is utilized and does not contain substantially all the information required by these rules, the form shall have attached to it one or more supplementary sheets providing such information.

[Order 103, § 44-01-100, filed 12/8/71; Order 102, § 44-01-100, filed 5/8/69; Order 101, § 44-01-100, filed 12/8/67, effective 1/8/68.]

WAC 44-01-110 Annual or periodic reports--Time for filing. The first annual report shall cover the first calendar or other fiscal year (as determined for federal tax reporting purposes) of the trust ending after the trust becomes subject to the act, whether or not such report covers a full twelve-month period. The report shall be filed on or before the fifteenth day of the sixth month after the close of said first calendar or other fiscal year.

Every trustee of a charitable trust subject to the reporting provisions of the Charitable Trust Act shall, subsequent to the filing of the first annual report, file an annual report for each subsequent year during the existence of the trust except as herein provided. All such subsequent annual reports shall cover the twelve-month period ending with the calendar or other fiscal year of the trust, and they shall be due on or before the fifteenth day of the sixth month after the close of such calendar or other fiscal year. A trust or other organization which commences reporting on either a calendar or fiscal year basis shall continue such method of reporting unless the attorney general permits a different method of reporting as provided in these regulations.

(1990 Ed.)

If any part of the income or principal of the charitable trust or corporation previously established was authorized or required to be applied to a charitable purpose on or before July 30, 1967, the first annual report shall be filed on or before January 31, 1968, unless filing of such report is suspended for any reason under the provisions of section 7, chapter 53, Laws of 1967 ex. sess.

If any part of the income or principal of a charitable trust or corporation previously exempted was authorized or required to be applied to a charitable purpose on or before August 9, 1971, the first annual report shall be filed on or before the fifteenth day of the sixth month after the close of the trust or corporation's first calendar or fiscal year ending after August 9, 1971.

The attorney general may suspend the filing of reports as to a particular trust for a reasonable, specifically designated time upon written application of the trustee filed with the attorney general, and after the attorney general has filed in the register of charitable trusts a written statement that the interests of the beneficiaries will not be prejudiced thereby and periodic reports are not required for proper supervision by his office.

[Order 103, § 44-01-110, filed 12/8/71; Order 101, § 44-01-110, filed 12/8/67, effective 1/8/68.]

WAC 44-01-120 Registration and reports--Executing and filing. All registration and annual reports and other reports required by the Charitable Trust Act, or by these regulations, shall be executed on affidavit by one or more trustees of the charitable trust, or by the chairman or secretary of the board submitting them. All such registration and annual reports and other reports and information shall be submitted to the Attorney General, Charitable Trust Division, Temple of Justice, Olympia, Washington, unless otherwise directed by the attorney general.

[Order 101, § 44-01-120, filed 12/8/67, effective 1/8/68.]

WAC 44-01-130 Notice of application for tax exemption. The trustee of a charitable trust shall file with the attorney general a copy of any application for federal income tax exemption and also a copy of any application for exemption from real or personal property tax exemptions in the state of Washington.

[Order 101, § 44-01-130, filed 12/8/67, effective 1/8/68.]

WAC 44-01-140 Notification of litigation. As provided in section 12, chapter 53, Laws of 1967 ex. sess., the Charitable Trust Act, the attorney general shall be notified of all judicial proceedings involving or affecting the charitable trust or its administration in which, at common law, he is a necessary or proper party as representative of the public beneficiaries. Notification shall be given by the trustee or the attorney for the trustee in the manner provided by the Charitable Trust Act. Cases of which the attorney general shall be notified shall include, but are not necessarily limited to, the following:

- (1) An action to dissolve a charitable trust or trustee;
- (2) An action alleging mismanagement or breach of trust on the part of a trustee;

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(3) An action by trustees or others requesting directions from the court as to management of the trust;

(4) Any action involving an application or request for application of the doctrine of cy pres;

(5) An action to approve the disposition of assets wherein, if the trust were a private trust, one or more beneficiaries of such trust would have the right to be represented and to be heard.

[Order 101, § 44-01-140, filed 12/8/67, effective 1/8/68.]

WAC 44-01-150 Duty to furnish information--In general. The trustees of all trusts subject to the Charitable Trust Act, and all other persons to whom the provisions of the act apply, shall furnish such further information and copies of records or other documents as and in the manner required from time to time by the attorney general in order to establish, maintain and keep current his register of trustees as provided by law, or for any other lawful purpose contemplated by the Charitable Trust Act. A request for information shall be in writing, signed by the attorney general or his representative, specifying as precisely as practicable the nature of the information desired and the nature of the instruments, reports, records, or other documents copies of which are requested for that purpose. Every person to whom such written request is directed, having such information or documents, shall comply with said written request within thirty days after its receipt, unless the time is extended in writing.

The procedures specified in this regulation for the gathering of information are intended to supplement and not limit the powers of the attorney general expressly granted in sections 10, 11 and 12, chapter 53, Laws of 1967 ex. sess., or any other law.

[Order 101, § 44-01-150, filed 12/8/67, effective 1/8/68.]

WAC 44-01-160 Register--Inspection. The attorney general will maintain the register of trustees in book or other suitable form, in which each trust or other relationship subject to the Washington Charitable Trust Act shall be recorded, together with all information pertinent thereto which the attorney general deems necessary in the public interest.

The register and records of any charitable trust registered in the office of attorney general are matters of public record and shall be subject to reasonable inspection between the hours of 9:00 a.m. and 4:00 p.m. on any day on which the attorney general's office is open for business.

When any trust instrument contains a trust for mixed purposes, and any one or more of such purposes is a private charity rather than a public charity, such document shall be withheld from public inspection.

[Order 101, § 44-01-160, filed 12/8/67, effective 1/8/68.]

WAC 44-01-170 When trust becomes subject to act--Vested remainders. A trust is not exclusively for charitable purposes, within the meaning of RCW 19.10.040, when the instrument creating it contains a trust for several or mixed purposes, and any one or more of such

purposes is not charitable within the meaning of RCW 19.10.020, as enacted or hereafter amended. Such instrument shall be withheld from public inspection by the attorney general and no information as to such noncharitable purposes shall be made public.

Annual reporting of such trusts to the attorney general, as now required by RCW 19.10.060 or 19.10.070, or as hereafter amended, and by these regulations shall commence within one year after trust income or principal is authorized or required to be used for a charitable purpose.

When a trust consists of a vested charitable remainder preceded by a term or life estate, a copy of the instrument only shall be filed by the trustee or by the term or life tenant, within two months after commencement of the term or life estate. Registration and annual reporting as required by RCW 19.10.060 or 19.10.070 (as the same may be hereafter amended) and by these regulations shall be required only upon the termination of such term or life estate or when trust income or principal is authorized or required to be used for a charitable purpose, whichever occurs first.

If the trust instrument contains only contingent gifts or remainders to charitable purposes, no charitable trust shall be deemed created until a charitable gift or remainder is legally vested. The first registration or report of such trust shall be filed within two months after trust income or principal is authorized or required to be used for a charitable purpose.

[Order 103, § 44-01-170, filed 12/8/71; Order 101, § 44-01-170, filed 12/8/67, effective 1/8/68.]

WAC 44-01-180 Regulations--Amendments. These regulations may be amended at any time and from time to time by the attorney general.

[Order 101, § 44-01-180, filed 12/8/67, effective 1/8/68.]

Chapter 44-06 WAC

CONSUMER PROTECTION DIVISION--PUBLIC RECORDS

WAC

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WAC 44-06-010 Purpose. The purpose of this chapter is to provide rules implementing sections 25 through 32, chapter 1, Laws of 1973 (RCW 42.17.250 through 42.17.320) for the Washington state attorney general's office.

[Order 102, § 44-06-010, filed 2/20/74.]

WAC 44-06-020 Definitions. (1) The definitions set forth in RCW 42.17.020 shall apply to this chapter.

(2) "Intra-agency memoranda" includes but is not limited to memoranda from one member of the attorney general's staff to another and memoranda by members of the attorney general's staff to the particular state client which they represent.

(3) "Consumer and business fair practices division" is the division of the attorney general's office which enforces chapter 19.86 RCW and other trade and business regulation and consumer protection statutes.

(4) "Office" is the attorney general's office.

[Statutory Authority: RCW 42.17.250 through 42.17.320. 84-10-031 (Order 103), § 44-06-020, filed 4/30/84; Order 102, § 44-06-020, filed 2/20/74.]

WAC 44-06-030 Function--Organization--Administrative offices. The attorney general's office is charged by the constitution and statutes with the general obligation of advising and legally representing the state of Washington, its officials, departments, boards, commissions and agencies but not the local units of government. In response to requests from state officers, legislators and prosecuting attorneys, the attorney general's office issues attorney general opinions. The published opinions of the attorney general's office are numbered as AGO (year of issue and number; i.e., AGO 1974 No. 1). The attorney general's office also issues office opinions which are not published, which are numbered as AGLO (year of issue and number; i.e., AGLO 1974 No. 1).

The organization of the office of the attorney general necessarily mirrors the organization of state government itself and a number of the assistant attorneys general are physically housed with the agency which they represent. Inquiries and correspondence should be directed to specifically named assistant attorneys general, if known; or the appropriate section of the office, if known.

Consumer protection complaints should be directed to the Consumer and Business Fair Practices Division, Dexter-Horton Building, Seattle, Washington or to local division offices located in Tacoma, Olympia, or Spokane. Other inquiries, including requests for attorney general's opinions, should be directed to the Attorney General's Office, Temple of Justice, Olympia, Washington 98504.

Attorney general offices located in other cities are as follows:

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| (1) Everett Office
1411 Wall Street
Everett, Washington | Social and Health Services
Public Assistance |
| (2) Tacoma Office
949 Market Street
Suite 380
Tacoma, Washington | Consumer Protection
(Pierce County) |
| (3) Vancouver Office
500 West 8th Street
Suite 751
Vancouver, Washington | Social and Health Services
Public Assistance |

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| (4) Spokane Office
1116 West
Riverside Street
Spokane, Washington | Consumer Protection
(Eastern Washington)
Labor and Industries
Social and Health Services |
| (5) Olympia Office
122 North Capitol Way
Olympia, Washington | Consumer Protection
(Thurston County) |

Offices of sections of the attorney general's office and their addresses are as follows (inquiries involving subject matters described in the following list should be initially directed to the respective section):

- (1) Agriculture - Legal Division
General Administration Bldg.
Olympia, Washington 98504
- (2) Ecology - Legal Division
St. Martin's College
Lacey, Washington 98504
- (3) Education - Legal Division
531 E. 15th
Olympia, Washington 98504
- (4) Employment Security - Legal Division
Employment Security Building
Olympia, Washington 98504
- (5) Departments of Game and Fisheries - Legal Division
600 North Capitol Way
Olympia, Washington 98504
- (6) Highways - Legal Division
5th Floor - Highway Licenses Building
Olympia, Washington 98504
- (7) Human Rights Commission - Legal Division
WEA Building
Olympia, Washington 98504
- (8) Labor and Industries - Legal Division
General Administration Building
Olympia, Washington 98504
- (9) Legal-Fiscal Division
Temple of Justice
Olympia, Washington 98504
(Auditor, General Administration, Office of Program Planning and Fiscal Management, Public Disclosure Commission)
- (10) Liquor Board - Legal Division
Capitol Plaza Building
Olympia, Washington 98504
- (11) Motor Vehicles - Legal Division
5th Floor - Highway Licenses Building
Olympia, Washington 98504
- (12) Natural Resources - Legal Division
Public Lands Building
Olympia, Washington 98504
- (13) Revenue Department - Legal Division
General Administration Building
Olympia, Washington 98504
- (14) Social and Health Services - Legal Division
101 Public Lands Bldg.
Olympia, Washington 98504
- (15) Tort Claims
5th Floor - Highway Licenses Building
Olympia, Washington 98504
- (16) Utilities and Transportation Commission - Legal Division
5th Floor - Highway Licenses Building
Olympia, Washington 98504
- (17) University of Washington
112 Administration Building
Seattle, Washington

(18) Washington State University
432 French Administration Bldg.
Pullman, Washington

(19) Western Washington University
Room 335, Old Main
Bellingham, Washington

Other inquiries should be directed to the Attorney General's Office, Temple of Justice, Olympia, Washington 98504, unless the sender is aware of another specific address for the appropriate attorney general legal section.

[Statutory Authority: RCW 42.17.250 through 42.17.320. 84-10-031 (Order 103), § 44-06-030, filed 4/30/84; Order 102, § 44-06-030, filed 2/20/74.]

WAC 44-06-040 Public records available. Public records are available for public inspection and copying pursuant to these rules except as otherwise provided by RCW 42.17.310 and these rules.

[Order 102, § 44-06-040, filed 2/20/74.]

WAC 44-06-050 Index. The attorney general's office biennial reports have indexed by subject matter the published opinions of the attorney general. A card index is maintained in the central office, Temple of Justice, Olympia, Washington, indexing all attorney general opinions (published and unpublished) by subject matter and by statute. Appellate briefs filed by the office of the attorney general are card indexed by subject and case name in the same office.

A card index is maintained in the central office, Temple of Justice, Olympia, Washington, for cases which have been filed involving the state, giving the name, the county and the cause number. For cases involving the department of labor and industries a comparable card index file is maintained in the Attorney General's Office, Dexter-Horton Building, Seattle, Washington.

The volume of correspondence received by the attorney general's office is such that it would be unduly burdensome to formulate and maintain an index for all such correspondence. In lieu of an index the following filing system is utilized.

(1) Consumer protection complaints received by the consumer and business fair practices division are filed by firm name of the subject of the complaint, or by the subject matter of the complaint if no specific firm is named.

(2) Letters from the public and the responses thereto are filed in the central office, Temple of Justice, Olympia, Washington, by alphabetical batching for specific time periods.

(3) Letters to and from agencies are filed in the central office, Temple of Justice, Olympia, Washington, by the name of the agency in a chronological sequence.

[Statutory Authority: RCW 42.17.250 through 42.17.320. 84-10-031 (Order 103), § 44-06-050, filed 4/30/84; Order 102, § 44-06-050, filed 2/20/74.]

WAC 44-06-060 Public records officer. The public records officer for the attorney general's office shall be the administrative assistant to the attorney general for

all records maintained in the central office, Temple of Justice, Olympia, Washington. For those records maintained at other locations, the assistant attorney general in charge of the legal division having custody of the records or any staff member designated by the assistant attorney general shall be the public records officer.

[Statutory Authority: RCW 42.17.250 through 42.17.320. 84-10-031 (Order 103), § 44-06-060, filed 4/30/84; Order 102, § 44-06-060, filed 2/20/74.]

WAC 44-06-070 Office hours. Public records shall be available for inspection and copying from 9:00 a.m. to noon and from 1:00 p.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

[Order 102, § 44-06-070, filed 2/20/74.]

WAC 44-06-080 Requests for public records. In accordance with requirements of chapter 1, Laws of 1973 that agencies prevent unreasonable invasions of privacy, protect public records from damage or disorganization, and prevent excessive interference with essential functions of the agency, public records may be inspected or copies of such records may be obtained, by members of the public, upon compliance with the following procedures:

(1) A request shall be made in writing upon a form prescribed by the office which shall be available at the offices where records are maintained. The form shall be presented to the public records officer; or to a member of the staff designated by him, if the public records officer is not available, at the office during the office hours specified in WAC 44-06-070. The request shall include the following information:

- (a) The name of the person requesting the record;
- (b) The time of day and calendar date on which the request was made;
- (c) The nature of the request;
- (d) If the matter requested is referenced within the current index maintained by the records officer, a reference to the requested record as it is described in such current index;
- (e) If the requested matter is not identifiable by reference to the office's current index, an appropriate description of the record requested.

(2) In all cases in which a member of the public is making a request, it shall be the obligation of the public records officer or designated staff member to whom the request is made, to assist the member of the public in appropriately identifying the public record requested.

[Order 102, § 44-06-080, filed 2/20/74.]

WAC 44-06-090 Copying fees. No fee shall be charged for the inspection of a public record. The office, however, will for requests under this chapter charge one dollar for the first ten pages and ten cents per copy for additional pages. These charges are necessary to reimburse the office for the costs of providing the copies of the public records and the use of the copying equipment. Payment should be made by check to the attorney general's office.

[Order 102, § 44-06-090, filed 2/20/74.]

WAC 44-06-100 Protection of public records. The public records officer shall to the extent practicable insure that records requested are not removed from the premises nor portions thereof removed by members of the public.

[Order 102, § 44-06-100, filed 2/20/74.]

WAC 44-06-110 Exemptions. (1) The office reserves the right to determine that a public record requested in accordance with the procedures outlined in WAC 44-06-080 is exempt under the provisions of RCW 42.17.310.

(2) In addition, pursuant to RCW 42.17.260, the office reserves the right to delete identifying details when it makes available or publishes any public record, in any cases when there is reason to believe that disclosure of such details would be an invasion of personal privacy protected by chapter 1, Laws of 1973. The public records officer will fully justify such deletion in writing.

(3) All denials of requests for public records must be accompanied by a written statement specifying the reason for the denial, including a statement of the specific exemption authorizing the withholding of the record and a brief explanation of how the exemption applies to the record withheld.

[Order 102, § 44-06-110, filed 2/20/74.]

WAC 44-06-120 Review of denials of public records requests. (1) Any person who objects to the denial of a request for a public record may petition for prompt review of such decision by tendering a written request for review. The written request shall specifically refer to the written statement by the public records officer or other staff member which constituted or accompanied the denial.

(2) Immediately after receiving a written request for review of a decision denying a public record, the public records officer or other staff member denying the request shall refer it to the attorney general or his designated deputy attorney general. The attorney general or his designee shall immediately consider the matter and either affirm or reverse such denial within two business days following the original denial.

(3) Administrative remedies shall not be considered exhausted until the attorney general or the designated deputy attorney general has returned the petition with a decision or until the close of the second business day following denial of inspection, whichever occurs first.

[Statutory Authority: RCW 42.17.250 through 42.17.320. 84-10-031 (Order 103), § 44-06-120, filed 4/30/84; Order 102, § 44-06-120, filed 2/20/74.]

WAC 44-06-130 Consumer protection complaints. Unless a complainant on a consumer protection matter specifically provides to the contrary, the consumer protection division is authorized when it deems it appropriate to forward a copy of the letter of complaint to the firm which is the subject of the complaint.

[Order 102, § 44-06-130, filed 2/20/74.]

WAC 44-06-140 Adoption of form. The attorney general's office hereby adopts use by all persons requesting inspection and/or copies of records of the form set out below, entitled "Request for public records."

Return to:

Public Records Officer
Office of the Attorney General
(Name and address of specific legal division. If not known, return to Office of Attorney General, Temple of Justice, Olympia, Washington 98504)

OFFICE OF THE ATTORNEY GENERAL
REQUEST FOR PUBLIC RECORDS

Date ----- Time -----

Name -----

Address -----

Phone number where you can be reached during day -----

Description of Records (see index):

Signature

Number of copies -----

Number of pages -----

Per page charge \$-----

Total charge \$-----

[Statutory Authority: RCW 42.17.250 through 42.17.320. 84-10-031 (Order 103), § 44-06-140, filed 4/30/84; Order 102, § 44-06-140, filed 2/20/74.]

Chapter 44-10 WAC
ARBITRATION AND THE ARBITRATION PROCESS

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DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

44-10-055	Composition of arbitration panel. [Statutory Authority: RCW 19.118.080 (2) and (7). 88-04-081 (Order 88-2), § 44-10-055, filed 2/3/88.] Repealed by 89-16-024 (Order 89-4), filed 7/24/89, effective 8/24/89. Statutory Authority: RCW 19.118.061, 19.118.080 and 19.118.090.
44-10-215	Receipt of resale information. [Statutory Authority: RCW 19.118.061 and 19.118.080. 88-09-064 (Order 88-5), § 44-10-215, filed 4/20/88.] Repealed by 90-19-024, filed 9/11/90, effective 10/12/90. Statutory Authority: RCW 19.118.080 and 19.118.090.

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

(1) The phrase "arbitration service" means the agency, firm, board, organization, individual or other entity selected by the attorney general through a request for proposal to conduct the arbitrations provided under chapter 19.118 RCW.

(2) The phrase "arbitration special master" means the individual or group of individuals selected by the arbitration service to hear and decide special issues brought before the arbitration service by the parties.

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

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

[Statutory Authority: RCW 19.118.080 (2) and (7). 88-01-093 (Order 87-4), § 44-10-010, filed 12/22/87.]

WAC 44-10-030 Arbitration requests. A consumer must submit a completed request for arbitration form with copies of supporting documentation to the Attorney General's Office, Lemon Law Administration in Seattle, in order to apply for the new motor vehicle arbitration process. The request for arbitration form will be supplied, upon request, by the attorney general's office.

[Statutory Authority: RCW 19.118.080 (2) and (7). 88-01-093 (Order 87-4), § 44-10-030, filed 12/22/87.]

WAC 44-10-035 Arbitration requests--Forty day written request to replace or repurchase vehicle. A consumer may file a request for arbitration any time after having sent the manufacturer a written request to replace or repurchase the new motor vehicle pursuant to RCW 19.118.041(1). However, no arbitration hearing shall be conducted before the manufacturer has had forty calendar days to comply with the consumer's written request.

[Statutory Authority: RCW 19.118.061 and 19.118.080. 88-19-064 (Order 88-8), § 44-10-035, filed 9/16/88.]

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. The date of screening shall be recorded in the request for arbitration file.

(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 at retail.

(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 an attorney general finding of jurisdiction for purposes of initial screening. However, this section shall not preclude a party from raising jurisdictional issues at the arbitration hearing or subsequent court proceedings.

[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 arbitration service. (1) After initial screening by the attorney general, all timely and complete requests for arbitration which have met the jurisdictional requirements of chapter 19.118

RCW shall be assigned by the attorney general to the arbitration service which will record the date of receipt in the request for arbitration file.

(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 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 arbitration service shall immediately send a notice of arbitration to the consumer and manufacturer of its acceptance 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 manufacturer shall be sent a copy of the consumer's request and a manufacturer's statement form with the notice of arbitration.

[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) 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 initiated by a party between such party and the arbitration special master.

[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 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.

[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 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.

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

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

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

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

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

(3) For purposes of this rule:

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

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

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

[Statutory Authority: RCW 19.118.080 and 19.118.090, 90-19-024, § 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 subpoena issued by the attorney general, pursuant to chapter 19.118 RCW, 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 shall 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.

(2) A subpoena may be served by any suitable person over 18 years of age, by exhibiting and reading it to the person, or by giving a copy of the subpoena, or by leaving such copy at the place of his or her abode. When service is made by any other person than an office authorized to serve process, proof of service shall be made by affidavit.

(3) A person to whom a subpoena is directed may move to quash the subpoena. The motion to quash must be accompanied by a short memorandum or statement setting forth the foundation for the motion. Upon motion made promptly, and in any event at or before the time specified in the subpoena for compliance, by the person

to whom the subpoena is directed and upon notice to the party who requested the subpoena, the arbitration special master may quash or modify the subpoena if it is unreasonable or requires evidence not relevant to any matter at issue.

(4) Any objection to the production of evidence shall be treated as a motion to quash to be decided by the arbitration special master.

(5) If a nonparty fails to comply with a subpoena and upon an arbitrator finding that without such compliance there is insufficient evidence to render a decision in the dispute, the attorney general shall enforce such subpoena in superior court and the arbitrator shall continue the arbitration hearing until such time as the nonparty complies with the subpoena or the subpoena is quashed. The attorney general shall petition the superior court of the county where the hearing is being conducted for enforcement of the subpoena. The petition shall be accompanied by a copy of the subpoena and proof of service, and shall set forth in what specific manner the subpoena has not been complied with, and shall ask for an order of the court to compel the production of relevant evidence for the arbitration hearing. The court upon such petition shall enter an order directing the person to appear before the court at a time and place to be fixed in such order and then and there to show cause why the person has not responded to the subpoena or has refused to comply. A copy of the order shall be served upon the person. If it appears to the court that the subpoena was properly issued, the court shall enter an order that the person appear at the time and place fixed in the order and produce the required evidence, and on failing to obey said order the person shall be dealt with as for contempt of court.

(6) If a party fails to comply with the subpoena, the arbitrator may, at the outset of the arbitration hearing, impose any of the following sanctions:

(a) Find that the matters which were the subject of the subpoena, or any other designated facts, shall be taken to be established for purposes of the hearing in accordance with the claim of the party which requested the subpoena;

(b) Refuse to allow the disobedient party to support or oppose the designated claims or defenses, or prohibit that party from introducing designated matters into evidence;

(c) Strike claims or defenses, or parts thereof; or

(d) Render a decision by default against the disobedient party.

(7) The arbitration service shall have three business days from the receipt of the manufacturer's statement to determine whether to submit a request from itself or the parties, to the attorney general to issue a subpoena for the production of evidence. A party or nonparty subject to the subpoena must comply or submit a motion to quash before the arbitration special master within five business days of receipt of the subpoena. The arbitration special master shall have five business days to hear and rule on a motion to quash. If the arbitration special master upholds a subpoena the party or nonparty shall have five business days to comply with the subpoena.

[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 arbitration service has the authority to schedule the arbitration hearing at its discretion and 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.

[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 withdrawal shall be granted without prejudice, although upon withdrawal, the thirty month statute of limitations 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. 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 44-10-130 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 which 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).

[Statutory Authority: RCW 19.118.061, 19.118.080 and 19.118.090. 89-16-024 (Order 89-4), § 44-10-130, filed 7/24/89, effective 8/24/89. Statutory Authority: RCW 19.118.080 (2) and (7). 88-04-081 (Order 88-2), § 44-10-130, filed 2/3/88.]

WAC 44-10-140 Representation by counsel. (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 arbitration service 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 or designated representative or agent.

[Statutory Authority: RCW 19.118.061, 19.118.080 and 19.118.090. 89-16-024 (Order 89-4), § 44-10-140, filed 7/24/89, effective 8/24/89. Statutory Authority: RCW 19.118.080 (2) and (7). 88-01-093 (Order 87-4), § 44-10-140, filed 12/22/87.]

WAC 44-10-150 Predecision settlement of dispute.

(1) Both parties shall notify the arbitration service and attorney general if the dispute is settled after the request for arbitration has been accepted by the arbitration board. The attorney general shall verify the terms of the settlement to which the parties have agreed. The disclosure of terms is for statutorily required record keeping only. The settlement is not subject to approval by the arbitration service or the attorney general.

(2) Notice of settlement 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 19.118.061, 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 44-10-160 Use of technical expert. (1) An adequate pool of automotive and motorcycle technical experts shall be maintained by the arbitration service for assignment as advisors and consultants to each arbitrator if such services are deemed necessary. Technical experts shall not be directly involved in the manufacture, distribution, sale, or warranty service of any motor vehicle.

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

(3) If a technical expert is assigned to a dispute, and intends to perform an inspection of the vehicle prior to the hearing, a notice of the time, date and location of the technical expert's inspection of the vehicle will be provided to both parties. This section does not confer a right, for either party, to be present during the inspection of the vehicle, however, either party may be present.

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

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

[Statutory Authority: RCW 19.118.080 and 19.118.090. 90-19-024, § 44-10-160, 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), § 44-10-160, filed 7/24/89, effective 8/24/89. Statutory Authority: RCW 19.118.080 (2) and (7). 88-04-081 (Order 88-2), § 44-10-160, filed 2/3/88.]

WAC 44-10-165 Technical expert prehearing inspection report. (1) In the event a technical expert is assigned to a dispute and conducts an inspection of the vehicle prior to hearing per WAC 44-10-160(2), any written report or results of such inspection shall be supplied to the parties as soon as it is available.

(2) In the event a technical expert conducts an inspection of the vehicle prior to hearing, said 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.

[Statutory Authority: RCW 19.118.061 and 19.118.080. 88-09-063 (Order 88-4), § 44-10-165, filed 4/20/88.]

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 for said arbitrator to render a fair and accurate decision. Such continuance shall be held within ten calendar days of the initial hearing;

(e) To impose sanctions or to continue a hearing for failure of a party or nonparty to comply with a subpoena pursuant to WAC 44-10-100.

(2) 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 arbitration service. Any prohibited contact shall be reported by the arbitrators to the arbitration service and noted in the case record.

[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. A party, at the hearing or any time prior, 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 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, 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 party 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 not be directly involved in the manufacture, distribution, sale, or warranty service of any motor vehicle.

[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 send the decision to the parties in each case within sixty calendar days of acceptance of the request for arbitration:

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

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

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

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

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

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

(iv) If the consumer prevails and the manufacturer is represented by counsel, the decision shall include a description of the reasonable costs and attorneys' fees incurred by the consumer in connection with board proceedings.

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

(2) Included with the copy of the arbitration decision sent to the consumer shall be a form to be completed by said consumer, indicating acceptance or rejection of the decision. The consumer must return said form to the arbitration service within sixty calendar days from the

date of the consumer's receipt of the decision. If the consumer has not responded within thirty days, the attorney general's office shall send a notice requesting a response and informing the consumer that failure to respond shall be deemed a rejection of the arbitration decision.

(3) If the consumer rejects the decision, the arbitration service shall forward general information to the consumer explaining the consumer's right to appeal the decision to superior court. The consumer shall have one hundred twenty calendar days from the date of the rejection of the decision to file a petition of appeal in superior court. At the time of filing an appeal, the consumer shall deliver by certified mail or by personal service a conformed copy of the petition to the attorney general.

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

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

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

[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 44-10-210 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.

[Statutory Authority: RCW 19.118.080 (2) and (7). 88-04-081 (Order 88-2), § 44-10-210, filed 2/3/88.]

WAC 44-10-220 Resale of motor vehicle determined or adjudicated as having a serious safety defect. (1) Resale of a motor vehicle in the state of Washington, pursuant to RCW 19.118.061(1), must conform to the following procedures:

(a) A manufacturer or its agent to whom a motor vehicle with a serious safety defect is returned, shall affix a "Lemon Law resale notice" to the lower center of the front windshield of the vehicle in a manner so as to be readily visible from the exterior of such vehicle. The "Lemon Law resale notice" will set forth that the vehicle was determined to have a serious safety defect and the specific serious safety defect(s) shall be enumerated. The "Lemon Law resale notice" shall be supplied by the attorney general's office. The "Lemon Law resale notice" may only be removed by the manufacturer, its agent or motor vehicle dealer upon receipt of a signed copy of the consumer disclosure form.

(b) The consumer disclosure form sets forth the specific serious safety defect found in the motor vehicle. The motor vehicle dealer shall ensure that the purchaser of a motor vehicle signs the consumer disclosure form and that a signed copy is delivered to the attorney general's office. The purchaser shall receive a copy of the signed disclosure form.

(c) The manufacturer must ensure that a copy of the signed certificate of correction and warranty is received by the motor vehicle dealer that is to sell the vehicle, the vehicle service division of the Washington state department of licensing and the state attorney general's office. Upon sale of the vehicle, the motor vehicle dealer shall provide a copy of the certificate of correction and warranty to the consumer.

(2)(a) If a manufacturer delivers a motor vehicle that has been found to have a serious safety defect under the Lemon Law, to a motor vehicle dealer outside of Washington state, the manufacturer shall fill out an out of state disposition postcard indicating the vehicle identification number and the destination state, and send the postcard to the attorney general's office.

(b) If a motor vehicle dealer in Washington state has received, for purposes of resale, a motor vehicle that has been found to have a serious safety defect, and such dealer sells, delivers or disposes of such vehicle outside of Washington state, the motor vehicle dealer shall fill out an out of state disposition postcard indicating the vehicle identification number and destination state, and send the postcard to the attorney general's office.

[Statutory Authority: RCW 19.118.061, 19.118.080 and 19.118.090. 89-16-024 (Order 89-4), § 44-10-220, filed 7/24/89, effective 8/24/89. Statutory Authority: RCW 19.118.061 and 19.118.080. 88-13-039 (Order 88-7), § 44-10-220, filed 6/9/88.]

WAC 44-10-230 Resale of motor vehicle determined or adjudicated as having a nonconformity. (1) Resale of a motor vehicle in the state of Washington, pursuant to RCW 19.118.061(3) and 19.118.061(4), must conform to the following procedures:

(a) A manufacturer or its agent to whom a motor vehicle with a nonconformity is returned shall affix a "Lemon Law resale notice" to the lower center of the

front windshield of the vehicle in a manner so as to be readily visible from the exterior of such vehicle. The "Lemon Law resale notice" will set forth that the vehicle was determined to have a nonconformity and the specific nonconformity(ies) shall be enumerated. The "Lemon Law resale notice" shall be supplied by the attorney general's office. The "Lemon Law resale notice" may only be removed by the manufacturer, its agent or motor vehicle dealer upon receipt of a signed copy of the consumer disclosure form.

(b) The consumer disclosure form sets forth the specific nonconformity found in the motor vehicle. The motor vehicle dealer shall ensure that the purchaser of a motor vehicle signs the consumer disclosure form and that a signed copy is delivered to the attorney general's office. The purchaser shall receive a copy of the signed disclosure form.

(c) The manufacturer, if it chooses to have the nonconformity corrected, must ensure that a copy of the signed certificate of correction and warranty is received by the motor vehicle dealer that is to sell the vehicle, the vehicle services division of the Washington state department of licensing and attorney general's office. Upon sale of the vehicle, the motor vehicle dealer shall provide a copy of the certificate of correction and warranty to the consumer.

(2)(a) If a manufacturer delivers a motor vehicle that has been found to have a nonconformity under the Lemon Law, to a motor vehicle dealer outside of Washington state, the manufacturer shall fill out an out of state disposition postcard indicating the vehicle identification number and the destination state, and send the postcard to the attorney general's office.

(b) If a motor vehicle dealer in Washington state has received, for purposes of resale, a motor vehicle that has been found to have a nonconformity, and such dealer sells, delivers or disposes of such vehicle outside of Washington state, the motor vehicle dealer shall fill out an out of state disposition postcard indicating the vehicle identification number and destination state, and send the postcard to the attorney general's office.

[Statutory Authority: RCW 19.118.061, 19.118.080 and 19.118.090. 89-16-024 (Order 89-4), § 44-10-230, filed 7/24/89, effective 8/24/89. Statutory Authority: RCW 19.118.061 and 19.118.080. 88-13-039 (Order 88-7), § 44-10-230, filed 6/9/88.]

WAC 44-10-235 Substitute resale disclosure forms.

(1) A manufacturer may submit to the attorney general for approval a proposed substitute form(s) for the consumer disclosure notice and certification of repair and warranty as required for resale of a vehicle.

(2) A substitute form must include:

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

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

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

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

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

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

[Statutory Authority: RCW 19.118.080 and 19.118.090. 90-19-024, § 44-10-235, filed 9/11/90, effective 10/12/90.]

WAC 44-10-240 Warranty period for certificate of correction and warranty. Any warranty of a correction of a defect issued pursuant to the provisions of RCW 19.118.061 shall be for not less than one year from the date of resale or an additional twelve thousand miles from the date of resale, whichever occurs first.

[Statutory Authority: RCW 19.118.061, 19.118.080 and 19.118.090. 89-16-024 (Order 89-4), § 44-10-240, filed 7/24/89, effective 8/24/89. Statutory Authority: RCW 19.118.061 and 19.118.080. 88-09-064 (Order 88-5), § 44-10-240, filed 4/20/88.]

WAC 44-10-300 Imposition of fine for manufacturer noncompliance with an arbitration decision. (1) Pursuant to RCW 19.118.090, the attorney general 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. 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 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 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 by the attorney general. The manufacturer's request for review of imposition of fine shall be 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 shall have ten days to conduct a review.

(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 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 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 the attorney general shall impose a fine against a manufacturer where a 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 personnel service to the manufacturer and shall be imposed according to the schedule in WAC 44-10-300(2), and imposition of such fine may be appealed by the manufacturer under WAC 44-10-310.

[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.]

WAC 44-10-320 Failure by the manufacturer to pay a fine. If the manufacturer fails to pay a fine imposed under this section, the attorney general shall initiate proceedings in superior court against the manufacturer to compel payment of such fine.

[Statutory Authority: RCW 19.118.061 and 19.118.080. 89-06-025 (Order 89-1), § 44-10-320, filed 2/24/89.]