

Title 44 WAC

ATTORNEY GENERAL'S OFFICE

Chapters

- 44-01** Regulations for the administration of charitable trusts in the state of Washington.
- 44-06** Public records.
- 44-10** Arbitration and the arbitration process.

Chapter 44-01 WAC

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

WAC

- 44-01-140 Notification of litigation.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

- 44-01-010 Promulgation. [Order 101, Promulgation, § 44-01-010, filed 12/8/67, effective 1/8/68.] Repealed by 94-01-004 and 94-02-011, filed 12/1/93 and 12/22/93, effective 1/1/94 and 1/23/94. Statutory Authority: Chapters 34.05, 19.09, 11.110 and 43.07 RCW and 1993 c 471.
- 44-01-020 General duties of the attorney general and of charitable trustees. [Order 103, § 44-01-020, filed 12/8/71; Order 101, § 44-01-020, filed 12/8/67, effective 1/8/68.] Repealed by 94-01-004 and 94-02-011, filed 12/1/93 and 12/22/93, effective 1/1/94 and 1/23/94. Statutory Authority: Chapters 34.05, 19.09, 11.110 and 43.07 RCW and 1993 c 471.
- 44-01-030 Creation of charitable trust division—Register of trustees. [Order 101, § 44-01-030, filed 12/8/67, effective 1/8/68.] Repealed by 94-01-004 and 94-02-011, filed 12/1/93 and 12/22/93, effective 1/1/94 and 1/23/94. Statutory Authority: Chapters 34.05, 19.09, 11.110 and 43.07 RCW and 1993 c 471.
- 44-01-040 To whom rules apply. [Order 103, § 44-01-040, filed 12/8/71; Order 101, § 44-01-040, filed 12/8/67, effective 1/8/68.] Repealed by 94-01-004 and 94-02-011, filed 12/1/93 and 12/22/93, effective 1/1/94 and 1/23/94. Statutory Authority: Chapters 34.05, 19.09, 11.110 and 43.07 RCW and 1993 c 471.
- 44-01-050 Definitions. [Order 103, § 44-01-050, filed 12/8/71; Order 101, § 44-01-050, filed 12/8/67, effective 1/8/68.] Repealed by 94-01-004 and 94-02-011, filed 12/1/93 and 12/22/93, effective 1/1/94 and 1/23/94. Statutory Authority: Chapters 34.05, 19.09, 11.110 and 43.07 RCW and 1993 c 471.
- 44-01-060 Exemptions and exclusions. [Order 103, § 44-01-060, filed 12/8/71; Order 101, § 44-01-060, filed 12/8/67, effective 1/8/68.] Repealed by 94-01-004 and 94-02-011, filed 12/1/93 and 12/22/93, effective 1/1/94 and 1/23/94. Statutory Authority: Chapters 34.05, 19.09, 11.110 and 43.07 RCW and 1993 c 471.
- 44-01-070 Trustees exempt from RCW 19.10.070—Reports required. [Order 103, § 44-01-070, filed 12/8/71; Order 101, § 44-01-070, filed 12/8/67, effective 1/8/68.] Repealed by 94-01-004 and 94-02-011, filed 12/1/93 and 12/22/93, effective 1/1/94 and 1/23/94. Statutory Authority: Chapters 34.05, 19.09, 11.110 and 43.07 RCW and 1993 c 471.
- 44-01-080 Registration—Time for registration. [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.] Repealed by 94-01-004 and 94-02-011, filed 12/1/93 and 12/22/93, effective 1/1/94 and 1/23/94. Statutory Authority: Chapters 34.05, 19.09, 11.110 and 43.07 RCW and 1993 c 471.
- 44-01-090 Annual reports. [Order 101, § 44-01-090, filed 12/8/67, effective 1/8/68.] Repealed by 94-01-004 and 94-02-011, filed

12/1/93 and 12/22/93, effective 1/1/94 and 1/23/94. Statutory Authority: Chapters 34.05, 19.09, 11.110 and 43.07 RCW and 1993 c 471.

- 44-01-100 Annual reports—Substance—Form. [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.] Repealed by 94-01-004 and 94-02-011, filed 12/1/93 and 12/22/93, effective 1/1/94 and 1/23/94. Statutory Authority: Chapters 34.05, 19.09, 11.110 and 43.07 RCW and 1993 c 471.
- 44-01-110 Annual or periodic reports—Time for filing. [Order 103, § 44-01-110, filed 12/8/71; Order 101, § 44-01-110, filed 12/8/67, effective 1/8/68.] Repealed by 94-01-004 and 94-02-011, filed 12/1/93 and 12/22/93, effective 1/1/94 and 1/23/94. Statutory Authority: Chapters 34.05, 19.09, 11.110 and 43.07 RCW and 1993 c 471.
- 44-01-120 Registration and reports—Executing and filing. [Order 101, § 44-01-120, filed 12/8/67, effective 1/8/68.] Repealed by 94-01-004 and 94-02-011, filed 12/1/93 and 12/22/93, effective 1/1/94 and 1/23/94. Statutory Authority: Chapters 34.05, 19.09, 11.110 and 43.07 RCW and 1993 c 471.
- 44-01-130 Notice of application for tax exemption. [Order 101, § 44-01-130, filed 12/8/67, effective 1/8/68.] Repealed by 94-01-004 and 94-02-011, filed 12/1/93 and 12/22/93, effective 1/1/94 and 1/23/94. Statutory Authority: Chapters 34.05, 19.09, 11.110 and 43.07 RCW and 1993 c 471.
- 44-01-150 Duty to furnish information—In general. [Order 101, § 44-01-150, filed 12/8/67, effective 1/8/68.] Repealed by 94-01-004 and 94-02-011, filed 12/1/93 and 12/22/93, effective 1/1/94 and 1/23/94. Statutory Authority: Chapters 34.05, 19.09, 11.110 and 43.07 RCW and 1993 c 471.
- 44-01-160 Register—Inspection. [Order 101, § 44-01-160, filed 12/8/67, effective 1/8/68.] Repealed by 94-01-004 and 94-02-011, filed 12/1/93 and 12/22/93, effective 1/1/94 and 1/23/94. Statutory Authority: Chapters 34.05, 19.09, 11.110 and 43.07 RCW and 1993 c 471.
- 44-01-170 When trust becomes subject to act—Vested remainders. [Order 103, § 44-01-170, filed 12/8/71; Order 101, § 44-01-170, filed 12/8/67, effective 1/8/68.] Repealed by 94-01-004 and 94-02-011, filed 12/1/93 and 12/22/93, effective 1/1/94 and 1/23/94. Statutory Authority: Chapters 34.05, 19.09, 11.110 and 43.07 RCW and 1993 c 471.
- 44-01-180 Regulations—Amendments. [Order 101, § 44-01-180, filed 12/8/67, effective 1/8/68.] Repealed by 94-01-004 and 94-02-011, filed 12/1/93 and 12/22/93, effective 1/1/94 and 1/23/94. Statutory Authority: Chapters 34.05, 19.09, 11.110 and 43.07 RCW and 1993 c 471.

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;

(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.]

Chapter 44-06 WAC PUBLIC RECORDS

WAC

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WAC 44-06-010 Purpose. The purpose of this chapter is to provide rules for the Washington state attorney general's office, implementing the provisions of chapter 42.17 RCW relating to public records.

[Statutory Authority: RCW 43.10.110, chapters 42.17, 19.118 and 34.05 RCW. 94-13-039, § 44-06-010, filed 6/6/94, effective 7/7/94; 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 protection 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) "Lemon law administration" means the agency created to administer the New Motor Vehicles Warranty Act, chapter 19.118 RCW within the office of the attorney general.

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

[Statutory Authority: RCW 43.10.110, chapters 42.17, 19.118 and 34.05 RCW. 94-13-039, § 44-06-020, filed 6/6/94, effective 7/7/94. 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). Inquiries and correspondence concerning a matter where a specific assistant attorney general is identified as representing a specific agency should be directed to the specifically named assistant attorney general, if known; or the appropriate section of the office, if known.

Consumer protection complaints should be directed to the Consumer Protection Division, 900 Fourth Avenue, Suite 2000, Seattle, Washington 98164-1012 or to local division offices located in Tacoma, Olympia, or Spokane. Communication concerning the New Motor Vehicles Warranty Act (the lemon law) should be directed to the Lemon Law Administration, 900 Fourth Avenue, Suite 2000, Seattle, Washington 98164-1012. Other inquiries, including requests for attorney general's opinions, should be directed to the Attorney General's Office, State of Washington, Olympia, Washington 98504-0100.

In addition to the areas mentioned above, the office is divided into several divisions which provide legal advice to state agencies in particular subject matter areas. Because regional office addresses may change from time to time, current division addresses and telephone numbers should be obtained from the local telephone directory or you may obtain an organizational chart and the addresses and telephone numbers of the regional offices of the attorney general by requesting it from the Attorney General's Office, State of Washington, Olympia, Washington 98504-0100, phone (206) 753-6200. Attorney general offices are located in other cities in the state and are denominated as regional offices.

[Statutory Authority: RCW 43.10.110, chapters 42.17, 19.118 and 34.05 RCW. 94-13-039, § 44-06-030, filed 6/6/94, effective 7/7/94. 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, any other law and these rules.

[Statutory Authority: RCW 43.10.110, chapters 42.17, 19.118 and 34.05 RCW. 94-13-039, § 44-06-040, filed 6/6/94, effective 7/7/94; Order 102, § 44-06-040, filed 2/20/74.]

WAC 44-06-050 Index. The attorney general's office has indexed by subject matter the published opinions of the attorney general. An index is maintained in the law library, Olympia, Washington, indexing all published attorney general opinions, as described in WAC 44-06-030, by subject matter and by statute. Retrieval capability is maintained in the central office, Olympia, Washington, for cases which have been filed involving the state, giving the name, the county and the cause number.

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 correspon-

dence. In lieu of an index the following filing system is utilized.

(1) Consumer protection complaints received by the consumer protection 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) Records of the new motor vehicle arbitration board as well as the lemon law administration are filed in the Seattle office, Lemon Law Administrator, Office of the Attorney General, 900 Fourth Avenue, Suite 2000, Seattle, Washington 98164-1012.

[Statutory Authority: RCW 43.10.110, chapters 42.17, 19.118 and 34.05 RCW. 94-13-039, § 44-06-050, filed 6/6/94, effective 7/7/94. 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. (1) The public records officer for the attorney general's office shall be the office services manager who shall be responsible for responses to requests for public records. Except as provided in subsections (2) and (3) of this section, all requests for public records shall be directed to Office Services Manager, Office of the Attorney General, 1110 Capitol Way S., PO Box 40107, Olympia, Washington 98504-0107.

(2) For those records maintained for lemon law administration for the New Motor Vehicles Warranty Act (chapter 19.118 RCW) the disclosure coordinator shall be located at the Office of Lemon Law Administration, Office of the Attorney General, 900 Fourth Avenue, Suite 2000, Seattle, Washington 98164-1012.

(3) For those records maintained by the "business and fair practices division" aka consumer protection division (chapter 19.86 RCW), the disclosure coordinator shall be located at the Office of the Attorney General, 900 Fourth Avenue, Suite 2000, Seattle, Washington 98164-1012.

[Statutory Authority: RCW 43.10.110, chapters 42.17, 19.118 and 34.05 RCW. 94-13-039, § 44-06-060, filed 6/6/94, effective 7/7/94. 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 Hours for seeking public records. 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.

[Statutory Authority: RCW 43.10.110, chapters 42.17, 19.118 and 34.05 RCW. 94-13-039, § 44-06-070, filed 6/6/94, effective 7/7/94; Order 102, § 44-06-070, filed 2/20/74.]

WAC 44-06-080 Requests for public records. In accordance with requirements of chapter 42.17 RCW 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 or her, if the public records officer is not available, at the office during the office hours speci-

fied 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 a 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 a current index maintained by the office, an appropriate description of the record requested.

(f) If the request is for a list of individuals, the requester shall certify that the request is not for commercial purposes except as provided in RCW 42.17.260(7).

(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.

(3) When a person's identity is relevant to an exemption, that person may be required to provide personal identification.

[Statutory Authority: RCW 43.10.110, chapters 42.17, 19.118 and 34.05 RCW. 94-13-039, § 44-06-080, filed 6/6/94, effective 7/7/94; Order 102, § 44-06-080, filed 2/20/74.]

WAC 44-06-085 Response to public records requests. (1) The office shall respond promptly to requests for disclosure. Within five business days of receiving a public record request, the office will respond by:

(a) Providing the record;

(b) Acknowledging that the office has received the request and providing a reasonable estimate of the time the office will require to respond to the request; or

(c) Denying the public record request.

(2) Additional time for the office to respond to a request may be based upon the need to:

(a) Clarify the intent of the request;

(b) Locate and assemble the information requested;

(c) Notify third persons or agencies affected by the request; or

(d) Determine whether any of the information requested is exempt and that a denial should be made as to all or part of the request.

(3) In acknowledging receipt of a public record request that is unclear, the office may ask the requester to clarify what information the requester is seeking. If the requester fails to clarify the request, the office need not respond to it.

(4)(a) If the office does not respond in writing within five working days of receipt of the request for disclosure, the person seeking disclosure shall be entitled to:

(i) Consider the request denied; and

(ii) Petition the public records officer under WAC 44-06-120.

(b) If the office responds within five working days acknowledging receipt of the request and providing an estimate of the time required to respond to the request, and the requester feels the amount of time stated is not reasonable, the person seeking disclosure shall be entitled to:

(i) Consider the request denied; and

(ii) Petition the public records officer under WAC 44-06-120.

[Statutory Authority: RCW 43.10.110, chapters 42.17, 19.118 and 34.05 RCW. 94-13-039, § 44-06-085, filed 6/6/94, effective 7/7/94.]

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. The public records officer may waive the fee for copies when the expense of processing the payment exceeds the costs of providing the copies. 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. The office may require that all charges be paid in advance of release of the copies of the records.

[Statutory Authority: RCW 43.10.110, chapters 42.17, 19.118 and 34.05 RCW. 94-13-039, § 44-06-090, filed 6/6/94, effective 7/7/94; 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 or other law.

(2) Many of the records of the office are protected by the attorney-client privilege and/or the attorney work product doctrine. The office, in the course of representing agencies, may at times have materials or copies of materials from such agencies. A request for such records may be referred by the attorney general to the agencies whose records are being requested. The office may assert exemptions applicable to the agency or agencies which transmitted the material to the office.

(3) 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 42.17 RCW. The public records officer will fully justify such deletion in writing.

(4) 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.

[Statutory Authority: RCW 43.10.110, chapters 42.17, 19.118 and 34.05 RCW. 94-13-039, § 44-06-110, filed 6/6/94, effective 7/7/94; 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 office's denial

of a request for a public record may petition for prompt review of such decision by tendering a written request for review to the public records officer. 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 or her designated deputy attorney general. The attorney general or his or her designee shall immediately consider the matter and either affirm or reverse such denial within two business days following the receipt of the written request for review of the denial of the public record.

(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 receipt of the written request for review of the denial of the public record, whichever occurs first.

(4) For purposes of WAC 44-06-160, the office shall have concluded a public record is exempt from disclosure only after the review conducted under this section has been completed.

[Statutory Authority: RCW 43.10.110, chapters 42.17, 19.118 and 34.05 RCW. 94-13-039, § 44-06-120, filed 6/6/94, effective 7/7/94. 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
1110 Capitol Way S.
PO Box 40107
Olympia, Washington 98504-0107

OFFICE OF THE ATTORNEY GENERAL
REQUEST FOR PUBLIC RECORDS

Date Time
Name
Address
.....

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) An arbitration special master may be appointed by the arbitration board to hear and decide preliminary and post-hearing issues which are within the arbitration board's authority. Requests for an arbitration special master may be made by either party, jointly or by the arbitration service. However, no arbitration special master may be appointed after the arbitration decision unless requested within twenty (20) days after the date of mailing of the arbitration decision or by the date the manufacturer receives the notice of acceptance from the arbitration service, whichever occurs first. Post-hearing arbitration special masters shall not resolve matters previously presented in the arbitration hearing and addressed in the arbitration decision.

(2) Issues which may be decided by the arbitration special master include but are not limited to: Motions to quash subpoenas, motions for telephone conference hearings, requests for continuances, requests to view the vehicle, request to set aside default determinations, resolution of factual disputes effecting an arbitration award including specification of the award amounts which could not have been or were not resolved at the arbitration hearing or matters necessary for compliance with the arbitration decision. The arbitration special master may conduct telephonic conferences with a party or parties, as appropriate, and may request additional written information in order to rule on issues.

(3) Arbitration special masters shall sign a written oath prior to their appointment as arbitration special master

attesting to their impartiality. There shall be no ex parte communication initiated by a party with an arbitration special master.

[Statutory Authority: RCW 19.118.080 and 19.118.090. 92-11-037, § 44-10-060, filed 5/18/92, effective 6/18/92. Statutory Authority: RCW 19.118.061, 19.118.080 and 19.118.090. 89-16-024 (Order 89-4), § 44-10-060, filed 7/24/89, effective 8/24/89. Statutory Authority: RCW 19.118.080 (2) and (7). 88-04-081 (Order 88-2), § 44-10-060, filed 2/3/88.]

WAC 44-10-070 Manufacturer's statement. (1) The manufacturer shall 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.

(1995 Ed.)

(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.]