

# Title 44 WAC

## ATTORNEY GENERAL'S OFFICE

### Chapters

- 44-06**            **Public records.**  
**44-10**            **Arbitration and the arbitration process.**

### DISPOSITION OF CHAPTERS FORMERLY CODIFIED IN THIS TITLE

#### Chapter 44-01

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

- 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 Repealed by 94-01-004 and 94-02-011, filed 12/1/93 and 12/22/93, effective 1/1/94 and 1/23/94.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 Repealed by 94-01-004 and 94-02-011, filed 12/1/93 and 12/22/93, effective 1/1/94 and 1/23/94.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 Repealed by 94-01-004 and 94-02-011, filed 12/1/93 and 12/22/93, effective 1/1/94 and 1/23/94.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 Repealed by 94-01-004 and 94-02-011, filed 12/1/93 and 12/22/93, effective 1/1/94 and 1/23/94.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 Repealed by 94-01-004 and 94-02-011, filed 12/1/93 and 12/22/93, effective 1/1/94 and 1/23/94.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 Repealed by 94-01-004 and 94-02-011, filed 12/1/93 and 12/22/93, effective 1/1/94 and 1/23/94.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 Repealed by 94-01-004 and 94-02-011, filed 12/1/93 and 12/22/93, effective 1/1/94 and 1/23/94.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.
- 44-01-140        Notification of litigation. [Order 101, § 44-01-140, filed 12/8/67, effective 1/8/68.] Repealed by 98-13-046, filed 6/10/98, effective 7/11/98. Statutory Authority: RCW 34.05.354.
- 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.

### 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, P.O. Box 40100, 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

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by requesting it from the Attorney General's Office, P.O. Box 40100, 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 and 34.05 RCW. 98-01-013, § 44-06-030, filed 12/5/97, effective 1/5/98. 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 chapter 42.17 RCW, any other law and these rules.

[Statutory Authority: RCW 43.10.110, chapters 42.17 and 34.05 RCW. 98-01-013, § 44-06-040, filed 12/5/97, effective 1/5/98. 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. 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 correspondence. 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 and 34.05 RCW. 98-01-013, § 44-06-050, filed 12/5/97, effective 1/5/98. 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 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 Public Records Officer, Office of the Attorney General, P.O. Box 40100, Olympia, Washington 98504-0100.

(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 and 34.05 RCW. 98-01-013, § 44-06-060, filed 12/5/97, effective 1/5/98. 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 (or by FAX or electronic mail if desired) upon a form prescribed by the office which shall be available at the offices where records are maintained. A request that is made other than upon the form prescribed by the office is permissible, but must provide the information listed in (a) through (f) of this subsection. 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 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 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.

(1999 Ed.)

(3) The requester may be required to provide additional information necessary to determine the application of an exemption or other law to the record(s) requested.

[Statutory Authority: RCW 43.10.110, chapters 42.17 and 34.05 RCW. 98-01-013, § 44-06-080, filed 12/5/97, effective 1/5/98. 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. Agency responses refusing in whole or in part the inspection of a public record shall include a statement of the specific exemption authorizing the withholding of the record (or any part) and a brief explanation of how the exemption applies to the record(s) withheld.

(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 petition the public records officer for a review of the estimate of time. The procedures set out in WAC 44-06-120 shall apply to this review.

[Statutory Authority: RCW 43.10.110, chapters 42.17 and 34.05 RCW. 98-01-013, § 44-06-085, filed 12/5/97, effective 1/5/98. 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 ten cents per copy. 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 reim-

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burse 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 and 34.05 RCW. 98-01-013, § 44-06-090, filed 12/5/97, effective 1/5/98. 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

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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  
PO Box 40100  
Olympia, Washington 98504-0100

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:

.....

.....

.....

If my request is for a list of individuals, I certify that the information obtained through this request will not be used for commercial purposes.

.....  
Signature

Number of copies .....

Number of pages . . . . .  
 Per page charge \$ . . . . .  
 Total charge \$ . . . . .

44-10-223 Manufacturer, transferor and dealer duties prior to resale of a returned vehicle.  
 44-10-235 Substitute resale disclosure forms.  
 44-10-240 Warranty period for certificate of correction and warranty.  
 44-10-300 Imposition of fine for manufacturer noncompliance with an arbitration decision.  
 44-10-310 Request for review of imposition of fine.

[Statutory Authority: RCW 43.10.110, chapters 42.17 and 34.05 RCW. 98-01-013, § 44-06-140, filed 12/5/97, effective 1/5/98. Statutory Authority: RCW 43.10.110, chapters 42.17, 19.118 and 34.05 RCW. 94-13-039, § 44-06-140, filed 6/6/94, effective 7/7/94. Statutory Authority: RCW 42.17.250 through 42.17.320. 84-10-031 (Order 103), § 44-06-140, filed 4/30/84; Order 102, § 44-06-140, filed 2/20/74.]

**WAC 44-06-150 Availability of pamphlet.** The office has available a pamphlet, written in plain language, explaining the provisions of the Public Records Act. Requests for a copy of the pamphlet should be directed to the Public Records Officer, Office of the Attorney General, P.O. Box 40100, Olympia, Washington 98504-0100.

[Statutory Authority: RCW 43.10.110, chapters 42.17 and 34.05 RCW. 98-01-013, § 44-06-150, filed 12/5/97, effective 1/5/98. Statutory Authority: RCW 43.10.110, chapters 42.17, 19.118 and 34.05 RCW. 94-13-039, § 44-06-150, filed 6/6/94, effective 7/7/94.]

**WAC 44-06-160 Requests for review.** As provided in RCW 42.17.325, "Whenever a state agency concludes that a public record is exempt from disclosure and denies a person opportunity to inspect or copy a public record for that reason, the person may request the attorney general to review the matter." Requests for such review shall be directed to Public Records Review, Office of the Attorney General, P.O. Box 40100, Olympia, Washington 98504-0100. The office will provide the person with a written opinion on whether the record is exempt.

Nothing in this section shall be deemed to establish an attorney-client relationship between the attorney general and a person making a request under this section.

[Statutory Authority: RCW 43.10.110, chapters 42.17, 19.118 and 34.05 RCW. 94-13-039, § 44-06-160, filed 6/6/94, effective 7/7/94.]

**Chapter 44-10 WAC**

**ARBITRATION AND THE ARBITRATION PROCESS**

**WAC**

44-10-010 Definitions.  
 44-10-020 Designation of manufacturer contract.  
 44-10-030 Arbitration requests.  
 44-10-031 Effect of request for arbitration filing.  
 44-10-035 Arbitration requests—Forty day written request to replace or repurchase vehicle.  
 44-10-040 Attorney general screening of arbitration requests.  
 44-10-050 Assignment to board.  
 44-10-060 Powers and duties of arbitration special master.  
 44-10-070 Manufacturer's statement.  
 44-10-080 Manufacturer's option to request a viewing of motor vehicle.  
 44-10-090 Arbitration fee.  
 44-10-100 Subpoenas.  
 44-10-110 Scheduling of arbitration hearings.  
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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.  
 44-10-165 Technical expert prehearing inspection report. [Statutory Authority: RCW 19.118.061 and 19.118.080. 88-09-063 (Order 88-4), § 44-10-165, filed 4/20/88.] Repealed by 96-03-155, filed 1/24/96, effective 2/24/96. Statutory Authority: RCW 19.118.080 (2) and (7), 19.118.061 and 1995 c 254 § 4.  
 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.  
 44-10-220 Resale of motor vehicle determined or adjudicated as having a serious safety defect. [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.] Repealed by 96-03-155, filed 1/24/96, effective 2/24/96. Statutory Authority: RCW 19.118.080 (2) and (7), 19.118.061 and 1995 c 254 § 4.  
 44-10-230 Resale of motor vehicle determined or adjudicated as having a nonconformity. [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.] Repealed by 96-03-155, filed 1/24/96, effective 2/24/96. Statutory Authority: RCW 19.118.080 (2) and (7), 19.118.061 and 1995 c 254 § 4.  
 44-10-320 Failure by the manufacturer to pay a fine. [Statutory Authority: RCW 19.118.061 and 19.118.080. 89-06-025 (Order 89-1), § 44-10-320, filed 2/24/89.] Repealed by 96-03-155, filed 1/24/96, effective 2/24/96. Statutory Authority: RCW 19.118.080 (2) and (7), 19.118.061 and 1995 c 254 § 4.

**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 special master" means the individual or group of individuals selected by the board to hear and decide special issues timely brought before the board by the parties.

(2) 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.

(3) The phrase "intervening transferor" means any person or entity which receives, buys or otherwise transfers the returned new motor vehicle prior to the first retail transfer, sale or lease subsequent to being repurchased or replaced by the manufacturer.

(4) The phrase "Lemon Law resale documents" refers to the following:

(a) "Lemon Law resale windshield display" means a document created and provided by the attorney general which identifies that: (i) the vehicle was reacquired by the manufacturer after a determination or adjudication of a dispute; (ii) the vehicle has one or more nonconformities or serious safety defects, or was out-of-service thirty or more days due to diagnosis or repair of one or more nonconformities; and (iii) the defects or conditions causing the vehicle to be reacquired by the manufacturer.

(b) "Lemon Law resale disclosure": means a document created and provided by the attorney general which identifies that: (i) the vehicle was reacquired by the manufacturer after a settlement, determination or adjudication of a dispute; (ii) the vehicle has one or more nonconformities or serious safety defects, or was out-of-service thirty or more days due to diagnosis or repair of one or more nonconformities; and (iii) the defects or conditions causing the vehicle to be reacquired by the manufacturer.

(c) "Notice of correction and warranty" means a document created and provided by the attorney general which identifies each nonconformity or serious safety defect which was the basis of the settlement, determination or adjudication of the dispute. The document will provide space for the manufacturer to indicate whether each nonconformity or serious safety defect has been corrected and is warranted by the manufacturer.

(d) "Notice of out-of-state disposition of a reacquired vehicle" refers to a document created and provided by the attorney general which requires the manufacturer, agent or dealer to identify the destination state and the dealer, auction, other person or entity to whom the manufacturer sells or otherwise transfers the reacquired vehicle when the vehicle is taken to another state for any disposition, including: resale, transfer or destruction.

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

(6) "Settlement" means the resolution of a dispute, under chapter 19.118 RCW, between the consumer and manufacturer after the new motor vehicle arbitration board has accepted the consumer's request for arbitration and which results in the manufacturer reacquiring the new motor vehicle directly or indirectly through an agent or a motor vehicle dealer.

(7) "Similar law of another state" refers to the law of another state which creates remedies for a manufacturer's failure to conform a vehicle to its warranty and under which the vehicle was reacquired by the manufacturer.

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

**WAC 44-10-020 Designation of manufacturer contract.** (1) A new motor vehicle manufacturer shall submit, in writing, to the Attorney General's Office, Lemon Law Administration the name, address and telephone number of an individual designated by the manufacturer to receive notices related to the arbitration program, service of subpoenas, and other correspondence from the attorney general

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related to the manufacturer's duties and responsibilities set forth in chapter 19.118 RCW.

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

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

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

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

**WAC 44-10-030 Arbitration requests.** A consumer must submit a request for arbitration form with copies of supporting documentation to the Attorney General's Office, Lemon Law Administration in Seattle or in the Attorney General's Office in Spokane, 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), 19.118.061 and 1995 c 254 § 4. 96-03-155, § 44-10-030, filed 1/24/96, effective 2/24/96. Statutory Authority: RCW 19.118.080 (2) and (7), 88-01-093 (Order 87-4), § 44-10-030, filed 12/22/87.]

**WAC 44-10-031 Effect of request for arbitration filing.** (1) A request for arbitration is deemed to have been received within the thirty month limitation identified in RCW 19.118.090(2), if it: (a) is received by the Office of the Attorney General within thirty months from the date of original delivery of the new motor vehicle to a consumer at retail; and (b) identifies the consumer and the new motor vehicle which is the subject of the requested arbitration.

(2) If the attorney general finds that a request is not complete, the thirty month limitation will resume running three business days after the date the attorney general mails notice of incompleteness to the consumer.

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

**WAC 44-10-035 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.]

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**WAC 44-10-040 Attorney general screening of arbitration requests.** (1) After a request for arbitration has been received, the attorney general shall review the form for completeness.

(2) The attorney general will screen the request for arbitration and supporting documentation to determine whether the request appears timely, complete and to comply with the jurisdictional requirements of chapter 19.118 RCW.

(a) If a request appears to be untimely or not in compliance with the jurisdictional requirements of chapter 19.118 RCW the attorney general will reject the request for arbitration and notify the consumer of the reason for the rejection.

(b) A request will be considered complete if the information required by the request form is provided in full or if the consumer provides a reasonable explanation for the absence of any supporting documentation.

(c) If a request is not complete, the attorney general will notify the consumer of any procedures or information required to complete the request.

(3) A consumer request that is based on a problem which does not manifest itself, is intermittent or unconfirmed shall not preclude an attorney general determination of the appearance 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 19.118.080 (2) and (7), 19.118.061 and 1995 c 254 § 4. 96-03-155, § 44-10-040, filed 1/24/96, effective 2/24/96. Statutory Authority: RCW 19.118.061, 19.118.080 and 19.118.090. 89-16-024 (Order 89-4), § 44-10-040, filed 7/24/89, effective 8/24/89. Statutory Authority: RCW 19.118.080 (2) and (7), 88-04-081 (Order 88-2), § 44-10-040, filed 2/3/88.]

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

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

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

(4) Upon acceptance of a request, the board shall immediately send a notice of acceptance for arbitration to the consumer and manufacturer by certified mail/return receipt requested and shall inform the parties that a hearing shall be held within forty-five calendar days. The parties shall be sent formal notice of the actual hearing date by certified mail/return receipt requested, at least ten calendar days before the hearing. The designated manufacturer contact shall be sent a copy of the consumer's request and a manufacturer's statement form with the notice of acceptance.

[Statutory Authority: RCW 19.118.080 (2) and (7), 19.118.061 and 1995 c 254 § 4. 96-03-155, § 44-10-050, filed 1/24/96, effective 2/24/96. Statutory Authority: RCW 19.118.061, 19.118.080 and 19.118.090. 89-16-024 (Order

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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 to the board by either party. Post-hearing arbitration special masters shall not resolve matters previously presented in the arbitration hearing and addressed in the arbitration decision, or extend the time for compliance beyond the time necessary to hear and notify the parties of a decision about the issues in dispute or requiring clarification.

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

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

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

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

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

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

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

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

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(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 option to request a viewing of the consumer's motor vehicle by including a request to view the vehicle in the manufacturer's statement.

[Statutory Authority: RCW 19.118.080 (2) and (7), 19.118.061 and 1995 c 254 § 4. 96-03-155, § 44-10-070, filed 1/24/96, effective 2/24/96. Statutory Authority: RCW 19.118.080 (2) and (7), 88-04-081 (Order 88-2), § 44-10-070, filed 2/3/88.]

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

(2) The manufacturer and the consumer shall attempt to arrange a mutually agreeable time and location for such viewing. If after reasonable good faith attempts to arrange a viewing, a mutually agreeable time and location is not established, the manufacturer may request from the board that an 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 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), 19.118.061 and 1995 c 254 § 4. 96-03-155, § 44-10-080, filed 1/24/96, effective 2/24/96. Statutory Authority: RCW 19.118.080 (2) and (7), 88-04-081 (Order 88-2), § 44-10-080, filed 2/3/88.]

**WAC 44-10-090 Arbitration fee.** (1) A three dollar arbitration fee shall be collected by the new motor vehicle dealer or lease company from the consumer at completion of the sale or lease of a new motor vehicle. No fee shall be col-

lected where the purchase, lease or transfer is made to a party other than a consumer.

[Statutory Authority: RCW 19.118.080 (2) and (7), 19.118.061 and 1995 c 254 § 4. 96-03-155, § 44-10-090, filed 1/24/96, effective 2/24/96. Statutory Authority: RCW 19.118.080 and 19.118.090. 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 party's request for a subpoena must be received by the arbitration board no later than fourteen calendar days prior to the arbitration hearing date. The board shall make a determination of whether the documents and records sought by the party are reasonably related to the dispute and notify the attorney general of the request within two (2) business days of receiving the request.

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

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

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

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

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

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

**WAC 44-10-110 Scheduling of arbitration hearings.** The board has the authority to schedule the arbitration hearing at its discretion 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. If for any reason an arbitration hearing must be rescheduled, the board shall promptly notify the parties by mail or telephone.

[Statutory Authority: RCW 19.118.080 (2) and (7), 19.118.061 and 1995 c 254 § 4. 96-03-155, § 44-10-110, filed 1/24/96, effective 2/24/96. Statutory Authority: RCW 19.118.061, 19.118.080 and 19.118.090. 89-16-024 (Order



89-4), § 44-10-110, filed 7/24/89, effective 8/24/89. Statutory Authority: RCW 19.118.080 (2) and (7), 88-04-081 (Order 88-2), § 44-10-110, filed 2/3/88.]

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

A withdrawal shall be granted without prejudice, although upon notice to the board of withdrawal, the thirty month period in which the consumer must submit a request for arbitration shall resume running. A consumer who has withdrawn may resubmit the claim for arbitration. However, if the consumer withdraws the second request, the withdrawal shall be considered a withdrawal with prejudice and the consumer shall not be allowed to resubmit the claim for arbitration.

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

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

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

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

(4) The default shall be final unless within twenty-four hours of the hearing time, the manufacturer or consumer contacts the board 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 19.118.080 (2) and (7), 19.118.061 and 1995 c 254 § 4. 96-03-155, § 44-10-130, filed 1/24/96, effective 2/24/96. Statutory Authority: RCW 19.118.061, 19.118.080 and 19.118.090, 89-16-024 (Order 89-4), § 44-10-130, 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 of parties.** (1) Any party to the arbitration hearing may be represented by counsel. If either party opts to be so represented, said party shall immediately notify the board 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 non-

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attorney. However, a person, acting as an interpreter, may assist a party in the presentation of the case if such assistance is necessary because of a mental or physical handicap or language barrier which would preclude the party from adequately representing himself or herself.

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

[Statutory Authority: RCW 19.118.080 (2) and (7), 19.118.061 and 1995 c 254 § 4. 96-03-155, § 44-10-140, filed 1/24/96, effective 2/24/96. Statutory Authority: RCW 19.118.061, 19.118.080 and 19.118.090, 89-16-024 (Order 89-4), § 44-10-140, 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 Settlement of dispute.** (1) Both parties shall notify the board of a resolution for settlement of the dispute after the request for arbitration has been accepted by the arbitration board. The attorney general shall verify the terms of the settlement or resolution. The disclosure of terms is for statutorily required record keeping only. The settlement or agreement to otherwise resolve the dispute is not subject to approval by the board or the attorney general.

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

[Statutory Authority: RCW 19.118.080 (2) and (7), 19.118.061 and 1995 c 254 § 4. 96-03-155, § 44-10-150, filed 1/24/96, effective 2/24/96. Statutory Authority: RCW 19.118.061, 19.118.080 and 19.118.090, 89-16-024 (Order 89-4), § 44-10-150, filed 7/24/89, effective 8/24/89. Statutory Authority: RCW 19.118.080 (2) and (7), 88-01-093 (Order 87-4), § 44-10-150, filed 12/22/87.]

**WAC 44-10-160 Use of technical expert.** (1) An adequate pool of automotive and motorcycle technical experts shall be maintained by the board. A technical expert is assigned by the board to advise and consult with an arbitrator. Technical experts shall not be directly involved in the manufacture, distribution, sale, or warranty service of any motor vehicle.

(2) Either party may request that a technical expert be assigned to a dispute. Such assignment, however, shall be at the discretion of the board. The board may upon their own volition assign a technical expert to a dispute.

(3) If a technical expert is assigned to a dispute, and is requested by the arbitrator to perform an inspection of the vehicle, other than as part of the arbitration hearing, a notice of the time, date and location of the technical expert's inspection of the vehicle will be provided to both parties. This section does not confer a right, for either party, to be present during the inspection of the vehicle, however, either party may be present. Any written report or results of the expert's inspection shall be supplied to the parties as soon as it is available. The technical expert shall be present at the hearing or shall be available by telephone at the time of hearing, and may be examined by either party or the arbitrator.

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

[Statutory Authority: RCW 19.118.080 (2) and (7), 19.118.061 and 1995 c 254 § 4. 96-03-155, § 44-10-160, filed 1/24/96, effective 2/24/96. 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 44-10-170 Powers and duties of arbitrators.** (1) Arbitrators shall have the duty to conduct fair and impartial hearings, to take all necessary actions to avoid delay in the disposition of proceedings, to maintain order, and to meet the sixty day time frame required by RCW 19.118.090 for the rendering of a decision. They shall have all powers necessary to meet these ends including, but not limited to, the power:

(a) To consider any and all evidence offered by the parties which the arbitrator deems necessary to an understanding and determination of the dispute;

(b) To regulate the course of the hearings and the conduct of the parties, their representatives and witnesses;

(c) To schedule vehicle inspection by the technical experts, if deemed necessary, at such time and place as the arbitrator determines;

(d) To continue the arbitration hearing to a subsequent date if, at the initial hearing, the arbitrator determines that additional information is necessary in order to render a fair and accurate decision. Such continuance shall be held within ten calendar days of the initial hearing;

(e) To impose sanctions for failure of a party to comply with a subpoena pursuant to RCW 19.118.080 (2)(b).

(2) The board shall maintain an adequate pool of trained arbitrators and is responsible for the assignment of arbitrators to arbitration hearings. The selection and assignment of arbitrators is not subject to the approval of either party.

(3) Arbitrators must not have a personal interest in the outcome of any hearing, nor be acquainted with any of the participants except as such acquaintance may occur in the hearing process, nor hold any prejudice toward any party. Arbitrators shall not be directly involved in the manufacture, distribution, sale, or warranty service of any motor vehicle. Arbitrators shall maintain their impartiality throughout the course of the arbitration proceedings.

(a) An arbitrator shall sign a written oath prior to the commencement of each arbitration hearing to which he or she has been assigned, attesting to his or her impartiality in that case.

(b) There shall be no direct communication between the parties and the arbitrators other than at the arbitration hearing. Any other oral or written communications between the parties and the arbitrators shall be channeled through the board. Any prohibited contact shall be reported by the arbitrators to the board and noted in the case record.

[Statutory Authority: RCW 19.118.080 (2) and (7), 19.118.061 and 1995 c 254 § 4. 96-03-155, § 44-10-170, filed 1/24/96, effective 2/24/96. Statutory Authority: RCW 19.118.061, 19.118.080 and 19.118.090. 89-16-024 (Order 89-4), § 44-10-170, filed 7/24/89, effective 8/24/89. Statutory Authority: RCW 19.118.080 (2) and (7). 88-01-093 (Order 87-4), § 44-10-170, filed 12/22/87.]

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

(2) Arbitrators may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent people in the conduct of their

affairs. They shall give effect to the rules of privilege recognized by law. They may exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence.

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

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

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

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

(7) The hearing procedure contemplates that both parties will be present. However, either party may offer written testimony only, as long as the board 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.

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

**WAC 44-10-200 The arbitration decision.** (1) The arbitration board shall 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 by certified mail to the parties;

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

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

(i) If the consumer prevails and has elected repurchase of the vehicle, the decision shall include the statutory calculations used to determine the monetary award;

(ii) If the consumer prevails and has elected replacement of the vehicle, the decision shall identify or describe a reasonably equivalent replacement vehicle and any refundable incidental costs;

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

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

(2) Included with the copy of the arbitration decision sent to the consumer shall be a form to be completed by the consumer, indicating acceptance or rejection of the decision. The board shall forward general information to the consumer explaining the consumer's right to appeal the decision to superior court. The consumer must return the form to the board within sixty calendar days from the date of the consumer's receipt of the decision.

(3) 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 a decision which awards repurchase or replacement, the board shall send a copy of the form completed by the consumer indicating acceptance by certified mail to the manufacturer and shall include a manufacturer's intent form.

A verification of compliance form shall be sent to the consumer by the attorney general's office. 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.

[Statutory Authority: RCW 19.118.080 (2) and (7), 19.118.061 and 1995 c 254 § 4. 96-03-155, § 44-10-200, filed 1/24/96, effective 2/24/96. Statutory Authority: RCW 19.118.080 and 19.118.090. 90-19-024, § 44-10-200, filed 9/11/90, effective 10/12/90. Statutory Authority: RCW 19.118.061, 19.118.080 and 19.118.090. 89-16-024 (Order 89-4), § 44-10-200, filed 7/24/89, effective 8/24/89. Statutory Authority: RCW 19.118.080 (2) and (7), 88-04-081 (Order 88-2), § 44-10-200, filed 2/3/88.]

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

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

[Statutory Authority: RCW 19.118.080 (2) and (7), 19.118.061 and 1995 c 254 § 4. 96-03-155, § 44-10-210, filed 1/24/96, effective 2/24/96. Statutory Authority: RCW 19.118.080 (2) and (7), 88-04-081 (Order 88-2), § 44-10-210, filed 2/3/88.]

**WAC 44-10-221 Resale documents—Attorney general procedures.** (1) When a vehicle has been determined by the new motor vehicle arbitration board, or has been adjudicated in a superior or appellate court of this state, as having one or more nonconformities or serious safety defects that have been subject to a reasonable number of attempts by the manufacturer to conform the vehicle to the warranty:

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

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(b) The attorney general will provide the manufacturer with the required documents by certified mail at the conclusion of the period pursuant to RCW 19.118.090(9) for a manufacturer to file an appeal or upon notice from the manufacturer of receipt of the vehicle, whichever occurs first.

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

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

(b) The attorney general will provide the manufacturer with the required documents by certified mail upon notice of the settlement by the parties.

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

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

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

[Statutory Authority: RCW 19.118.080 (2) and (7), 19.118.061 and 1995 c 254 § 4. 96-03-155, § 44-10-221, filed 1/24/96, effective 2/24/96.]

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

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

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

(3) Correct and warrant a serious safety defect.

(4) Notify the attorney general's office and the department of licensing of correction of a nonconformity or serious safety defect and execute a "notice of correction and warranty" as provided by the attorney general.

[Statutory Authority: RCW 19.118.080 (2) and (7), 19.118.061 and 1995 c 254 § 4. 96-03-155, § 44-10-222, filed 1/24/96, effective 2/24/96.]

**WAC 44-10-223 Manufacturer, transferor and dealer duties prior to resale of a returned vehicle.** After the manufacturer's receipt of a vehicle and prior to first subsequent retail transfer, sale or lease of a vehicle subject to the requirements of RCW 19.118.061:

(1) The manufacturer, agent or new motor vehicle dealer with actual knowledge of a determination, adjudication or settlement must deliver the Lemon Law resale documents with the vehicle to a wholesale or retail buyer, or transferor.

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(2) The buyer or transferor should sign and date the acknowledgement of receipt of the Lemon Law resale documents on the "Lemon Law resale disclosure" in each wholesale transaction.

(3) An intervening transferor who receives the "Lemon Law resale disclosure" or "notice of correction and warranty" is prohibited from transferring, selling, or leasing the vehicle without delivery of the "Lemon Law resale disclosure" and any "notice of correction and warranty" with the vehicle to the next transferor, purchaser or lessee.

(4) The "Lemon Law resale windshield display" can only be removed by the first subsequent retail purchaser or lessee of the motor vehicle who has signed the Lemon Law resale disclosure form.

[Statutory Authority: RCW 19.118.080 (2) and (7), 19.118.061 and 1995 c 254 § 4. 96-03-155, § 44-10-223, filed 1/24/96, effective 2/24/96.]

**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, notwithstanding any arbitration special master hearing or findings. Notice of the imposition of fine shall be to the manufacturer by certified mail or personal service.

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

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

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

[Statutory Authority: RCW 19.118.080 (2) and (7), 19.118.061 and 1995 c 254 § 4. 96-03-155, § 44-10-300, filed 1/24/96, effective 2/24/96. Statutory Authority: RCW 19.118.080 and 19.118.090(7). 91-02-080, § 44-10-300, filed 12/31/90, effective 1/31/91. Statutory Authority: RCW 19.118.061 and 19.118.080. 89-06-025 (Order 89-1), § 44-10-300, filed 2/24/89.]

**WAC 44-10-310 Request for review of imposition of fine.**

(1) The manufacturer shall have ten days from the date of receipt of notice of imposition of fine to request a review of imposition of fine 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 non-compliance 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 or request additional information from the parties or other persons regarding manufacturer noncompliance.

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

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

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