



RULE-MAKING ORDER PERMANENT RULE ONLY

CR-103P (October 2017) (Implements RCW 34.05.360)

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STATE OF WASHINGTON
FILED

DATE: December 20, 2017

TIME: 9:20 AM

WSR 18-01-142

Agency: Office of the Attorney General

Effective date of rule:

Permanent Rules

31 days after filing.

Other (specify) _____ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

Yes No If Yes, explain:

Purpose: These rules will update, streamline, and enhance the efficiency of communications, record keeping, and procedures regarding vehicle arbitrations under this Act. The revisions will also remove redundant provisions and enhance equity and fairness between the participants

Citation of rules affected by this order:

New:

Repealed:

Amended:

Suspended:

Statutory authority for adoption: RCW 19.118.080(2), RCW 19.118.080(6).

Other authority:

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 17-21-037 on October 12, 2017 (date).

Describe any changes other than editing from proposed to adopted version:

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name:

Address:

Phone:

Fax:

TTY:

Email:

Web site:

Other:

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	___	Amended	___	Repealed	___
Federal rules or standards:	New	___	Amended	___	Repealed	___
Recently enacted state statutes:	New	___	Amended	___	Repealed	___

The number of sections adopted at the request of a nongovernmental entity:

New	___	Amended	___	Repealed	___
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The number of sections adopted on the agency's own initiative:

New	<u>7</u>	Amended	___	Repealed	___
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	<u>7</u>	Amended	___	Repealed	___
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The number of sections adopted using:

Negotiated rule making:	New	___	Amended	___	Repealed	___
Pilot rule making:	New	___	Amended	___	Repealed	___
Other alternative rule making:	New	___	Amended	___	Repealed	___

Date Adopted: December 20, 2017

Name: Bob Ferguson

Title: Attorney General

Signature:



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

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

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

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

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

"Lemon Law administration" means the section within the attorney general's office, consumer protection division, designated by the attorney general to be responsible for the implementation of chapter 19.118 RCW and related rules.

"Lemon Law resale documents" refers to the following:

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

(b) "Lemon Law resale disclosure": Means a document created and provided by the attorney general which identifies that: (i) The vehicle was reacquired by the manufacturer after a settlement, determination or adjudication of a dispute; (ii) the vehicle has one or more nonconformities or serious safety defects, or was out-of-service thirty or more days due to diagnosis or repair of one or more nonconformities; and (iii) the defects or conditions causing the vehicle to be reacquired by the manufacturer. The document will provide space for the manufacturer to indicate if each nonconformity or serious safety defect has been corrected and is warranted by the manufacturer.

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

"Manufacturer dispute program" means a program offered by a manufacturer to owners or lessees of vehicles covered by or previously covered by the manufacturer's warranty to resolve complaints or claims: (a) Established in substantial compliance with the applicable provision of Title 16, Code of Federal Regulations Part 703; (b) where the basis of the program's standards for decision making are substan-

tially equivalent to chapter 19.118 RCW; (c) where the basis of the program's standards for decision making are identified as some or all of the provisions of chapter 19.118 RCW; or (d) references the "Lemon Law" in a manner suggesting or inferring that chapter 19.118 RCW is the program's basis for the decision making, determining remedies or has been approved by the attorney general.

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

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

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

AMENDATORY SECTION (Amending WSR 10-01-069, filed 12/11/09, effective 1/11/10)

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

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

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

AMENDATORY SECTION (Amending WSR 10-01-069, filed 12/11/09, effective 1/11/10)

WAC 44-10-100 Subpoenas. (1) A party's request for a subpoena to be issued must be received by the Lemon Law administration with the consumer's request for arbitration or the manufacturer's statement to be considered. A consumer may submit a request for a subpoena within three business days of receipt of a manufacturer's statement. The attorney general shall make a determination of whether the documents and records sought by the party are reasonably related to the dispute.

(2) A subpoena issued by the attorney general shall identify the party causing the issuance of the subpoena, designate that the subpoena is issued by the attorney general pursuant to RCW 19.118.080, state the purpose of the proceeding, and command the person to whom it is

directed to produce at the time and place set in the subpoena the designated documents or records under his or her control.

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

(4) A person to whom a subpoena is directed may submit a written request to suspend or limit the terms of the subpoena to the Lemon Law administration within five business days of receipt of the subpoena and shall notify the party who requested the subpoena, of the request to suspend or limit it. The request must be accompanied by a short statement setting forth the basis for the request. The Lemon Law administration program manager may suspend or modify the subpoena or shall assign the request to be heard at the arbitration hearing.

(5) Where the Lemon Law administration program manager upholds or modifies the subpoena, the responding person or party shall comply with the date set in the subpoena or within five business days, whichever is greater.

AMENDATORY SECTION (Amending WSR 10-01-069, filed 12/11/09, effective 1/11/10)

WAC 44-10-110 Scheduling of arbitration hearings. The board has the authority to schedule the arbitration hearing at its discretion. The Lemon Law administration shall notify the parties of the date, time and place by (~~(certified letter mailed)~~) letter sent by standard U.S. mail and email at least ten calendar days prior to the hearing. Hearings may be scheduled during business hours, Monday through Thursday evenings, or Saturdays. If for any reason an arbitration hearing must be rescheduled, the board or the Lemon Law administration shall promptly notify the parties by mail, email if requested by a party or telephone.

AMENDATORY SECTION (Amending WSR 10-01-069, filed 12/11/09, effective 1/11/10)

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)~~) an electronic recording record of the hearing is maintained.

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

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

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

AMENDATORY SECTION (Amending WSR 10-01-069, filed 12/11/09, effective 1/11/10)

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

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

(b) The date on which the board provides the arbitration decision to the Lemon Law administration shall determine compliance with the sixty day requirement to issue an arbitration decision;

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

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

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

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

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

(d) Upon receipt of the board's decision, the Lemon Law administration will distribute it to the parties by ~~((certified mail or email if requested by a party))~~ email or standard U.S. mail.

(2) Upon request of a party, an arbitrator shall make factual findings and modify the offset total where the wear and tear on those portions of the motor home designated, used, or maintained primarily as a mobile dwelling, office, or commercial space is significantly greater or significantly less than that which could be reasonably expected based on the mileage attributable to the consumer's use of the motor home in an arbitration decision awarding repurchase or replacement of a new motor vehicle. An arbitrator will consider the actual amount of time that portions of the motor home were in use as dwell-

ing, office or commercial space. The arbitrator shall not consider wear and tear resulting from:

(a) Defects in materials or workmanship in the manufacture of the motor home including the dwelling, office or commercial space;

(b) Damage due to removal of equipment pursuant to RCW 19.118.095 (1)(a); or

(c) Repairs.

The modification to the reasonable offset for use may not result in the addition or reduction of the offset for use calculation by more than one-third. The modification shall be specified as a percentage for reduction or addition to the offset calculation. The modification to the reasonable offset for use shall apply to the offset calculation at the time of repurchase or replacement of the motor home.

(3)(a) A motor home manufacturer is independently liable for compliance with a decision awarding repurchase or replacement of the motor home if the manufacturer:

(i) Has met or exceeded the reasonable number of attempts to diagnose or repair the vehicle as set forth in RCW 19.118.041 (3)(a) or (b); or

(ii) Is responsible for sixty or more applicable days out of service by reason of diagnosis or repair as set forth in RCW 19.118.041 (3)(c), the motor home manufacturer is independently liable for compliance with a decision awarding repurchase or replacement of the motor home.

(b) If a motor home manufacturer has not met the criteria set forth in (a)(i) and (ii) of this subsection, but has contributed to the combined total of sixty or more days out of service by reason of diagnosis or repair as set forth in RCW 19.118.041 (3)(c), the manufacturer is jointly liable with the other liable motor home manufacturers for compliance with a decision awarding repurchase or replacement of the motor home.

(c) If a motor home manufacturer has met or exceeded the reasonable number of attempts to diagnose or repair the vehicle as set forth in RCW 19.118.041 (3)(a), (b), or (c) and the manufacturer, together with one or more other motor home manufacturers, contributed to a combined total of sixty or more days out of service by reason of diagnosis or repair as set forth in RCW 19.118.041 (3)(c), the motor home manufacturer is jointly and severally liable for compliance with a decision awarding repurchase or replacement of the motor home.

(d) In a decision awarding repurchase or replacement of a motor home, and that allocates compliance liability, an arbitrator will identify the motor home manufacturer's minimum percentage of contribution to compliance with the award. In determining the allocation of liability among jointly liable motor home manufacturers, the arbitrator will consider a motor home manufacturer's contribution to the total number of applicable days out of service as a factor.

(e) When applicable as set forth in RCW 19.118.090(6), the arbitrator must allocate liability for the consumer's costs and attorneys' fees among the liable motor home manufacturers represented by counsel. The arbitrator will specify the liable motor home manufacturer's minimum percentage of contribution to compliance with the award. The motor home manufacturer's minimum percentage of contribution for the consumer's costs and attorneys' fees may be different from the minimum percentage of contribution of the motor home manufacturer's compliance obligation due to other liable motor home manufacturers' lack of representation by counsel.

(f) An arbitration decision must specify that the lack of compliance, late or delayed compliance, or the filing of an appeal by another liable motor home manufacturer will not affect a motor home manufacturer's independent liability for compliance with a decision awarding repurchase or replacement of the motor home.

(g) A motor home manufacturer may present testimony and other evidence regarding the allocation of liability for compliance with arbitration decisions awarding repurchase or replacement of the motor home. If the motor home manufacturers agree amongst themselves to terms for the allocation of liability for compliance obligations, the arbitrator must include the terms in the arbitration decisions awarding repurchase or replacement of the motor home if the terms are consistent with the arbitration decisions, specific, complete and not otherwise contrary to chapter 19.118 RCW.

(4) Included with the copy of the arbitration decision sent to the consumer shall be a form to be completed by the consumer, indicating acceptance or rejection of the decision and general information to the consumer explaining the consumer's right to appeal the decision to superior court. The consumer must return the form to the Lemon Law administration within sixty calendar days from the date of the consumer's receipt of the decision or the decision will be deemed to have been rejected as of the sixty-first day.

(5) The consumer shall have one hundred twenty calendar days from the date of the rejection of the decision to file a petition of appeal in superior court. At the time of filing an appeal, the consumer shall deliver by certified mail or by personal service a conformed copy of the petition to the attorney general.

(6) If the consumer accepts a decision which awards repurchase or replacement, the Lemon Law administration shall send a copy of the form completed by the consumer indicating acceptance to the manufacturer by certified mail or email (~~(if requested by the manufacturer and shall include a manufacturer's intent form.~~

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