

HAWAII ADMINISTRATIVE RULES

TITLE 16

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

CHAPTER 181

MOTOR VEHICLE EXPRESS WARRANTY ENFORCEMENT
(LEMON LAW)

Subchapter 1 General Provisions

- §16-181-1 Authority
- §16-181-2 Objective
- §16-181-3 Computation of time

Subchapter 2 Administration of State Certified Arbitration Program
("SCAP")

- §16-181-4 Appointment of program administrator
- §16-181-5 Program administrator's duties
- §16-181-6 Setting arbitrator stipend

Subchapter 3 Filing of Complaints by Consumers

- §16-181-7 Consumer's demand for arbitration
- §16-181-8 Filing fees
- §16-181-9 Manufacturer's statement

Subchapter 4 Scheduling and Notification of Arbitration Hearing

- §16-181-10 Notification by manufacturers to SCAP
- §16-181-11 Assignment of arbitrator
- §16-181-12 Notice of arbitration hearing
- §16-181-13 Waiver of notice requirements

Subchapter 5 Pre-Hearing Procedures

- §16-181-14 Manufacturer's request for viewing of motor vehicle
- §16-181-15 Availability of witness and document subpoenas
- §16-181-16 Witness fees
- §16-181-17 Continuances or extensions of time

Subchapter 6 Hearings

- §16-181-18 Parties; appearances; interpreters
- §16-181-19 Settlement before the hearing
- §16-181-20 Defaults; dismissals
- §16-181-21 Powers and duties of the arbitrator
- §16-181-22 Conduct of the hearing
- §16-181-23 Evidence
- §16-181-24 Arbitrator's records
- §16-181-25 Settlement at the hearing

Subchapter 7 Arbitrator's Decision

- §16-181-26 Form and content of decision
- §16-181-27 Hearing on documents only
- §16-181-28 Technical corrections; rehearing

Subchapter 8 Recordkeeping

- §16-181-29 Program administrator's records
- §16-181-30 Department's records

Subchapter 9 Leased Cars

- §16-181-31 Refunds

Subchapter 10 Miscellaneous Provisions

- §16-181-32 Avoidance of liability
- §16-181-33 Manufacturer's records

SUBCHAPTER 1

GENERAL PROVISIONS

§16-181-1 Authority. Authority to adopt rules by the department of commerce and consumer affairs, hereinafter referred to as "department", is found in chapter 481I, Hawaii Revised Statutes. [Eff 3/3/97; comp 10/8/05] (Auth: HRS §481I-4) (Imp: HRS §481I-4)

§16-181-2 Objective. These rules are intended to clarify and implement chapter 481I, HRS, so that the provisions assist consumers who purchase or lease motor vehicles in this State in resolving their good faith motor vehicle warranty complaints with manufacturers. [Eff 3/3/97; comp 10/8/05] (Auth: HRS §481I-4) (Imp: HRS §481I-4)

§16-181-3 Computation of time. In computing any period of time prescribed or allowed by these rules, the day of the act from which the designated period of time begins to run shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday, or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, nor legal holiday. As used in these rules, "legal holiday" means those days designated in section 8-1, HRS. [Eff 3/3/97; comp 10/8/05] (Auth: HRS §481I-4) (Imp: HRS §481I-4)

SUBCHAPTER 2

ADMINISTRATION OF
STATE CERTIFIED ARBITRATION PROGRAM ("SCAP")

§16-181-4 Appointment of program administrator. (a) The department may contract with an independent arbitration program for annual term appointments. The following criteria shall be considered in evaluating the suitability of independent arbitration mechanisms: capability, objectivity, experience, nonaffiliation with manufacturers of or dealers in new motor vehicles, reliability, financial stability, and fee structure.

§181-4

(b) The department shall give public notice according to applicable law inviting any interested qualified party to apply in writing for the position of program administrator.

(c) Upon a vacancy occurring prior to the expiration of a program administrator's term, the department shall take appropriate steps to assure the continued administration of the program. [Eff 3/3/97; comp 10/8/05] (Auth: HRS §481I-4) (Imp: HRS §481I-4) (Imp: HRS §481I-4)

§16-181-5 Program administrator's duties. The program administrator shall provide and perform arbitration of disputes initiated pursuant to section 481I-3, HRS, as specified in the Agreement for Arbitration Services Contract entered into between the administrator and the State of Hawaii. The administrator's duties under the contract include, but are not limited to, the following:

- (1) Provide a training program to its arbitrators to enable them to participate in SCAP with a full understanding of the objectives and requirements of the program;
- (2) Receive and process all information provided by the parties to the arbitration in order that the dispute may be resolved as fairly and quickly as possible;
- (3) Effect a resolution of the case through an arbitrator's decision which shall be transmitted, through the administrator, to the manufacturer and the consumer no later than forty-five days after the initiation of the consumer's case into the arbitration process;
- (4) Provide written reports to the department on a quarterly basis, regarding the status of the program and statistics as to the number and outcome of all arbitrations initiated; and
- (5) Initiate and utilize a trust account for the acceptance of initial filing fees payable by the manufacturer and consumer. [Eff 3/3/97; comp 10/8/05] (Auth: HRS §481I-4) (Imp: HRS §481I-4)

§16-181-6 Setting arbitrator stipend. The director of the department, in his or her discretion, may establish a stipend amount to be paid to the arbitrator. [Eff 3/3/97; comp 10/8/05] (Auth: HRS §481I-4) (Imp: HRS §481I-4)

SUBCHAPTER 3

FILING OF COMPLAINTS BY CONSUMERS

§16-181-7 Consumer's demand for arbitration. (a) The department shall prescribe and make available through the program administrator, a form entitled, "Demand for Arbitration", hereinafter referred to as "demand form". The demand form may be obtained by telephone request to the program administrator, and the completed form shall be submitted to the program administrator.

(b) The program administrator shall provide information concerning the SCAP's procedures and forms to any person requesting information or assistance.

(c) To apply for arbitration under SCAP, a consumer shall complete and submit to the program administrator an original and two copies of the demand form and three copies each of documents which shall include, but not be limited to, the sales contract, repair orders, warranty, and correspondence with the manufacturer.

(d) Consumers wishing a hearing on documents only shall so indicate on the demand form.

(e) Upon receipt of a properly completed demand form with attachments, and upon determination after initial screening that the SCAP has jurisdiction over the matter, the program administrator shall initiate a case by date-stamping the form and assigning a case number. [Eff 3/3/97; comp 10/8/05] (Auth: HRS §481I-4) (Imp: HRS §481I-4)

§16-181-8 Filing fees. (a) A consumer who submits a demand form shall pay a filing fee in the amount of \$50. The consumer shall be notified of this requirement in the demand form referenced in section 16-181-7.

(b) Payment of the consumer's filing fee shall be by cash, personal check, certified check, cashier's check, or money order and shall be submitted to the program administrator at the same time the demand form is submitted.

(c) The consumer's \$50 filing fee shall be refunded if the final decision by the arbitrator is awarded in favor of the consumer.

(d) The manufacturer, upon notification that a demand form has been processed, shall pay a filing fee in the amount of \$200 no later than ten days from the date of the receipt of the notification.

§181-8

(e) Failure of the manufacturer to timely remit the prescribed filing fee shall be considered a default pursuant to section 16-181-20. [Eff 3/3/97; comp 10/8/05] (Auth: HRS §481I-4) (Imp: HRS §481I-4)

§16-181-9 Manufacturer's statement. The department shall prescribe and make available through the program administrator a form entitled "Manufacturer's Statement". After a case has been initiated, the program administrator shall mail the manufacturer a notification of the demand for arbitration, a copy of the consumer's demand form and attachments, and a manufacturer's statement form. The manufacturer shall submit to the program administrator three copies of the completed manufacturer's statement within ten days from the date of the receipt of the notification. The manufacturer shall also submit three copies each of documents which shall include, but not be limited to, the warranty, the service history of the vehicle, and a signed copy of the statement of consumer's lemon law rights. [Eff 3/3/97; comp 10/8/05] (Auth: HRS §481I-4) (Imp: HRS §481I-4)

SUBCHAPTER 4

SCHEDULING AND NOTIFICATION OF ARBITRATION HEARING

§16-181-10 Notification by manufacturers to SCAP. Each manufacturer of motor vehicles sold in Hawaii shall forward to the department, in writing within thirty days after the effective date of these rules, the name, address, and telephone number of the person designated to receive notices under the program. The information shall be presumed correct unless updated by the manufacturer. Failure to update the information will result in notices under this chapter being mailed to the manufacturer's last known address. [Eff 3/3/97; comp 10/8/05] (Auth: HRS §481I-4) (Imp: HRS §481I-4)

§16-181-11 Assignment of arbitrator. (a) After a case has been initiated, the program administrator shall assign an arbitrator to hear and decide the case.

(b) The assigned arbitrator shall not have any bias, any financial or personal interest in the outcome of the hearing, or have a pending claim against a manufacturer. The assigned arbitrator shall not have any current connection

to the sale or manufacture of new motor vehicles so as to create a bias, as determined by the program administrator. The assigned arbitrator shall not be employed by a manufacturer, a motor vehicle dealer, or the consumer, or be a staff person or decision maker for a manufacturer-established program.

(c) If any arbitrator should resign, die, withdraw, be disqualified by the program administrator, or be otherwise unable to perform the duties of the position, the administrator shall assign another arbitrator to the case, and the period to render a decision may be extended if necessary. If the forty-five day period must be extended, to the extent possible, the program administrator shall obtain the written consent from the parties.

(d) Arbitrators shall undergo training established by the department and the program administrator. This training shall include procedural techniques, the duties and responsibilities of arbitrators under the program, the substantive portions of chapter 481I, HRS, and any rules adopted thereunder. [Eff 3/3/97; comp 10/8/05] (Auth: HRS §481I-4) (Imp: HRS §481I-4)

§16-181-12 Notice of arbitration hearing. (a) The program administrator shall set the time, place, and date of the hearing.

(b) Arbitration hearings shall be held at hearing sites which shall be determined by the program administrator. Consideration as to the convenience of both the consumer and the manufacturer may be made, and the program administrator may schedule the hearing to take place on a neighbor island if such a location is feasible and would be convenient for the parties involved.

(c) The program administrator shall notify the parties of the date, time, and location of the scheduled arbitration proceeding at least five days before the date of the hearing.

(d) A notice of arbitration shall be sent by certified mail to the consumer and to the manufacturer. General information about the arbitration process shall be included with the notice. Notices shall also be provided to attorneys of record. The notice shall include, but not be limited to, the following information:

- (1) A statement of the date, time, and place of the scheduled hearing;
- (2) The name of the arbitrator to whom the case has been assigned;
- (3) A statement of the legal authority and jurisdiction under which the hearing is to be held;
- (4) A statement that failure to attend may result in a dismissal of the case or a decision in favor of the other side;

§181-12

- (5) A statement that any ex parte communication to the arbitrator about any matter concerning the case is strictly forbidden; and
- (6) The address of the office to which all requests, communications, or correspondence concerning the hearing should be directed.
- (e) The program administrator shall provide the assigned arbitrator copies of all correspondence to and from the parties.
- (f) A manufacturer may present its case by telephone, provided that written notice is given to the program administrator at the time the manufacturer's statement is timely filed. Any long distance telephone charges shall be paid by the manufacturer. [Eff 3/3/97; am and comp 10/8/05] (Auth: HRS §481I-4) (Imp: HRS §481I-4)

§16-181-13 Waiver of notice requirements. If notice is not provided in the manner set forth in section 16-181-12, or if the notice provided is defective in any other way, and all parties nevertheless appear at the hearing, the arbitrator shall inquire on the record whether such parties are willing to waive their rights set forth in section 16-181-12. If the arbitrator is satisfied that an informed and intelligent consent is obtained from all parties who were not properly noticed, the hearing may proceed. If any party refuses to consent to a waiver, the hearing shall be continued with the proper notice of the rescheduled hearing provided to all parties. If the continuance results in the forty-five day deadline passing, each party shall sign a written statement agreeing to the extension of time. [Eff 3/3/97; comp 10/8/05] (Auth: HRS §481I-4) (Imp: HRS §481I-4)

SUBCHAPTER 5

PRE-HEARING PROCEDURES

§16-181-14 Manufacturer's request for viewing of motor vehicle. (a) A manufacturer may request a viewing of the consumer's motor vehicle to aid in preparation of its case.

(b) The manufacturer and the consumer shall attempt to arrange a mutually agreeable time and location for the viewing. If, after reasonable good faith attempts to arrange a viewing, a mutually agreeable time and location are not established, the manufacturer may request that the program administrator set a time and location for viewing.

(c) The program administrator, upon the request, may 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.

(d) The viewing does not constitute another attempt to repair the vehicle, and no repair procedures shall be conducted.

(e) 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 made available no later than three business days before the date of the hearing. [Eff 3/3/97; comp 10/8/05] (Auth: HRS §481I-4) (Imp: HRS §481I-4)

§16-181-15 Availability of witness and document subpoenas. (a) Subpoenas may be issued by the arbitrator through the program administrator. Subpoenas requiring the attendance of witnesses or production of records, memoranda, or tangible things at the designated place of hearing, for the purpose of taking the testimony of such witness or inspection of documents, shall be issued upon written application to the arbitrator by any party.

(b) The application for a subpoena shall state at least the following:

- (1) The name and address of the witness;
- (2) The purpose for which the witness or material is sought;
- (3) The time and place of the hearing for the witness to appear or produce the material;
- (4) The name of the party requesting the subpoena;
- (5) The address at which the subpoena shall be served; and
- (6) A detailed description of any documents to be brought by the witness.

(c) The subpoena must be issued sufficiently in advance of the scheduled hearing to allow service before the hearing.

(d) A subpoena may be served by any person authorized by law to serve process or by any person who is not a party and who is not less than eighteen years of age. Service may be made by delivery of a copy to the person named in the subpoena. Proof of the service shall be made by affidavit of the person making service. The affidavit shall be filed with the program administrator within three days of service of the subpoena.

§181-15

(e) Service may also be made by certified mail to addressee only, return receipt requested. Proof of the service shall be by return receipt signed by the addressee. The signed return receipt shall be filed with the program administrator within three days after being returned to the party who requested the subpoena.

(f) The party requesting the subpoena will be required to pay the reasonable costs of service. [Eff 3/3/97; comp 10/8/05] (Auth: HRS §481I-4) (Imp: HRS §481I-4)

§16-181-16 Witness fees. The requesting party shall pay any witness fees. Witness fees, other than expert witness fees, shall be tendered at the time of service of a subpoena. [Eff 3/3/97; comp 10/8/05] (Auth: HRS §481I-4) (Imp: HRS §481I-4)

§16-181-17 Continuances or extensions of time. (a) The program administrator or the assigned arbitrator may, upon request of a party, continue a hearing or extend the time for issuance of a decision for good cause.

(b) Requests for continuance or extension of time shall state the reasons for the request and shall be made orally or in writing at least two business days before the date of the hearing.

(c) A request for continuance or extension of time by either party shall constitute a waiver of the time period set forth in section 481I-3(i), HRS, for holding the hearing and rendering a decision.

(d) Upon receipt of a request for continuance or extension of time before the date of the hearing, the program administrator shall ask the opposing party for its response. The hearing shall not be rescheduled unless both parties have agreed to the continuance or extension of time in writing.

(e) Notice of any new hearing date shall be provided to the parties by any means appropriate for the time then remaining before the hearing. [Eff 3/3/97; comp 10/8/05] (Auth: HRS §481I-4) (Imp: HRS §481I-4)

SUBCHAPTER 6

HEARINGS

§16-181-18 Parties; appearances; interpreters. (a) Parties in arbitration proceedings are consumers and manufacturers.

(b) Any person compelled to appear, or who appears voluntarily, at the arbitration proceeding may, at the party's own expense, be accompanied, represented, or advised by an attorney or other representative. Any party choosing to be so represented should notify the program administrator of such representation.

(c) Any party desiring an interpreter shall make the necessary arrangements and shall inform the program administrator that an interpreter will be present at the hearing. [Eff 3/3/97; comp 10/8/05] (Auth: HRS §481I-4) (Imp: HRS §481I-4)

§16-181-19 Settlement before the hearing. If there is a settlement before the hearing, the parties shall inform the program administrator by telephone and then in writing of the settlement. Upon confirming that a settlement has been reached, the program administrator shall close the file on the matter. [Eff 3/3/97; comp 10/8/05] (Auth: HRS §481I-4) (Imp: HRS §481I-4)

§16-181-20 Defaults; dismissals. (a) A party who fails to appear at the arbitration hearing, who fails to pay the applicable filing fee, or who fails to submit its response will be considered in default.

(b) If a manufacturer defaults by failing to appear, the arbitration hearing shall proceed as scheduled, and the arbitrator shall make a decision based on the evidence presented by the consumer and any documents contained in the record.

(c) If a manufacturer defaults by failing to pay the \$200 filing fee or by failing to submit its response within ten days from receipt of the notification of the consumer's demand for arbitration, it is within the discretion of the arbitrator whether the manufacturer may present its own evidence and if so, what weight any such evidence may be given.

(d) If a consumer defaults, the hearing shall be cancelled, and the case shall be dismissed with prejudice.

(e) An arbitrator's decision after a manufacturer defaults shall be considered final unless the manufacturer or consumer contacts the program administrator within seven days of receipt of the decision to request that the decision be set aside. The request shall include evidence of an unforeseeable circumstance that resulted in the party's failure to appear. Such request shall be considered by the assigned arbitrator, who may hear arguments from both parties on the request to set aside the decision. Arguments may be conducted by telephone conference.

(f) If the decision is set aside, a new hearing shall be scheduled as soon as is practicable after the original hearing date. Notice of the rescheduled hearing shall be made to the parties. [Eff 3/3/97; comp 10/8/05] (Auth: HRS §481I-4) (Imp: HRS §481I-4)

§16-181-21 Powers and duties of the arbitrator. (a) The assigned arbitrator shall conduct a fair, impartial, and orderly hearing, taking all necessary action to avoid delay in the disposition of proceedings. The arbitrator shall have all powers necessary to meet these ends, including, but not limited to, the power to:

- (1) Administer oaths or affirmations to witnesses;
- (2) Consider any and all evidence offered by the parties which the arbitrator deems necessary to an understanding and development of the facts and a determination of the dispute;
- (3) Regulate the course of the hearing and the conduct of the parties, their representatives, and witnesses;
- (4) Inspect or ride the consumer's vehicle, if deemed necessary by the arbitrator, and if requested by either party, during the course of a hearing, or at such other time as may be determined; and
- (5) Construe and apply the provisions of chapter 481I, HRS, and rules adopted thereunder.

(b) Arbitrators shall maintain their impartiality throughout the course of the proceedings and rendering of their decisions.

(c) There shall be no ex parte communication regarding the merits of a case between the parties, between a person who has a direct or indirect interest in the case and a party, or between a party and the arbitrator any time before the rendering of a decision. Any oral or written communications among the parties and the arbitrator shall be channeled through the program administrator.

(d) Any arbitrator who has received an ex parte communication or who has received a threat or offer of reward by any person with respect to the conduct or outcome of an arbitration proceeding, shall place in the record the following:

- (1) All written communications received;
- (2) All written responses to such communications; and
- (3) A memorandum stating the substance of any and all oral communications received and all oral responses made.

(e) Any arbitrator who has received an ex parte communication shall notify the program administrator of the communication. If the communication was received after the hearing and before an award has been rendered:

- (1) The parties shall be notified of the communication;
- (2) The communication shall be made a part of the record; and
- (3) The parties shall be advised that they may file a response to the communication.

(f) If deemed necessary by the program administrator or the department, to eliminate the effect of the communication, the arbitrator shall recuse himself or herself or shall be disqualified and a substitute arbitrator assigned. [Eff 3/3/97; comp 10/8/05] (Auth: HRS §481I-4) (Imp: HRS §481I-4)

§16-181-22 Conduct of the hearing. (a) The hearing shall be conducted to encourage a full and complete disclosure of the facts and to afford each party a full and equal opportunity to present the party's evidence.

(b) Hearings shall be open to the public, provided that the arbitrator may exclude any observer, witness, or party who is disruptive to the conduct of the hearing. The person may be readmitted upon the cessation of disruptive conduct and upon reassurance that the person's conduct will not continue.

(c) The arbitrator shall conduct the hearing and shall take whatever action is necessary to maintain decorum and ensure that the hearing proceeds in an equitable, orderly, and expeditious manner. All parties shall abide by the arbitrator's ruling.

(d) Each party shall have the right to present evidence, cross-examine witnesses, enter objections, and assert all other rights essential to a fair hearing.

(e) Oral testimony shall be taken upon oath.

(f) The arbitrator shall open the hearing by introducing the parties and shall set forth the procedures to be followed during the hearing.

§181-22

(g) The consumer shall present the consumer's evidence and witnesses, then the manufacturer shall present its evidence and witnesses. The arbitrator may vary the presentation of evidence if deemed appropriate to more fully develop the facts.

(h) Each party may question the other after each presentation, and may question each witness after testimony. The arbitrator may direct questions to any party or witness at any time. The arbitrator shall restrict the inquiry of any person to the scope of the proceedings.

(i) Each party shall be allowed to present a closing argument. [Eff 3/3/97; comp 10/8/05] (Auth: HRS §481I-4) (Imp: HRS §481I-4)

§16-181-23 Evidence. (a) The formal rules of evidence shall not apply. The parties may introduce any relevant evidence which is commonly relied upon by reasonably prudent people in the conduct of their affairs. The arbitrator may exclude irrelevant, immaterial, or unduly repetitious evidence.

(b) Before the hearing or at the hearing, the arbitrator or either party may request that the arbitrator inspect or ride the consumer's vehicle. If requested, both parties shall be afforded the opportunity to be present and accompany the arbitrator on the inspection or ride.

(c) The arbitrator may receive and consider evidence of a witness not present at the hearing by affidavit and shall give any affidavit such weight as may be deemed appropriate, after consideration of any objections made to its submission. [Eff 3/3/97; comp 10/8/05] (Auth: HRS §481I-4) (Imp: HRS §481I-4)

§16-181-24 Arbitrator's records. Any records or documents submitted by the parties to the arbitrator which are not on file with the program administrator shall be turned in to the administrator after the decision has been issued. [Eff 3/3/97; comp 10/8/05] (Auth: HRS §481I-4) (Imp: HRS §481I-4)

§16-181-25 Settlement at the hearing. If the arbitrator facilitates a settlement at the hearing, the terms of the agreement shall be written down at the hearing and signed and dated by both parties. The terms shall include how the refund and the mileage offset were calculated, if applicable. The terms shall

also include the date for compliance with the settlement which the parties must abide by. [Eff 3/3/97; comp 10/8/05] (Auth: HRS §481I-4) (Imp: HRS §481I-4)

SUBCHAPTER 7

ARBITRATOR'S DECISION

§16-181-26 Form and content of decision. (a) The arbitrator shall render a decision within forty-five days of the proper filing of the demand form with the program administrator. A decision may be rendered after the forty-five day period has passed only if the provisions of section 16-181-17 have been complied with.

(b) The decision shall be in writing, dated, and signed by the arbitrator. The date of the signature of the decision shall determine compliance with the forty-five day requirement unless otherwise waived in writing by both parties.

(c) If not otherwise specified in these rules, no other remedies aside from those specifically identified in section 481I-3(i), HRS, may be awarded to a consumer.

(d) The decision shall determine whether the consumer is entitled to relief pursuant to section 481I-3(i), HRS, and shall contain, but not be limited to, the following:

- (1) A statement of the program's jurisdiction;
- (2) Findings of fact necessary for resolution of the issues. Findings based upon stipulation of the parties shall be so designated;
- (3) A conclusion with supporting rationale of whether the standards for refund or replacement have been met;
- (4) An explanation as to whether the presumptions have been met, or whether a reasonable number of attempts have been made to conform the motor vehicle to the applicable express warranties and if not, any factors which mitigate against the necessity of meeting the presumptions;
- (5) A statement of the remedy granted by the arbitrator as provided for by section 481I-3(i), HRS, or a dismissal of the case if the consumer is not entitled to relief under the statute.

(e) If the consumer prevails and a refund is awarded, the decision shall include the calculations used to determine the monetary award and offset for use as set forth in sections 481I-2 and 481I-3(b), HRS.

(f) If the consumer prevails and a replacement vehicle is awarded, the decision shall include a calculation of the offset for use as set forth in sections 481I-2 and 481I-3(b), HRS.

(g) If the arbitrator finds that the motor vehicle has undergone excessive wear and tear unattributable to the nonconformity, the decision for consumer refund or replacement vehicle may include an offset for that damage in addition to the offset for use.

(h) If the consumer prevails, the decision shall include a provision for delivery of clear title to the manufacturer by the consumer, lienholder, or lessor as the case may be, and delivery of possession of the motor vehicle to the manufacturer by the consumer at a reasonable time and place, upon compliance with the decision by the manufacturer.

(i) Where applicable, the decision shall require that any action required by the manufacturer be completed within thirty days of receipt of the decision.

(j) Upon receipt of the decision from the arbitrator, the program administrator shall review the decision for completion, typographical errors, and mathematical accuracy. If errors or omissions are found, the program administrator shall inform the arbitrator, and corrections shall be made by the arbitrator.

(k) Once an arbitrator's decision has been reviewed and found acceptable, the program administrator shall send the parties copies of the decision by certified mail. The parties shall also be mailed compliance forms which shall be signed and returned to the program administrator within ten days after compliance with the decision has been completed.

(l) In cases where the consumer has elected "binding" arbitration, the arbitrator's decision shall be final and binding upon the parties unless modified or vacated under chapter 658A, HRS.

(m) In cases where the consumer has elected "nonbinding" arbitration, the non-prevailing party must either honor the decision or file for a trial de novo within thirty days of receipt of the arbitrator's decision. [Eff 3/3/97; am and comp 10/8/05] (Auth: HRS §481I-4) (Imp: HRS §481I-4)

§16-181-27 Hearing on documents only. If the hearing is on documents only, all documents shall be submitted to the program administrator no later than thirty days from the proper filing of the demand form with the program administrator. The arbitrator shall issue a timely decision based on all the documents submitted. The decision shall be issued within forty-five days of the filing date of the demand form. [Eff 3/3/97; comp 10/8/05] (Auth: HRS §481I-4) (Imp: HRS §481I-4)

§16-181-28 Technical corrections; rehearing. (a) Technical corrections, defined as corrections in computational, clerical, or typographical errors, or other minor corrections of errors arising from oversight or omission, may be achieved by the entry of an amended decision by the arbitrator within forty-five days of the proper filing of the demand form with the program administrator. Clarification of a decision may also be made in this manner.

(b) In a binding arbitration, if the forty-five day period has passed, a party who desires clarification or technical corrections in a decision must submit a written request to extend the arbitrator's jurisdiction to the program administrator within five days of receipt of the decision. The written request should explain in detail the correction or clarification being requested. The program administrator shall provide a copy of the written request to the opposing party. Only if the opposing party also submits a written request to extend the arbitrator's jurisdiction, shall the requests be forwarded to the arbitrator. The opposing party's written request to extend the arbitrator's jurisdiction must be received by the program administrator within five days after the opposing party's receipt of the copy of the original written request. Upon receipt of both parties' written requests to extend jurisdiction, the arbitrator may accept the reinstatement of jurisdiction. If the arbitrator's jurisdiction is reinstated and the decision is amended, the amended decision shall be served upon the parties by the program administrator in the manner specified in section 16-181-26(k).

(c) In a nonbinding arbitration, if the forty-five day period has passed, a party who desires clarification or technical corrections in a decision must submit a written request to extend the arbitrator's jurisdiction to the program administrator within five days of receipt of the decision. The program administrator shall provide a copy of the written request to the opposing party. The opposing party may submit a response if it so chooses. The original request and any response shall be forwarded to the arbitrator. Upon receipt of the original request and any response, the arbitrator may accept the reinstatement of

jurisdiction. If the arbitrator's jurisdiction is reinstated and the decision is amended, the amended decision shall be served upon the parties by the program administrator in the manner specified in section 16-181-26(k). [Eff 3/3/97; comp 10/8/05] (Auth: HRS §481I-4) (Imp: HRS §481I-4)

SUBCHAPTER 8

RECORDKEEPING

§16-181-29 Program administrator's records. (a) The program administrator shall maintain records of each dispute submitted to the SCAP. The program administrator shall submit a written report to the regulated industries complaints office of the department on a quarterly basis, regarding the status of the program and relevant statistics, including but not limited to, the following:

- (1) The number of arbitrations screened, initiated, heard, and resolved;
- (2) A brief synopsis of each decision, including the remedies awarded;
- (3) The length of time elapsed from the filing date of the demand form to the date of the arbitrator's written award; and
- (4) The names of the arbitrators hearing cases and a list, categorized by arbitrator, of cases heard and decisions rendered.

(b) The program administrator shall turn over to the regulated industries complaints office of the department the files pertaining to each arbitration within sixty days after issuance of the award. [Eff 3/3/97; comp 10/8/05] (Auth: HRS §481I-4) (Imp: HRS §481I-4)

§16-181-30 Department's records. The department may compile on an annual basis a summary of the resolutions for each dispute submitted to the SCAP, including statistics for each manufacturer. [Eff 3/3/97; comp 10/8/05] (Auth: HRS §481I-4) (Imp: HRS §481I-4)

SUBCHAPTER 9

LEASED CARS

§16-181-31 Refunds. (a) When an arbitrator awards a refund for a leased car, a manufacturer shall refund to the consumer the following: the cash down payment, any security deposit, all cash charges on signing the lease, all lease payments made, and all collateral and incidental charges, less a reasonable offset for the consumer's use of the motor vehicle[, and less any finance or interest charges]. The security deposit may be refunded through the lessor, if applicable.

(b) The reasonable offset for use shall be equal to one per cent of the lease price for every thousand miles of use. The lease price means the aggregate of the lessor's actual purchase cost; the freight cost, if applicable; the cost for accessories, if applicable; and any other incidental fee paid by the lessor. If this information is not provided at the hearing, the arbitrator may use the "agreed upon value of the vehicle" as stated in the lease to calculate the reasonable offset for use. Reasonable offset for use means the number of miles attributable to a consumer up to the date of the third repair attempt of the same nonconformity which is the subject of the claim, the date of the first repair attempt of a nonconformity that is likely to cause death or serious bodily injury, or the date of the thirtieth cumulative business day when the vehicle is out of service by reason of repair of one or more nonconformities, whichever occurs first.

(c) The manufacturer shall refund to the leasing company the balance of the lease price, as that term is defined in this section, after the consumer's refund has been calculated.

(d) Once a decision for the consumer has been rendered by an arbitrator, the lease is terminated. No early termination penalties under the lease may be collected. [Eff 3/3/97; am and comp 10/8/05] (Auth: HRS §481I-4) (Imp: HRS §481I-4)

SUBCHAPTER 10

MISCELLANEOUS PROVISIONS

§16-181-32 Avoidance of liability. No manufacturer, or its authorized service agent, may refuse to examine or repair any nonconformity for the

purpose of avoiding responsibility under chapter 481I, HRS. [Eff 3/3/97; comp 10/8/05] (Auth: HRS §481I-4) (Imp: HRS §481I-4)

§16-181-33 Manufacturer's records. (a) It is the responsibility of the manufacturer, its agents, distributor, or authorized dealer to provide the consumer with the written notice described in section 481I-3(g), HRS, at the time of purchase of the motor vehicle. The consumer shall receive the signed original or a signed copy of the notice at the time of purchase.

(b) The distributor of the written notice shall maintain the signed original or signed copy of the notice for a period of at least two years. The manufacturer shall be asked to produce this record if a demand for arbitration is filed by a consumer.

(c) If the distributor of the written notice did not provide the consumer with a copy of the notice at the time of purchase, the time period within which the consumer is required to notify the manufacturer in writing of a nonconformity may be extended. [Eff 3/3/97; comp 10/8/05] (Auth: HRS §481I-4) (Imp: HRS §481I-4)

Amendments to and compilation of Chapter 16-181 Hawaii Administrative Rules, on the Summary page dated May 20, 2005, were adopted on May 20, 2005, following a public hearing held on May 20, 2005, after public notices were given in the Honolulu Star Bulletin, The Garden Island, the Hawaii Tribune-Herald, West Hawaii Today and The Maui News on April 18, 2005.

These rules shall take effect ten days after filing with the Office of the Lieutenant Governor.

/s/ Lawrence M. Reifurth
for MARK E. RECKTENWALD, Director
Department of Commerce and Consumer Affairs

APPROVED AS TO FORM: Date _____

/s/ Shari J. Wong
Deputy Attorney General

APPROVED: Date 9/20/05

/s/ Linda Lingle
LINDA LINGLE
Governor
State of Hawaii

Filed

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

Amendment and Compilation of Chapter 16-181
Hawaii Administrative Rules

May 20, 2005

SUMMARY

1. §16-181-12 is amended.
2. §16-181-26 is amended.
3. §16-181-31 is amended.
4. Chapter 181 is compiled.

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