

**WSR 09-22-043**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**EARLY LEARNING**

[Filed October 28, 2009, 8:57 a.m., effective December 1, 2009]

Effective Date of Rule: December 1, 2009.

Purpose: The department of early learning (DEL) is adopting changes to rules that help eligible parents obtain state-paid child care subsidies under the working connections child care (WCCC) and seasonal child care (SCC) programs.

The WCCC and SCC rules are consolidated into chapter 170-290 WAC. Seasonal child care rules in chapter 170-292 WAC are repealed.

Chapters 170-290 and 170-292 WAC were transferred to the department of early learning (DEL) from the department of social and health services (DSHS) when the legislature created DEL in 2006 by enacting chapter 265, Laws of 2006 (2SHB 2964). Both WAC chapters were outdated, and the rules did not reflect how the programs are operated nor the child care collective bargain[ing] agreement with the Service Employees International Union Local 925 (SEIU).

DEL is revising the child care subsidy rules in phases. The new, amended and repealed rules adopted herein represent the first phase. The rules are intended to:

- Be clearer and easier to understand;
- Make requirements in rule consistent with the current child care collective bargaining agreement where appropriate;
- Clarify DEL and DSHS roles in the WCCC program as provided in 2SHB 2964. DEL and DSHS operate this program jointly. DEL adopts WCCC policy and rules, while DSHS determines a family's eligibility and authorizes child care based on chapter 170-290 WAC, and processes subsidy payments to child care providers;
- Clarify the role of SCC contractors, which are local community agencies contracted by DEL to accept applications for SCC subsidies, and to determine family eligibility and SCC benefits;
- Change references to DSHS-related laws, rules and programs to DEL references where appropriate; and
- Make requirements consistent between the WCCC and SCC rules where appropriate.

The second phase of the DEL subsidy rule changes are planned to start shortly after these first-phase rules are adopted. Revisions in the second phase are expected to be more substantive than changes made in the first phase.

DEL plans to involve interested consumers, advocates, SEIU, DSHS and others in developing the second-phase subsidy rules. Draft materials will be circulated for informal public input before DEL prepares and files a formal proposed rule. To join a DEL mailing list of persons and groups interested in receiving information about the child care subsidy rule changes, please e-mail Rules@del.wa.gov or write to the DEL Rules Coordinator, P.O. Box 40970, Olympia, WA 98504-0970.

**Conversion Table: Revised and New WAC - to - Old or Repealed WAC.**

**Chapter 170-290 WAC**  
**WORKING CONNECTIONS AND SEASONAL CHILD**  
**CARE SUBSIDY PROGRAMS**

**PART I. INTRODUCTION**

REVISED WAC	OLD WAC
<b>170-290-0001</b> Purpose and intent.	<b>170-290-0001</b> What is the purpose of the working connections child care program?
<b>170-290-0002</b> Scope of agency responsibilities. New	<b>No comparable WAC.</b>
<b>170-290-0003</b> Definitions. New	<b>No comparable WAC.</b>

**PART II. WORKING CONNECTIONS CHILD CARE**  
**Eligibility Requirements**

REVISED WAC	OLD WAC
<b>170-290-0005</b> Consumers.	<b>170-290-0005</b> Who is considered a consumer for the WCCC program?
<b>Merged with 170-290-0005.</b>	<b>170-290-0010</b> What makes me eligible for WCCC benefits? <b>Repealed</b>
<b>170-290-0012</b> Verifying consumers' information.	<b>170-290-0012</b> When do I need to verify information?
<b>170-290-0015</b> Eligibility—Family size.	<b>170-290-0015</b> How does the WCCC program determine my family size for eligibility?
<b>170-290-0020</b> Eligibility—Special circumstances.	<b>170-290-0020</b> Are there special circumstances that might affect my WCCC eligibility?

**Rights and Responsibilities**

REVISED WAC	OLD WAC
<b>170-290-0025</b> Consumers' rights.	<b>170-290-0025</b> What rights do I have when I apply for or receive WCCC benefits?
<b>170-290-0030</b> Consumers' responsibilities.	<b>170-290-0030</b> What must I do when I apply for or receive WCCC benefits?
<b>170-290-0031</b> Notification of changes.	<b>170-290-0031</b> What changes do I need to report when I apply for or receive WCCC?

REVISED WAC	OLD WAC
<b>170-290-0032</b> Failure to report changes.	<b>170-290-0032</b> What are the consequences if I do not report changes within the specified time frames?
<b>170-290-0035</b> DSHS's responsibilities to consumers.	<b>170-290-0035</b> What responsibilities does the WCCC program staff have?

**Approved Activities**

REVISED WAC	OLD WAC
<b>170-290-0040</b> Approved activities for TANF consumers.	<b>170-290-0040</b> If I receive a temporary assistance for needy families (TANF) grant, what activities must I be involved in to be eligible for WCCC benefits?
<b>170-290-0045</b> Approved activities for consumers not receiving TANF.	<b>170-290-0045</b> If I don't get a temporary assistance for needy families (TANF) grant, what activities must I be involved in to be eligible for WCCC benefits?
<b>170-290-0050</b> Additional requirements for self-employed WCCC consumers.	<b>170-290-0050</b> If I am self-employed, can I get WCCC benefits?
<b>170-290-0055</b> Receipt of benefits when not engaged in approved activities.	<b>170-290-0055</b> If I am not working or in an approved activity right now, can I get WCCC benefits?

**Income and Copayment Calculations**

REVISED WAC	OLD WAC
<b>170-290-0060</b> Countable income.	<b>170-290-0060</b> What income does the WCCC program count when determining eligibility and copayments?
<b>170-290-0065</b> Calculation of income.	<b>170-290-0065</b> How does the WCCC program define and use my income?
<b>170-290-0070</b> Excluded income and deductions.	<b>170-290-0070</b> What income types and deductions does the WCCC program disregard when figuring my income eligibility and for WCCC benefits?
<b>170-290-0075</b> Determining income eligibility and copayment amounts.	<b>170-290-0075</b> What steps does the WCCC program take to determine my family's WCCC eligibility and copayment amount?

REVISED WAC	OLD WAC
<b>170-290-0082</b> Eligibility period.	<b>170-290-0082</b> When I am approved, how long is my eligibility period?
<b>170-290-0085</b> Change in copayment.	<b>170-290-0085</b> When might my WCCC copayment change?
<b>170-290-0090</b> Minimum copayment.	<b>170-290-0090</b> When do I pay the minimum copayment?

**Start Dates and Eligibility Period**

REVISED WAC	OLD WAC
<b>170-290-0095</b> When WCCC benefits start for TANF consumers.	<b>170-290-0095</b> If I receive temporary assistance for needy families (TANF) and I am determined eligible for WCCC, when do my benefits begin?
<b>170-290-0100</b> When WCCC benefits start for consumers not receiving TANF.	<b>170-290-0100</b> If I do not receive temporary assistance for needy families (TANF) and I am determined eligible for WCCC, when do my benefits begin?
<b>Renumbered as 170-290-0109.</b>	<b>170-290-0105</b> How do I reapply for WCCC when my eligibility period is ending? <b>Repealed</b>
<b>170-290-0107</b> Denial of benefits—Date of redetermining eligibility.	<b>170-290-0107</b> When do I receive a denial letter?
<b>Merged with 170-290-0107.</b>	<b>170-290-0108</b> What happens if I meet eligibility requirements after I receive a denial letter? <b>Repealed</b>
<b>170-290-0109</b> New eligibility period. <b>New</b>	<b>Formerly 170-290-0105.</b>
<b>170-290-0110</b> Termination of and redetermining eligibility for benefits.	<b>170-290-0110</b> What circumstances might affect my eligibility for WCCC benefits and when might I be eligible again?

**Notice**

REVISED WAC	OLD WAC
<b>170-290-0115</b> Notice of payment changes.	<b>170-290-0115</b> When does the WCCC program provide me with advance and adequate notice of payment changes?

REVISED WAC	OLD WAC
<b>170-290-0120</b> When notice of payment changes is not required.	<b>170-290-0120</b> When doesn't advance and adequate notice of payment changes apply to me?

**Eligible Child Care Providers**

REVISED WAC	OLD WAC
<b>170-290-0125</b> Eligible child care providers.	<b>170-290-0125</b> What child care providers can I choose under the WCCC program?
<b>170-290-0130</b> In-home/relative providers—Eligibility.	<b>170-290-0130</b> What in-home/relative providers can I choose under the WCCC program?
<b>170-290-0135</b> In-home/relative providers—Information provided to DSHS.	<b>170-290-0135</b> When I choose an in-home/relative provider, what information must I give the department?
<b>170-290-0138</b> In-home/relative providers—Responsibilities.	<b>170-290-0138</b> What responsibilities does my eligible in-home/relative provider have?
<b>170-290-0140</b> In-home/relative providers—Ineligibility.	<b>170-290-0140</b> When is my in-home/relative provider not eligible for WCCC payment?
<b>170-290-0143</b> In-home/relative providers—Background checks—Required persons.	<b>170-290-0143</b> Who must have a background check for the WCCC program and how often is the check done?
<b>170-290-0145</b> In-home/relative providers—Background checks—Reasons and notification.	<b>170-290-0145</b> Why is a background check required and will I be notified of the results?
<b>170-290-0150</b> In-home/relative providers—Background checks—Included information and sources.	<b>170-290-0150</b> What information does the background check contain and where does it come from?
<b>170-290-0155</b> In-home/relative providers—Background checks—Subsequent steps.	<b>170-290-0155</b> What happens after the WCCC program receives the background information?
<b>170-290-0160</b> In-home/relative providers—Background checks—Disqualified providers.	<b>170-290-0160</b> What convictions would cause the WCCC program to permanently disqualify my in-home/relative provider?

REVISED WAC	OLD WAC
<b>170-290-0165</b> In-home/relative providers—Background checks—Other disqualifying information.	<b>170-290-0165</b> Is there other background information or convictions that will disqualify my in-home/relative provider?
<b>170-290-0167</b> In-home/relative providers—Background checks—Disqualified person living with the provider.	<b>170-290-0167</b> What happens if my in-home/relative provider, who provides care in their home, is disqualified based solely on the disqualifying background of an individual living with that provider?

**Subsidy Rates and Fees**

REVISED WAC	OLD WAC
<b>170-290-0180</b> WCCC subsidy rates—Effective date.	<b>170-290-0180</b> When are the WCCC program subsidy rates in this chapter effective?
<b>170-290-0185</b> WCCC subsidy rates—Five-year-old children.	<b>170-290-0185</b> How does the WCCC program set rates when my child is five years old?
<b>170-290-0190</b> WCCC authorized and additional payments—Determining units of care.	<b>170-290-0190</b> What does the WCCC program pay for and when can the program pay more?
<b>170-290-0200</b> Daily child care rates—Licensed or certified child care centers and DEL contracted seasonal day camps.	<b>170-290-0200</b> What daily rates does DSHS pay for child care in a licensed or certified child care center or DSHS contracted seasonal day camps?
<b>170-290-0205</b> Daily child care rates—Licensed or certified family home child care providers.	<b>170-290-0205</b> What daily rates does DSHS pay for child care in a licensed or certified family home child care?
<b>170-290-0220</b> Special needs rates—Qualification.	<b>170-290-0220</b> How does DSHS determine that my child qualifies for a special needs daily rate?
<b>170-290-0225</b> Special needs rates—Child care centers and seasonal day camps.	<b>170-290-0225</b> What is the additional subsidy daily rate for children with special needs in a licensed or certified child care center or DSHS contracted seasonal day camp?

REVISED WAC	OLD WAC
<b>170-290-0230</b> Special needs rates—Family home child care providers.	<b>170-290-0230</b> What is the additional subsidy daily rate for children with special needs in a licensed or certified family home child care?
<b>170-290-0235</b> Special needs rates—In-home/relative providers.	<b>170-290-0235</b> What is the DSHS in-home/relative child care daily rate for children with special needs?
<b>170-290-0240</b> Child care subsidy rates—In-home/relative providers.	<b>170-290-0240</b> What is the DSHS child care subsidy rate for in-home/relative child care and how is it paid?
<b>170-290-0245</b> Registration fees.	<b>170-290-0245</b> When can the WCCC program authorize payment of fees for registration?
<b>170-290-0247</b> Field trip fees.	<b>170-290-0247</b> When can the WCCC program authorize payment for field trip fees?
<b>170-290-0249</b> Nonstandard hours bonus. <b>New</b>	<b>No comparable WCCC WAC.</b>

**Payment Discrepancies**

REVISED WAC	OLD WAC
<b>170-290-0266</b> Payment discrepancies—Generally. <b>New</b>	No comparable WCCC WAC.
<b>170-290-0267</b> Payment discrepancies—Provider underpayments. <b>New</b>	No comparable WCCC WAC.
<b>170-290-0268</b> Payment discrepancies—Provider overpayments. <b>New</b>	No comparable WCCC WAC.
<b>170-290-0269</b> Payment discrepancies—Consumer underpayments. <b>New</b>	No comparable WCCC WAC.
<b>Merged with 170-290-0268.</b>	<b>170-290-0270</b> What is a WCCC overpayment and what can be included? <b>Repealed</b>
<b>170-290-0271</b> Payment discrepancies—Consumer overpayments.	<b>170-290-0271</b> When might I get an overpayment?
<b>Merged with 170-290-0268.</b>	<b>170-290-0273</b> When would my licensed or certified provider or DSHS contracted seasonal day camp get an overpayment? <b>Repealed</b>

REVISED WAC	OLD WAC
<b>Merged with 170-290-0268.</b>	<b>170-290-0274</b> When would my in-home/relative provider get an overpayment? <b>Repealed</b>
<b>170-290-0275</b> Payment discrepancies—Providers covered under collective bargaining. <b>New</b>	No comparable WCCC WAC.

**Administrative Hearings - WCCC**

REVISED WAC	OLD WAC
<b>170-290-0280</b> Right to request an administrative hearing. <b>New</b>	<b>170-290-0260</b> Who has a right to ask for a hearing and how do they ask for one? <b>Repealed</b>
<b>170-290-0285</b> Receipt of WCCC benefits pending the outcome of an administrative hearing. <b>New</b>	<b>170-290-0265</b> When can I get WCCC benefits pending the outcome of a hearing? <b>Repealed</b>

**PART III - SEASONAL CHILD CARE**

**Introduction**

NEW OR REVISED WAC	REPEALED WAC
<b>170-290-0001</b> Purpose and intent. <b>Revised</b> <b>170-290-3501</b> Program funding—Waiting lists. <b>New</b>	<b>170-292-0001</b> Introduction.
<b>170-290-0001</b> Purpose and intent. <b>Revised</b>	<b>170-292-0003</b> What is the purpose of the seasonal child care program?
<b>170-290-3510</b> SCC definitions. <b>New</b>	<b>No comparable SCC WAC.</b>

**Eligibility Requirements**

NEW WAC	REPEALED WAC
<b>170-290-3520</b> Eligible consumers.	<b>170-292-0005</b> Am I eligible for the SCC program? <b>170-292-0025</b> What additional criteria does my family need to meet to be eligible for SCC program subsidies?
<b>170-290-3530</b> Verifying consumers' information.	<b>170-292-0065</b> What responsibilities do I have when I apply for or receive SCC program subsidies?

NEW WAC	REPEALED WAC
<b>170-290-3540</b> Eligibility—Family size.	<b>170-292-0010</b> How is my family size defined for SCC program eligibility purposes?
<b>170-290-3550</b> Eligibility—Special circumstances.	<b>170-292-0015</b> Are there special circumstances when I might be eligible for the SCC program?
<b>170-290-3555</b> Eligibility—Approved activities.	<b>170-292-0020</b> What activities must I be involved in to be eligible for the SCC program?

**Rights and Responsibilities**

NEW WAC	REPEALED WAC
<b>170-290-3560</b> Consumers' rights.	<b>170-292-0060</b> What rights do I have when I apply for or receive SCC program subsidies?
<b>170-290-3565</b> Consumers' responsibilities.	<b>170-292-0065</b> What responsibilities do I have when I apply for or receive SCC program subsidies? <b>170-292-0102</b> When can my child care provider charge me more than the amount authorized by the SCC program?
<b>170-290-3570</b> Notification of changes.	<b>170-292-0065</b> What responsibilities do I have when I apply for or receive SCC program subsidies?
<b>170-290-3580</b> Failure to report changes.	<b>170-292-0155</b> What is an overpayment and when might I receive one?
<b>170-290-3590</b> SCC contractor's responsibilities to consumers.	<b>170-292-0070</b> Who are the SCC program staff and what responsibilities do they have?

**Income and Copayment Calculations**

NEW WAC	REPEALED WAC
<b>170-290-3610</b> Countable income.	<b>170-292-0035</b> What income is counted when determining eligibility and copayment for the SCC program?
<b>170-290-3620</b> Calculation of income.	<b>170-292-0040</b> How is my family's average monthly income calculated for the SCC program?

NEW WAC	REPEALED WAC
<b>170-290-3630</b> Excluded income and deductions.	<b>170-292-0045</b> What is not counted, or is deducted, when figuring income eligibility for the SCC program?
<b>170-290-3640</b> Determining income eligibility and copayment.	<b>170-292-0050</b> How is my family's income eligibility and copayment amount determined for the SCC program?
<b>170-290-3650</b> Change in copayment.	<b>170-292-0055</b> When might my SCC program copayment change?
<b>170-290-3660</b> Eligibility period.	<b>170-292-0135</b> When are my eligibility and copayment information for the SCC program looked at?

**Start Dates and Eligibility Period**

NEW WAC	REPEALED WAC
<b>170-290-3665</b> When SCC benefits start.	<b>170-292-0115</b> If I am determined eligible for the SCC program, when does my child care subsidy begin? <b>170-292-0120</b> Can I be authorized for the SCC program before I start a job?
<b>170-290-3670</b> Preauthorization for the SCC program.	<b>170-292-0125</b> I am preauthorized for the SCC program, when do my SCC program child care subsidies begin?
<b>170-290-3690</b> Denial of benefits—Date of redetermining eligibility.	<b>No comparable SCC WAC.</b>

**Notice**

NEW WAC	REPEALED WAC
<b>170-290-3720</b> Notice of payment changes.	<b>170-292-0145</b> When might I receive advance and adequate notice of change in my SCC program subsidies?
<b>170-290-3730</b> Notice of payment changes is not required.	<b>170-292-0150</b> When won't I receive advance and adequate notice of changes in my SCC program subsidies?

**Eligible Providers and Rates**

NEW WAC	REPEALED WAC
<b>170-290-3750</b> Eligible child care providers.	<b>170-292-0085</b> What child care providers can I choose under the SCC program?

NEW WAC	REPEALED WAC
<b>170-290-3760</b> SCC subsidy rates—Effective date.	<b>170-292-0090</b> When are the DSHS child care subsidy rates, used by the SCC program in this chapter, effective?
<b>170-290-3770</b> Authorized SCC payments.	<b>170-292-0095</b> What DSHS child care subsidy rate does the SCC program use when my child is five years old? <b>170-292-0100</b> What services can be authorized for the SCC program, and at what rates?
<b>170-290-3790</b> When additional SCC subsidy payments are authorized.	<b>170-292-0105</b> When can additional SCC program subsidy payments be authorized?
<b>No comparable SCC WAC.</b>	<b>170-292-0110</b> What additional SCC program subsidy payments can be authorized?

**Review Process**

NEW WAC	REPEALED WAC
<b>170-290-3820</b> Review of eligibility and copayment information.	<b>170-292-0135</b> When are my eligibility and copayment information for the SCC program looked at?
<b>170-290-3830</b> Redetermination of SCC benefits.	<b>170-292-0130</b> If I am reauthorized for the SCC program, when do my SCC program subsidies begin?
<b>170-290-3840</b> New eligibility period.	<b>170-292-0140</b> How are my SCC program subsidies reauthorized and when may they continue?

**Payment Discrepancies**

NEW WAC	REPEALED WAC
<b>170-290-3850</b> Payment discrepancies generally.	<b>170-292-0155</b> What is an overpayment and when might I receive one? <b>170-292-0160</b> When might a child care provider receive an overpayment?
<b>170-290-3855</b> Termination of and redetermining eligibility for benefits.	<b>170-292-0030</b> When might my ongoing eligibility for SCC subsidies stop, and when might I be eligible again?

**Administrative Hearings - SCC**

NEW WAC	REPEALED WAC
<b>170-290-3860</b> Right to request an administrative hearing.	<b>170-292-0075</b> Do I have the right to ask for a hearing regarding SCC program subsidy payments, and how do I request one?
<b>170-290-3865</b> Receipt of SCC benefits pending the outcome of an administrative hearing.	<b>170-292-0080</b> Can I use SCC programs subsidies while waiting for the outcome of a hearing, and when might it need to be repaid?

Citation of Existing Rules Affected by this Order: Repealing WAC 170-290-0010, 170-290-0105, 170-290-0108, 170-290-0260, 170-290-0265, 170-290-0270, 170-290-0273, 170-290-0274, 170-292-0001, 170-292-0003, 170-292-0005, 170-292-0010, 170-292-0015, 170-292-0020, 170-292-0025, 170-292-0030, 170-292-0035, 170-292-0040, 170-292-0045, 170-292-0050, 170-292-0055, 170-292-0060, 170-292-0065, 170-292-0070, 170-292-0075, 170-292-0080, 170-292-0085, 170-292-0090, 170-292-0095, 170-292-0100, 170-292-0102, 170-292-0105, 170-292-0110, 170-292-0115, 170-292-0120, 170-292-0125, 170-292-0130, 170-292-0135, 170-292-0140, 170-292-0145, 170-292-0150, 170-292-0155 and 170-292-0160; and amending WAC 170-290-0001, 170-290-0005, 170-290-0012, 170-290-0015, 170-290-0020, 170-290-0025, 170-290-0030, 170-290-0031, 170-290-0032, 170-290-0035, 170-290-0040, 170-290-0045, 170-290-0050, 170-290-0055, 170-290-0060, 170-290-0065, 170-290-0070, 170-290-0075, 170-290-0082, 170-290-0085, 170-290-0090, 170-290-0095, 170-290-0100, 170-290-0107, 170-290-0110, 170-290-0115, 170-290-0120, 170-290-0125, 170-290-0130, 170-290-0135, 170-290-0138, 170-290-0140, 170-290-0143, 170-290-0145, 170-290-0150, 170-290-0155, 170-290-0160, 170-290-0165, 170-290-0167, 170-290-0180, 170-290-0185, 170-290-0190, 170-290-0200, 170-290-0205, 170-290-0220, 170-290-0225, 170-290-0230, 170-290-0235, 170-290-0240, 170-290-0245, 170-290-0247, and 170-290-0271.

Statutory Authority for Adoption: RCW 43.215.060 and 43.215.070 are statutory authority for adoption for all new and amended rules adopted by this rule-making order. RCW 43.215.060, 43.215.070, and 43.43.832(6) are statutory authority for adoption for WAC 170-290-0125, 170-290-0130, 170-290-0135, 170-290-0138, 170-290-0140, 170-290-0143, 170-290-0145, 170-290-0150, 170-290-0155, 170-290-0160, 170-290-0165, and 170-290-0167, adopted by this rule-making order.

Other Authority: Chapter 265, Laws of 2006, chapter 43.215 RCW.

Adopted under notice filed as WSR 09-12-115 on June 3, 2009.

Changes Other than Editing from Proposed to Adopted Version: DEL made several changes to the rules proposed on June 3, 2009, as WSR 09-12-115. Changes considered "other than editing" are described in the following table. Underlined words are words added since the proposal; words lined through are deleted from the proposed rule.

Rule as Proposed	Rule as Adopted
<b>PART I</b> <b>Introduction</b>	
<p><b>WAC 170-290-0001 Purpose and intent.</b>  <i>(Subsections (2) and (3) only)</i></p> <p>(2) The purpose of WCCC, as provided in part II of this chapter, is to:</p> <p>(a) Assist families lower incomes in obtaining child care subsidies for approvable activities that enable them to work, attend training, or enroll in educational programs; and</p> <p>(b) Consider the health and safety of children while they are in care and receiving child care subsidies.</p> <p>(3) The purpose of SCC, as provided in part III of this chapter, is to:</p> <p>(a) Assist families who are seasonally employed in agriculturally related work to access licensed child care; and</p> <p>(b) Consider the health and safety of children while they are in care and receiving child care subsidies.</p>	<p><b>WAC 170-290-0001 Purpose and intent.</b></p> <p>(2) The purpose of WCCC, as provided in part II of this chapter, is to:</p> <p>(a) Assist <u>eligible</u> families <del>with lower incomes</del> in obtaining child care subsidies for approvable activities that enable them to work, attend training, or enroll in educational programs; and</p> <p>(b) Consider the health and safety of children while they are in care and receiving child care subsidies.</p> <p>(3) The purpose of SCC, as provided in part III of this chapter, is to:</p> <p>(a) Assist <u>eligible</u> families who are seasonally employed in agriculturally related work to <del>access pay for</del> licensed child care; and</p> <p>(b) Consider the health and safety of children while they are in care and receiving child care subsidies.</p> <p><i>(Other subsections of this WAC are unchanged.)</i></p>
<p>Reason: The changes clarify wording regarding family eligibility for DEL child care subsidy programs. The changes do not alter the intent of the rule.</p>	
<p><b>WAC 170-290-0003 Definitions</b>  <i>(Subsections (9) and (10) only)</i></p> <p>(9) "SCC" means the seasonal child care program, which is a child care subsidy program described in part III of this chapter that within available funds assists families who are seasonally employed in agriculturally related work to access licensed child care.</p> <p>(10) "WCCC" means the working connections child care program, which is a child care subsidy program described in part II of this chapter that assists families with lower incomes in obtaining child care subsidies for approvable activities that enable them to work, attend training, or enroll in educational programs.</p>	<p><b>WAC 170-290-0003 Definitions</b></p> <p>(9) "SCC" means the seasonal child care program, which is a child care subsidy program described in part III of this chapter that <del>within available funds</del> assists <u>eligible</u> families who are seasonally employed in agriculturally related work to <del>access pay for</del> licensed child care.</p> <p>(10) "WCCC" means the working connections child care program, which is a child care subsidy program described in part II of this chapter that assists <u>eligible</u> families <del>with lower incomes</del> in obtaining child care subsidies for approvable activities that enable them to work, attend training, or enroll in educational programs.</p> <p><i>(Other subsections of this rule are unchanged.)</i></p>
<p>Reason: The changes clarify language regarding family eligibility for DEL child care subsidy programs. They do not change the intent of the rule.</p>	
<b>PART II</b> <b>Working Connections Child Care</b>	
<p><b>WAC 170-290-0005 Consumers</b>  <i>(Subsection (3) only)</i></p> <p>(3) A consumer is not eligible for WCCC benefits when he or she:</p> <p>(a)(i) Will be away from the home for more than thirty days in a row; and</p> <p>(ii) Is the only parent in the household; or</p> <p>(b) Has a monthly copayment that is higher than the rate the state will pay for all eligible children in care.</p>	<p><b>WAC 170-290-0005 Consumers</b></p> <p>(3) A consumer is not eligible for WCCC benefits when he or she:</p> <p>(a) <del>(i)</del> <u>Is the only parent in the family and</u> will be away from the home for more than thirty days in a row;</p> <p><del>(ii) Is the only parent in the household;</del> or</p> <p>(b) Has a monthly copayment that is higher than the rate the state will pay for all eligible children in care.</p> <p><i>(Other changes in this WAC are editing only.)</i></p>
<p>Reason: This is a technical change for clarity that does not alter the intent of the rule.</p>	
<p><b>WAC 170-290-0015 Eligibility—Family</b>  <i>(lead paragraph and subsection (1) only)</i></p>	<p><b>WAC 170-290-0015 Eligibility—Family</b></p>

Rule as Proposed		Rule as Adopted	
DSHS determines a consumer's family size by reviewing those individuals who live together in the same household as follows:		<del>DSHS determines a consumer's family size by reviewing those individuals who live together in the same household</del> as follows:	
<b>(1) If a consumer is:</b>	<b>DSHS counts the following individuals as part of the family for WCCC eligibility:</b>	<b>(1) If a consumer's family includes is:</b>	<b>DSHS counts the following individuals as part of the family for WCCC eligibility:</b>
(a) A single parent, including a minor parent living independently.	The consumer and the consumer's children.	(a) A single parent, including a minor parent living independently.	The consumer and the consumer's children.
(b) Unmarried parents who have at least one mutual child.	Both parents and all their children living in the household.	(b) Unmarried parents who have at least one mutual child.	Both parents and all their children living in the household.
(c) Unmarried parents with no mutual children.	Unmarried parents and their respective children living in the household as separate WCCC families.	(c) Unmarried parents with no mutual children.	Unmarried parents and their respective children living in the household as separate WCCC families.
(d) Married parents.	Both parents and all their children living in the household.	(d) Married parents.	Both parents and all their children living in the household.
(e) Undocumented parents.	Parents and children, documented and undocumented, as long as the child needing care is a U.S. citizen or legally residing in the United States. All other family rules in this section apply.	(e) Undocumented parents.	Parents and children, documented and undocumented, as long as the child needing care is a U.S. citizen or legally residing in the United States. All other family rules in this section apply.
(f) A legal guardian verified by a legal or court document; adult sibling or step-sibling; nephew, niece, aunt, uncle, grandparent; or great-nephew, great-niece, great-aunt, great-uncle, or great-grandparent.	The children only (the children and their income are counted).	(f) A legal guardian verified by a legal or court document; adult sibling or step-sibling; nephew, niece, aunt, uncle, grandparent; or great-nephew, great-niece, great-aunt, great-uncle, or great-grandparent.	The children only (the children and their income are counted).
(g) A minor parent with children and lives with a parent/guardian.	Only the minor parent and their children.	(g) A minor parent with children and lives with a parent/guardian.	Only the minor parent and their children.
(h) A family member who is out of the household because of employer requirements, such as the military or training, and is expected to return to the household.	The consumer, the absent individual, and the children. Subsection (1)(b) and (d) of this section apply.	(h) A <del>family member</del> parent who is out of the household because of employer requirements, such as the military or training, and is expected to return to the household.	The consumer, the absent <del>parent individual</del> , and the children. Subsection (1)(b) and (d) of this section apply.

Rule as Proposed		Rule as Adopted	
(i) A family member who is voluntarily out of the household for reasons other than requirements of the employer, such as unapproved schooling and visiting family members, and is expected to return to the household.	The consumer, the absent individual and the children. Subsection (1)(b) and (d) of this section apply as well as WAC 170-290-0020.	(i) A <del>family member</del> <u>parent</u> who is voluntarily out of the household for reasons other than requirements of the employer, such as unapproved schooling and visiting family members, and is expected to return to the household.	The consumer, the absent <del>individual</del> <u>parent</u> and the children. Subsection (1)(b) and (d) of this section apply as well as WAC 170-290-0020.
(j) An incarcerated family member.	The absent individual is removed from the household. We count all remaining household members. All other family rules in this section apply.	(j) An incarcerated <del>family member</del> <u>parent</u> .	The <u>incarcerated</u> <del>absent</del> individual is <u>not part of the household count in determining income and eligibility.</u> <del>removed from the household</del> DSHS counts all remaining household members. All other family rules in this section apply.
		<i>(Changes to other subsections of this rule are editing only.)</i>	
Reason: These are technical changes for purposes of clarity that do not alter the intent of the rule. A change identical to that in subsection (1)(j) is also made in new seasonal child care WAC 170-290-3540 (1)(h).			
<p><b>WAC 170-290-0025 Consumer rights.</b>  <i>(Subsection (12) only)</i>                      When a consumer applies for or receives WCCC benefits, he or she has the right to:                      ... (12) Not be charged by the consumer's licensed or certified provider, or be made to pay for:                      (a) The difference between their private rate and the state maximum rate, when their private rate for child care or the registration fee is higher;                      (b) Any day when the consumer's child is absent;                      (c) Vacation days when the provider chooses to close;                      (d) A higher amount than the state allows for field trips.</p>		<p><b>WAC 170-290-0025(12) Consumer rights.</b>                      When a consumer applies for or receives WCCC benefits, he or she has the right to:                      ... (12) Not be charged by the consumer's licensed or certified provider, or be made to pay for:                      (a) The difference between <del>their</del> <u>the provider's</u> private rate and the state maximum rate, when <del>their</del> <u>the provider's</u> private rate for child care or the registration fee is higher;                      (b) Any day when the consumer's child is absent;                      (c) Vacation days when the provider chooses to close;                      (d) A higher amount than the state allows for field trips. <u>If the consumer requests, and the provider has a policy in place, the consumer may voluntarily pay the difference between the amount that the state allows and the actual field trip cost;</u>  <i>(Other changes to this WAC are editing only.)</i></p>	
Reason: This change is needed for clarity. It allows the consumer to contribute to the cost of a field trip if the cost per child is more than what the state will pay. But the rule doesn't require the consumer to pay.			
<p><b>WAC 170-290-0030 Consumers' responsibilities.</b>  <i>(First paragraph and subsections (4) through (10) only)</i>                      When a consumer applies for or receives WCCC benefits, he or she must: ...                      (4) Leave the consumer's children with his or her provider while the consumer is in WCCC approved activities. If the consumer is not in an approved activity and wants to use the provider, he or she must make a plan to pay the provider if the provider wants payment;</p>		<p><b>WAC 170-290-0030 Consumers' responsibilities.</b>  <i>(Only subsections with substantive changes noted below)</i>                      When a consumer applies for or receives WCCC benefits, <del>he or she</del> <u>the consumer</u> must: ...                      (4) <u>Only use WCCC benefits</u> <del>Leave the consumer's children with his or her provider</del> while the consumer is in WCCC approved activities. If the consumer is not in an approved activity and wants to use the provider, he or she must make a plan to pay the provider if the provider wants payment. <u>The provider may charge the consumer the same rate that the provider charges to other parents who are not in the WCCC program;</u></p>	

Rule as Proposed	Rule as Adopted
<p>(5) Pay for additional child care hours that exceed the DSHS authorization based on the same fees that are charged to other families;</p> <p>... (8) Cooperate (provide the information requested) with the quality assurance review process to remain eligible for WCCC. A consumer becomes ineligible for WCCC benefits upon a determination of noncooperation by quality assurance and remains ineligible until he or she meets quality assurance requirements or thirty days from the determination of noncooperation. If DSHS determines that a consumer is not cooperating, the consumer will not be eligible for WCCC benefits. The consumer may become eligible again when he or she meets WCCC requirements in part II of this chapter, or when thirty days have passed since the consumer;</p> <p>(9) Provide the information requested by DSHS's WCCC staff or the fraud early detection (FRED) investigator. If the consumer refuses to provide the information requested within a reasonable time, it could affect his or her benefits; and</p> <p>(10) Sign the consumer's children in and out of child care as provided in WAC 170-290-0138, 170-295-7030, 170-296-0520, or 170-151-460, as applicable, for that type of provider.</p>	<p><del>(5) Pay for additional child care hours that exceed the DSHS authorization based on the same fees that are charged to other families;...</del></p> <p>... <del>(8)</del>(7) Cooperate (provide the information requested) with the quality assurance review process to remain eligible for WCCC. A consumer becomes ineligible for WCCC benefits upon a determination of noncooperation by quality assurance and remains ineligible until he or she meets quality assurance requirements <del>or thirty days from the determination of noncooperation</del>. If DSHS determines that a consumer is not cooperating, the consumer will not be eligible for WCCC benefits. The consumer may become eligible again when he or she meets WCCC requirements in part II of this chapter, <del>or when thirty days have passed since the consumer;</del></p> <p><del>(9)</del>(8) Provide the information requested by DSHS's WCCC staff or the fraud early detection (FRED) investigator. If the consumer refuses to provide the information requested within fourteen days, it could affect his or her benefits; <del>and</del></p> <p><del>(10)</del>(9) <u>Sign the consumer's children in and out of child care as provided</u> <u>Document the children's attendance as described in WAC 170-290-0138, 170-295-7030, 170-296-0520, or 170-151-460, as applicable, for that type of provider; and</u></p> <p><u>(10) Provide to his or her in-home/relative provider the names, addresses and telephone numbers of persons who are authorized to pick up the child from care.</u></p> <p><i>(Other changes to this WAC are editing only.)</i></p>
<p>Reason: These changes clarify the scope of consumers' responsibilities. The requirement in new subsection (10) is moved from proposed language in WAC 170-290-0138.</p>	
<p><b>WAC 170-290-0032 Failure to report changes.</b></p> <p>If a consumer fails to report any changes as required in WAC 170-290-0031 within the stated time frames, DSHS may establish an overpayment to the consumer per WAC 170-290-0271, or the consumer may have to pay additional costs, such as:</p> <p>(1) A higher copayment as provided in WAC 170-290-0085; or</p> <p>(2) Receiving an overpayment beyond what the provider is allowed to bill (see publication <i>Child Care Subsidies, A Booklet for Licensed and Certified Child Care Providers</i>, DEL 22-877, March 2007).</p>	<p><b>WAC 170-290-0032 Failure to report changes.</b></p> <p><del>If a consumer's failure fails to report any changes as required in WAC 170-290-0031 within the stated time frames, DSHS may establish an overpayment to the consumer per WAC 170-290-0271, or the consumer may have to pay additional costs, such as:</del></p> <p>(1) A <u>higher copayment error. The consumer may be required to pay a higher copayment as stated as provided</u> in WAC 170-290-0085; or</p> <p>(2) <u>A WCCC payment error. Receiving If an overpayment occurs, the consumer may receive an overpayment for beyond what the provider is allowed to bill, including billing for absent days</u> (see publication <i>Child Care Subsidies, A Booklet for Licensed and Certified Child Care Providers</i>, DEL 22-877, <u>March 2007 revised 2009</u>).</p>
<p>Reason: This change clarifies the overpayment language, and makes the rule more consistent with the collective bargaining agreement.</p>	
<p><b>WAC 170-290-0055 Receipt of benefits when not engaged in approved activities.</b></p> <p>When care is approved in the situations described in subsections (1) and (2) of this section, the child needs to attend for the provider to bill.</p>	<p><b>WAC 170-290-0055 Receipt of benefits when not engaged in approved activities.</b></p> <p><i>(A new subsection (4) is added to the rule.)</i></p> <p>When care is approved in the situations described in subsections (1) and (2) of this section, the child needs to attend for the provider to bill.</p>

Rule as Proposed	Rule as Adopted
<p>(1) <b>Fourteen-day wait period.</b> DSHS may authorize WCCC payments for a child's attendance in child care for up to fourteen consecutive days when a consumer is waiting to enter an approved activity under WAC 170-290-0040 or 170-290-0045.</p> <p>(2) <b>Twenty-eight-day gap period.</b> DSHS may authorize WCCC payments to ensure a child's continuing attendance in child care for up to twenty-eight consecutive days when a consumer experiences a gap in his or her employment or approved activity. The consumer may be eligible for this twenty-eight-day gap period: (a) Twice in a calendar year; and (b) For the same number of units open while the consumer is in the approved activity, not to exceed two hundred thirty hours a month.</p> <p>(3) In order for a consumer to qualify for the twenty-eight-day gap period: (a) The consumer must be currently receiving WCCC benefits; (b) The consumer must report to DSHS within ten days the loss of his or her employment or approved activity; and (c) The consumer must:</p> <p>(i) Be looking for another job; or</p> <p>(ii) Have verbal or written assurance from the consumer's employer or approved activity that the employment or approved activity will resume within the twenty-eight-day gap period.</p>	<p>(1) <b>Fourteen-day wait period.</b> DSHS may authorize WCCC payments for a child's attendance in child care for up to fourteen consecutive days when a consumer is waiting to enter an approved activity under WAC 170-290-0040 or 170-290-0045.</p> <p>(2) <b>Twenty-eight-day gap period.</b> DSHS may authorize WCCC payments to ensure a child's continuing attendance in child care for up to twenty-eight consecutive days when a consumer experiences a gap in his or her employment or approved activity. The consumer may be eligible for this twenty-eight-day gap period: (a) Twice in a calendar year; and (b) For the same number of units open while the consumer is in the approved activity, not to exceed two hundred thirty hours a month.</p> <p>(3) In order for a consumer to qualify for the twenty-eight-day gap period: (a) The consumer must be currently receiving WCCC benefits; (b) The consumer must report to DSHS within ten days the loss of his or her employment or approved activity; and (c) The consumer must:</p> <p>(i) Be looking for another job; or</p> <p>(ii) Have verbal or written assurance from the consumer's employer or approved activity that the employment or approved activity will resume within the twenty-eight-day gap period.</p> <p><u>(4) A consumer is eligible for the minimum copayment during the fourteen-day wait period or twenty-eight-day gap period.</u></p>
<p>Reason: This change clarifies the rule to be consistent with current department practice. The change is not expected to negatively impact consumers, child care providers, or the state budget. The change ensures fair application across DSHS Community Services Offices for child care providers and WCCC consumers.</p>	
<p><b>WAC 170-290-0085 Change in copayment.</b></p> <p>(1) Once DSHS determines that a consumer is eligible for WCCC benefits, his or her copayment may change when:</p> <p>(a) The consumer's monthly income decreases;</p> <p>(b) The consumer's family size increases;</p> <p>(c) DSHS makes an error in the consumer's copayment computation;</p> <p>(d) The consumer did not report all income, activity and household information at the time of eligibility determination or application/reapplication;</p> <p>(e) The consumer is no longer eligible for the minimum copayment under WAC 170-290-0090;</p> <p>(f) DEL makes a mass change in benefits due to a change in law or program funding; or</p> <p>(g) The consumer is approved for a new eligibility period.</p>	<p><b>WAC 170-290-0085 Change in copayment.</b> <i>(A new subsection (1)(h) is added to this section.)</i></p> <p>(1) Once DSHS determines that a consumer is eligible for WCCC benefits, his or her copayment may change when:</p> <p>(a) The consumer's monthly income decreases;</p> <p>(b) The consumer's family size increases;</p> <p>(c) DSHS makes an error in the consumer's copayment computation;</p> <p>(d) The consumer did not report all income, activity and household information at the time of eligibility determination or application/reapplication;</p> <p>(e) The consumer is no longer eligible for the minimum copayment under WAC 170-290-0090;</p> <p>(f) DEL makes a mass change in benefits due to a change in law or program funding; <del>or</del></p> <p>(g) The consumer is approved for a new eligibility period; <u>or</u></p> <p><u>(h) The consumer is approved for the fourteen-day wait period or twenty-eight-day gap period as provided in WAC 170-290-0055.</u></p> <p><i>(Other subsections of this WAC are unchanged.)</i></p>
<p>Reason: This change clarifies the existing rule consistent with department practice. The change is not expected to negatively impact consumers, child care providers, or the state budget. The change ensures fair application across DSHS community services offices for child care providers and WCCC consumers.</p>	

Rule as Proposed	Rule as Adopted
<p><b>WAC 170-290-0125 Eligible child care providers.</b></p> <p>(1) To receive payment under the WCCC program, a consumer's child care provider must be:</p> <p>(a) Currently licensed as required by chapter 43.215 RCW and chapters 170-295, 170-296, or 170-151 WAC;</p> <p>(b) Meeting their state's licensing regulations, for providers who care for children in states bordering Washington. DSHS pays the lesser of the following to qualified child care facilities in bordering states:</p> <p>(i) The provider's private pay rate for that child; or</p> <p>(ii) The DSHS maximum child care subsidy daily rate for the DSHS region where the child resides.</p> <p>(c) Exempt from licensing but certified by DEL, such as:</p> <p>(i) Tribal child care facilities that meet the requirements of tribal law;</p> <p>(ii) Child care facilities on a military installation; and</p> <p>(iii) Child care facilities operated on public school property by a school district.</p> <p>(d) Seasonal day camps that have a contract with DEL to provide subsidized child care, and are:</p> <p>(i) Of a duration of three months or less;</p> <p>(ii) Engaged in primarily recreational or educational activities; and</p> <p>(iii) Accredited by the American Camping Association (ACA)</p> <p>(2) Providers other than those specified in this section shall meet the requirements in WAC 170-290-0130.</p>	<p><b>WAC 170-290-0125 Eligible child care providers.</b></p> <p>(+) To receive payment under the WCCC program, a consumer's child care provider must be:</p> <p><b>(1) A licensed, certified, or DEL-contracted provider.</b></p> <p><b>(a) Licensed providers are:</b></p> <p>(i) Currently licensed as required by chapter 43.215 RCW and chapters 170-295, 170-296, or 170-151 WAC; <b>or</b></p> <p>(ii) Meeting their <u>provider's</u> state's licensing regulations, for providers who care for children in states bordering Washington. DSHS pays the lesser of the following to qualified child care facilities in bordering states:</p> <p><b>(A)</b> The provider's (<del>usual daily</del>) <u>private pay</u> rate for that child; or</p> <p><b>(B)</b> The DSHS maximum child care subsidy daily rate for the DSHS region where the child resides.</p> <p><b>(b) Certified providers are</b> exempt from licensing but certified by DEL, such as:</p> <p>(i) Tribal child care facilities that meet the requirements of tribal law;</p> <p>(ii) Child care facilities on a military installation; and</p> <p>(iii) Child care facilities operated on public school property by a school district.</p> <p><b>(c) DEL-contracted</b> seasonal day camps have a contract with DEL to provide subsidized child care; <del>or and are:</del></p> <p><del>(iv) Of a duration of three months or less;</del></p> <p><del>(v) Engaged in primarily recreational or educational activities; and</del></p> <p><del>(vi) Accredited by the American Camping Association (ACA)</del></p> <p><b>(2) An in-home/relative provider.</b> Providers other than those specified in <u>subsection (1) of this section</u> <del>shall</del> <b>must</b> meet the requirements in WAC 170-290-0130.</p>
<p>Reason: This change deletes duplicate language and clarifies other wording of this WAC section. The requirements for contracted seasonal day camps are in DEL contracts and are not needed in the rule.</p>	
<p><b>WAC 170-290-0130 In-home/relative providers—Eligibility</b></p> <p><i>(Subsections (2) and (7) only)</i></p> <p>(2) Additionally, eligible in-home/relative providers must:</p> <p>(a) Meet all applicable background check requirements in part II of this chapter;</p> <p>(b) Agree to provide care, supervision, and daily activities based on the child's developmental needs, including environmental, physical, nutritional, emotional, cognitive, safety, and social needs. As used in this section, "care" means that the provider must be within sight or hearing of the children in his or her care, both inside and outside; and</p> <p>(c) Bill only for actual hours of care provided. Those hours must be authorized by DSHS, and used by the parent for his or her DSHS approved activities or work hours.</p>	<p><b>WAC 170-290-0130 In-home/relative providers—Eligibility</b></p> <p>(2) Additionally, eligible in-home/relative providers must:</p> <p>(a) Meet all applicable background check requirements in part II of this chapter;</p> <p>(b) Agree to provide care, supervision, and daily activities based on the child's developmental needs, including environmental, physical, nutritional, emotional, cognitive, safety, and social needs. <del>As used in this section, "care" means that the provider must be within sight or hearing of the children in his or her care, both inside and outside; and...</del></p> <p>(c) Bill only for actual hours of care provided. Those hours must be authorized by DSHS, and used by the parent for his or her DSHS approved activities or work hours.</p>

Rule as Proposed	Rule as Adopted
<p>...(7) WCCC consumers who choose in-home/relative care are responsible to monitor the environment and child care services they receive from their provider. Additionally, WCCC consumers are required by federal law to ensure that their children who receive subsidized child care outside of their own home are current on all Washington state immunizations, except in cases based on religious preference or medical conditions.</p>	<p>...(7) WCCC consumers who choose in-home/relative care are responsible to monitor the environment and child care services they receive from their provider. <del>Additionally,</del> WCCC consumers <del>are required by federal law to</del> <u>must</u> ensure that their children who receive subsidized child care outside of their own home are current on all Washington state immunizations, except in cases based on religious preference or medical conditions. <i>(Other subsections of this WAC are unchanged.)</i></p>
<p>Reason: Deletes proposed language defining "care" in subsection (2)(b) as inappropriate for in-home/relative care. The change in subsection (7) does not change the intended effect of the rule.</p>	
<p><b>WAC 170-290-0138 In-home/relative providers—Responsibilities</b> A consumer's in-home/relative provider must:</p> <p>(1) Provide care, supervision, and daily activities based on the child's developmental needs. As used in this section, "care" means that the provider must be within sight or hearing of the children in his or her care, both inside and outside;</p> <p>(2) Report to DSHS within ten days any changes to their legal name, address or telephone number;</p> <p>(3) Report to DSHS within twenty-four hours any pending charges or convictions they have;</p> <p>(4) Report to DSHS within twenty-four hours any pending charges or convictions for anyone sixteen years of age and older who lives with the provider when care occurs in the provider's home;</p> <p>(5) Bill only for actual hours of care provided. Those hours must be authorized by DSHS, and used by the consumer for his or her DSHS approved activities;</p> <p>(6) Bill for no more than six children at one time during the same hours of care;</p> <p>(7) Keep daily attendance records that:</p> <p>(a) Show days and times the care was provided;</p> <p>(b) Show the consumer's full signature, or the full signature of the consumer's designee as provided in subsection (8) of this section, signing the child in and out of the provider's care;</p> <p>(c) Be kept for five years; and</p> <p>(d) Be given to DSHS or DEL, within fourteen consecutive calendar days, if DSHS or DEL asks for them.</p> <p>(8) If the consumer wishes to designate an alternate person to drop off and/or pick up the consumer's child:</p> <p>(a) The consumer's designee must be over the age of eighteen; and</p> <p>(b) There must be a signed and dated agreement between the provider and the consumer allowing the consumer's designee to leave with the consumer's child.</p>	<p><b>WAC 170-290-0138 In-home/relative providers—Responsibilities</b> <del>An consumer's</del> in-home/relative provider must:</p> <p>(1) Provide care, supervision, and daily activities based on the child's developmental needs. <del>As used in this section, "care" means that the provider must be within sight or hearing of the children in his or her care, both inside and outside;</del></p> <p>(2) Report to DSHS within ten days any changes to their legal name, address or telephone number;</p> <p>(3) Report to DSHS within twenty-four hours any pending charges or convictions they have;</p> <p>(4) Report to DSHS within twenty-four hours any pending charges or convictions for anyone sixteen years of age and older who lives with the provider, <u>including any person sixteen years of age or older who newly resides with the provider, when the provider cares for the child when care occurs in the provider's home. Background checks must be completed for all these persons as provided in WAC 170-290-0143;</u></p> <p>(5) Bill only for actual hours of care provided. Those hours must be authorized by DSHS, and used by the consumer for his or her DSHS approved activities;</p> <p>(6) Bill for no more than six children at one time during the same hours of care;</p> <p>(7) Keep <u>daily</u> attendance records <del>that</del> <u>for five years documenting the days and hours of care provided;</u></p> <p>(8) <u>Have the consumer sign and date the records at least weekly, verifying the accuracy of the dates and times; that:</u></p> <p><del>(a) Show days and times the care was provided;</del></p> <p><del>(b) Show the consumer's full signature, or the full signature of the consumer's designee as provided in subsection (8) of this section, signing the child in and out of the provider's care;</del></p> <p><del>(c) Be kept for five years; and</del></p> <p><u>(8) Repay any overpayments under WAC 170-290-0268; and</u></p> <p><u>(9) Provide any of the records in subsections (7) and (8) of this section that are requested by</u> <del>Be given to</del> DSHS or DEL, within fourteen consecutive calendar days <u>of the request,</u> <del>if DSHS or DEL asks for them.</del></p> <p><del>(8) If the consumer wishes to designate an alternate person to drop off and/or pick up the consumer's child:</del></p>

Rule as Proposed	Rule as Adopted
	<p><del>(a) The consumer's designee must be over the age of eighteen; and</del>  <del>(b) There must be a signed and dated agreement between the provider and the consumer allowing the consumer's designee to leave with the consumer's child.</del></p>
<p>Reasons:</p> <ul style="list-style-type: none"> <li>Deletes proposed language defining "care" in subsection (1) as inappropriate for in-home/relative care.</li> <li>Amends subsection (4) to clarify that the reporting requirement includes any person sixteen years of age or older who newly resides with the provider when the provider cares for the child in the provider's home, and that background checks must be completed for all these persons as provided in WAC 170-290-0143.</li> <li>As a result of a public comment on the proposal, proposed subsection (7) is amended and subsections (8) to (10) are added to clarify consumers' in-home/relative providers' responsibilities relating to attendance keeping records needed by the collective bargaining agreement.</li> <li>Deletes proposed subsection (8). This requirement is moved to a new subsection (10) of WAC 170-290-0030 Consumer's responsibilities.</li> </ul>	
<p><b>WAC 170-290-0140 In-home/relative providers—Ineligibility.</b>  <i>(Subsection (4) only)</i>                      (4) DSHS determines a consumer's provider is not of suitable character and competence or of sufficient physical or mental health to meet the needs of the child in care, or the household may be at risk of harm by this provider, as indicated by information other than conviction information. DSHS will use criteria, such as the following, when reviewing information about incidents, issues, reports, and findings:</p>	<p><b>WAC 170-290-0140 In-home/relative providers—Ineligibility.</b>                      (4) DSHS determines a consumer's provider is not of suitable character and competence or of sufficient physical or mental health to meet the needs of the child in care, or the <del>household</del> <u>consumer's child</u> may be at risk of harm by this provider, as indicated by information other than conviction information. DSHS will use criteria, such as the following, when reviewing information about incidents, issues, reports, and findings:  <i>(Other subsections of this WAC are unchanged.)</i></p>
<p>Reason: This change clarifies that the rule applies to care for the consumer's child rather than for the household.</p>	
<p><b>WAC 170-290-0145 In-home/relative providers—Ineligibility.</b>  <i>(Subsection (4) only)</i>                      (4) It is the WCCC consumer's responsibility to monitor the in-home/relative providers' quality of care to ensure that the child's environmental, physical, nutritional, emotional, cognitive, safety and social needs are being met.</p>	<p><b>WAC 170-290-0145 In-home/relative providers—Ineligibility.</b>  <i>(Deleting subsection (4) only)</i>  <del>(4) It is the WCCC consumer's responsibility to monitor the in-home/relative providers' quality of care to ensure that the child's environmental, physical, nutritional, emotional, cognitive, safety and social needs are being met.</del>  <i>(Other subsections of this WAC are unchanged.)</i></p>
<p>Reason: The language in subsection (4) duplicates wording in WAC 170-290-0030(7) Consumers' responsibilities.</p>	
<p><b>WAC 170-290-0155 In-home/relative providers—Background checks—Subsequent steps.</b>  <i>(Subsection (6) only)</i>                      After DSHS receives the background information, DSHS: ...<del>(6) Assists the consumer in finding other child care arrangements.</del></p>	<p><b>WAC 170-290-0155 In-home/relative providers—Background checks—Subsequent steps.</b>  <i>(Deleting subsection (6) only)</i>                      After DSHS receives the background information, DSHS: ...<del>(6) Assists the consumer in finding other child care arrangements.</del>  <i>(Other subsections of this WAC are unchanged.)</i></p>
<p>Reason: Subsection (6) relates to DSHS procedure, and is not needed in the rule.</p>	
<p><b>WAC 170-290-0165 In-home/relative providers—Background checks—Other disqualifying information.</b>  <i>(Subsection (1) only)</i>                      (1) DSHS can disqualify a consumer's in-home/relative provider if the individual being checked has a background containing information other than conviction information that DSHS determines:</p>	<p><b>WAC 170-290-0165 In-home/relative providers—Background checks—Other disqualifying information.</b>                      (1) DSHS can disqualify a consumer's in-home/relative provider if the individual being checked has a background containing information other than conviction information that DSHS determines:</p>

Rule as Proposed	Rule as Adopted
<p>(a) Makes the individual not of suitable character and competence or of sufficient physical or mental health to meet the needs of the child in care; or                      (b) Puts the household at risk for harm.</p>	<p>(a) Makes the individual not of suitable character and competence or of sufficient physical or mental health to meet the needs of the child in care; or                      (b) Puts the <del>household</del> <u>consumer's child</u> at risk for harm.  <i>(Other subsections of this WAC are unchanged.)</i></p>
<p>Reason: This change clarifies that the rule applies to care for the consumer's child rather than for the household.</p>	
<p><b>WAC 170-290-0200 Daily child care rates—Licensed or certified child care centers and DEL contracted seasonal day camps.</b>  <i>(Subsection (2) only)</i>                      (2) The child care center WAC 170-295-0010 allows providers to care for children from one month up to and including the day before their thirteenth birthday. The provider must obtain a child-specific and time-limited waiver from their child care licensor to provide care for a child outside the age listed on their license.</p>	<p><b>WAC 170-290-0200 Daily child care rates—Licensed or certified child care centers and DEL contracted seasonal day camps.</b>                      (2) The child care center WAC 170-295-0010 allows providers to care for children from one month up to and including the day before their thirteenth birthday. The provider must obtain a child-specific and time-limited waiver from their child care licensor to provide care for a child outside the age listed on their license. <u>If the provider has a waiver to care for a child who has reached his or her thirteenth birthday, the payment rate is the same as subsection (1) of this section, and the five to twelve year age range column is used for comparison.</u>  <i>(Other subsections of this WAC are unchanged.)</i></p>
<p>Reason: This change makes the rule consistent with language in WAC 170-290-0205(2).</p>	
<p><b>WAC 170-290-0225 Special needs rates—Child care centers and seasonal day camps.</b>                      (1) In addition to the rate listed in WAC 170-290-0200, DSHS authorizes special needs daily rates to licensed or certified child care centers or DEL contracted seasonal day camps according to whichever of the following is greater:                      (a) The provider's reasonable documented additional cost associated with the care of the child; or                      (b) The daily rate listed in the table below after a consumer has verified that his or her child has a special need and requires a higher level of care according to WAC 170-290-0220:                      (2) The child care provider must verify the child's additional care needs when they request a rate above that listed in subsection (1)(b) of this section. The verification should include details about all of the child's additional needs while in child care in relevant areas such as environmental accommodations, ambulation, eating, personal hygiene, communication, and behavior.</p>	<p><b>WAC 170-290-0225 Special needs rates—Child care centers and seasonal day camps.</b>                      (1) In addition to the rate listed in WAC 170-290-0200, DSHS authorizes special needs daily rates to licensed or certified child care centers or DEL contracted seasonal day camps <u>after a consumer has verified that his or her child has a special need and requires a higher level of care according to WAC 170-290-0220,</u> according to whichever of the following is greater:                      (a) The provider's reasonable documented additional cost associated with the care of the child; or                      (b) The daily rate listed in the table below <u>after a consumer has verified that his or her child has a special need and requires a higher level of care according to WAC 170-290-0220:</u>                      (2) The child care provider must verify the child's additional care needs when they request a rate above that listed in subsection (1)(b) of this section. The verification should include details about all of the child's additional needs <del>while in child care</del> in relevant areas such as environmental accommodations, ambulation, eating, personal hygiene, communication, and behavior.  <i>(Other subsections of this WAC and the rate table following subsection (1) are unchanged.)</i></p>
<p>Reasons:</p> <ul style="list-style-type: none"> <li>• Wording from subsection (1)(b) is moved to subsection (1) for clarity and does not change the intent of the rule.</li> <li>• As a result of a public comment received on the proposal, the phrase "while in child care" in subsection (2) is deleted pending further consideration.</li> </ul>	
<p><b>WAC 170-290-0230 Special needs rates—Family home child care providers.</b>  <i>(Subsections (1) and (2) only)</i></p>	<p><b>WAC 170-290-0230 Special needs rates—Family home child care providers.</b></p>

Rule as Proposed	Rule as Adopted
<p>(1) In addition to the rate listed in WAC 170-290-0205, DSHS authorizes special needs daily rates to licensed or certified family home child care providers according to whichever of the following is greater:</p> <p>(a) The provider's reasonable documented additional cost associated with the care of the child; or</p> <p>(b) The daily rate listed in the table below after the consumer has verified that his or her child has a special need and requires a higher level of care according to WAC 170-290-0220:</p> <p>(2) A family home child care provider must verify the child's additional care needs when they request a rate above that listed in subsection (1)(b) of this section. The verification should include details about all of the child's additional needs while in child care in relevant areas such as environmental accommodations, ambulation, eating, personal hygiene, communication, and behavior.</p>	<p>(1) In addition to the rate listed in WAC 170-290-0205, DSHS authorizes special needs daily rates to licensed or certified family home child care providers <u>after the consumer has verified that his or her child has a special need and requires a higher level of care according to WAC 170-290-0220</u>, according to whichever of the following is greater:</p> <p>(a) The provider's reasonable documented additional cost associated with the care of the child; or</p> <p>(b) The daily rate listed in the table below <del>after the consumer has verified that his or her child has a special need and requires a higher level of care according to WAC 170-290-0220</del>:</p> <p>(2) A family home child care provider must verify the child's additional care needs when they request a rate above that listed in subsection (1)(b) of this section. The verification should include details about all of the child's additional needs while in child care in relevant areas such as environmental accommodations, ambulation, eating, personal hygiene, communication, and behavior.</p> <p><i>(Other subsections of this WAC and the rate table following subsection (1) are unchanged.)</i></p>
<p>Reasons:</p> <ul style="list-style-type: none"> <li>• Wording from subsection (1)(b) is moved to subsection (1) for clarity and does not change the intent of the rule.</li> <li>• As a result of a public comment received on the proposal, the phrase "while in child care" in subsection (2) is deleted pending further consideration.</li> </ul>	
<p><b>WAC 170-290-0235 Special needs rates—In-home/relative providers.</b></p> <p>(1) DSHS authorizes a base rate of two dollars and twenty cents an hour for in-home/relative child care when a child has verified special needs and requires a higher level of care according to WAC 170-290-0220.</p> <p>(2) In addition to the base rate, the state authorizes whichever of the following is greater:</p> <p>(a) Sixty-two cents per hour, for a total of two dollars and eighty-two cents per hour; or</p> <p>(b) The provider's reasonable documented additional cost associated with the care for that child while the child is in the child care setting.</p> <p>(3) The in-home/relative provider must verify the child's additional care needs when they request a rate above that listed in subsection (2)(a) of this section. The verification must include details about all the child's additional needs while in child care in relevant areas such as environmental accommodations, ambulation, eating, personal hygiene, communication, and behavior.</p> <p>(4) If other children in the home are also authorized for in-home/relative care with the same provider, DSHS authorizes the lesser of the following:</p> <p>(a) Two dollars and twenty cents per hour for the child who needs the greatest number of hours of care and two dollars and seventeen cents per hour for the care of each additional child in the family; or</p> <p>(b) An amount less than the state's rate.</p>	<p><b>WAC 170-290-0235 Special needs rates—In-home/relative providers.</b></p> <p>(1) DSHS authorizes a base rate of two dollars and twenty cents an hour for in-home/relative child care when a child has verified special needs and requires a higher level of care according to WAC 170-290-0220.</p> <p>(2) In addition to the base rate, the state authorizes whichever of the following is greater:</p> <p>(a) Sixty-two cents per hour, for a total of two dollars and eighty-two cents per hour; or</p> <p>(b) The provider's reasonable documented additional cost associated with the care for that child <del>while the child is in the child care setting</del>.</p> <p>(3) The in-home/relative provider must verify the child's additional care needs when they request a rate above that listed in subsection (2)(a) of this section. The verification must include details about all the child's additional needs <del>while in child care</del> in relevant areas such as environmental accommodations, ambulation, eating, personal hygiene, communication, and behavior.</p> <p>(4) If other children in the home are also authorized for in-home/relative care with the same provider, DSHS authorizes <del>the lesser of the following</del>:</p> <p><del>(a) Two dollars and twenty cents per hour for the child who needs the greatest number of hours of care and two dollars and seventeen cents per hour for the care of each additional child in the family; or</del></p> <p><del>(b) An amount less than the state's rate.</del></p>

Rule as Proposed	Rule as Adopted
<p>Reasons:</p> <ul style="list-style-type: none"> <li>As a result of a public comment received, DEL is deleting the phrases "while in the child care setting" in subsection (2) and "while in child care" in subsection (3) pending further consideration.</li> <li>As a result of a public comment received on the proposal, subsection (4) was changed to make it consistent with the child care collective bargaining agreement.</li> </ul>	
<p><b>WAC 170-290-0240 Child care subsidy rates—In-home/relative providers.</b> <i>(Subsection (1) only)</i></p> <p>1) When a consumer employs an in-home/relative provider, the maximum DSHS pays for child care is the lesser of the following:</p> <p>(a) Two dollars and twenty cents per hour for the child who needs the greatest number of hours of care and two dollars and seventeen cents per hour for the care of each additional child in the family; or</p> <p>(b) An amount less than the state's rate...</p>	<p><b>WAC 170-290-0240 Child care subsidy rates—In-home/relative providers.</b></p> <p>1) When a consumer employs an in-home/relative provider, the maximum DSHS pays for child care is the lesser of the following:</p> <p><del>(a) Two</del> dollars and twenty cents per hour for the child who needs the greatest number of hours of care and two dollars and seventeen cents per hour for the care of each additional child in the family; or</p> <p><del>(b) An amount less than the state's rate...</del></p> <p><i>(Other subsections of this WAC are unchanged.)</i></p>
<p>Reason: As a result of a public comment received on the proposal, subsection (1) was changed to make the language consistent with the child care collective bargaining agreement, pending further review.</p>	
<p><b>WAC 170-290-0247 Field trip fees.</b> <i>(Subsection (2) only)</i></p> <p>(2) The field trip fee can only be reimbursed for children three years of age and older. In-home/relative and licensed family home child care providers are exempt from this subsection.</p>	<p><b>WAC 170-290-0247 Field trip fees.</b> <i>(Subsection (2) only)</i></p> <p>(2) The field trip fee can only be reimbursed for children three years of age and older. <del>In-home/relative and licensed family-home child care providers are exempt from this subsection.</del></p> <p><i>(Other subsections of this WAC are unchanged.)</i></p>
<p>Reason: Deletes language in subsection (2) pending further discussion on potential fiscal impact.</p>	
<p><b>WAC 170-290-0268 Payment discrepancies—Provider overpayments.</b></p> <p>(1) An overpayment occurs when a provider receives a payment that is more than the provider is eligible to receive. DSHS establishes overpayments for providers when that provider:</p> <p>(a) Bills and receives payment for services not provided;</p> <p>(b) Does not have attendance records that comply with WAC 170-290-0138 and chapters 170-151, 170-295, or 170-296 WAC, or for in-home/relative providers as provided in this chapter. Only attendance records meeting WAC requirements will be accepted for attendance verification;</p> <p>(c) Bills and receives payment for more than they are eligible to bill; or</p> <p>(d) With respect to licensed or certified providers only, is caring for a WCCC child outside of their licensed allowable age range without a waiver.</p> <p>(2) DEL's or DSHS's WCCC program staff may request documentation from a provider when preparing to establish an overpayment. The provider has fourteen consecutive calendar days to supply any requested documentation.</p> <p>(3) Providers are required to repay any payments that they were not eligible to receive.</p> <p>(4) If an overpayment was made through departmental error, the provider is still required to repay that amount.</p>	<p><b>WAC 170-290-0268 Payment discrepancies—Provider overpayments.</b></p> <p>(1) An overpayment occurs when a provider receives a payment that is more than the provider is eligible to receive. <del>DSHS establishes</del> <u>Provider overpayments are established for providers</u> when that provider:</p> <p>(a) Bills and receives payment for services not provided;</p> <p>(b) <del>Does not have</del> <u>Bills without</u> attendance records that <u>support their billing</u> comply with WAC 170-290-0138 and chapters 170-151, 170-295, or 170-296 WAC, or for in-home/relative providers as provided in this chapter. <del>Only attendance records meeting WAC requirements will be accepted for attendance verification;</del></p> <p>(c) Bills and receives payment for more than they are eligible to bill; or</p> <p>(d) With respect to licensed or certified providers only, is caring for a WCCC child outside of their licensed allowable age range without a waiver.</p> <p>(2) DEL's or DSHS's WCCC program staff may request documentation from a provider when preparing to establish an overpayment. The provider has fourteen consecutive calendar days to supply any requested documentation.</p> <p>(3) Providers are required to repay any payments that they were not eligible to receive.</p> <p>(4) If an overpayment was made through departmental error, the provider is still required to repay that amount.</p>

Rule as Proposed	Rule as Adopted
<p>(5) When establishing an overpayment, DSHS reduces the overpayment by the amount of the underpayment when applicable.</p> <p>(6) Absent days can be added to an overpayment when care is used or billed when the consumer was not eligible as provided in WAC 170-290-0032 or care is billed incorrectly.</p>	<p><del>(5) When establishing an overpayment, DSHS reduces the overpayment by the amount of the underpayment when applicable.</del></p> <p><del>(6) Absent days can be added to an overpayment when care is used or billed when the consumer was not eligible as provided in WAC 170-290-0032 or care is billed incorrectly.</del></p>
<p>Reason: As a result of a public comment received on the proposal, subsection (1) is amended to clarify that provider overpayments are established when providers bill without attendance records that support their billing. Proposed subsection (5) is deleted to make the rule consistent with current practice. Proposed subsection (6) is deleted because it duplicates similar revised wording in WAC 170-290-0271.</p>	
<p><b>WAC 170-290-0271 Payment discrepancies—Consumer overpayments.</b></p> <p>(1) DSHS establishes overpayments for past or current consumers when:</p> <p>(a) The consumer is no longer eligible for benefits;</p> <p>(b) The consumer is eligible for a smaller amount of care than authorized, such as using care for an unapproved activity or for children not in his or her WCCC household;</p> <p>(c) The consumer fails to report information to DSHS that results in an error in determining eligibility, amount of care authorized, or copayment;</p> <p>(d) The consumer's provider is not an eligible per WAC 170-290-0125; or</p> <p>(e) The consumer's child is not eligible per WAC 170-290-0015 or 170-290-0020.</p> <p>(2) DEL's or DSHS's staff may request documentation from a consumer when preparing to establish an overpayment. The consumer has fourteen consecutive calendar days to supply any requested documentation.</p> <p>(3) Consumers are required to repay any benefits paid by DSHS that they were not eligible to receive.</p> <p>(4) If an overpayment was made through departmental error, the consumer is still required to repay that amount.</p> <p>(5) When establishing an overpayment, DSHS reduces the overpayment by the amount of the underpayment when applicable.</p> <p>(6) Absent days can be added to an overpayment when care is used or billed when the consumer was not eligible as provided in WAC 170-290-0032 or care was billed incorrectly.</p>	<p><b>WAC 170-290-0271 Payment discrepancies—Consumer overpayments.</b></p> <p>(1) DSHS establishes overpayments for past or current consumers when <u>the consumer</u>:</p> <p>(a) <u>Received benefits when he or she was not eligible</u>; <del>The consumer is no longer eligible for benefits;</del></p> <p>(b) <u>Used</u> care for a smaller amount of care than authorized, such as using <u>Used</u> care for an unapproved activity or for children not in his or her WCCC household;</p> <p>(c) <u>Failed</u> to report information to DSHS that <u>results resulting</u> in an error in determining eligibility, amount of care authorized, or copayment;</p> <p>(d) <u>Used a provider that was</u> <del>is not an</del> eligible per WAC 170-290-0125; or</p> <p>(e) <u>Received benefits for a child who was</u> <del>is not</del> eligible per WAC 170-290-0015 or 170-290-0020.</p> <p>(2) DEL's or DSHS's staff may request documentation from a consumer when preparing to establish an overpayment. The consumer has fourteen consecutive calendar days to supply any requested documentation.</p> <p>(3) Consumers are required to repay any benefits paid by DSHS that they were not eligible to receive.</p> <p>(4) If an overpayment was made through departmental error, the consumer is still required to repay that amount.</p> <p><del>(5) When establishing an overpayment, DSHS reduces the overpayment by the amount of the underpayment when applicable.</del></p> <p><del>(6) (5) If a consumer is not eligible under WAC 170-290-0032 and the provider has billed correctly, the consumer is responsible for the entire overpayment, including any absent days. Absent days can be added to an overpayment when care is used or billed when the consumer was not eligible as provided in WAC 170-290-0032 or care was billed incorrectly.</del></p>
<p>Reason: The changes to subsection (1)(a) and (b) remove procedural language. Proposed subsection (5) is deleted to make the rule consistent with current practice. The revised subsection (6), renumbered as subsection (5), makes the rule consistent with current practice and the child care collective bargaining agreement.</p>	

Rule as Proposed	Rule as Adopted
<p><b>WAC 170-290-0280 Right to request an administrative hearing.</b></p> <p>(1) WCCC consumers have a right to request a hearing under chapter 388-02 WAC on any action affecting WCCC benefits except for mass changes resulting from a change in policy or law.</p> <p>(2) Licensed or certified child care providers or in-home/relative providers may request hearings under chapter 388-02 WAC only for WCCC overpayments.</p> <p>(3) To request a hearing, a consumer, the licensed/certified provider, or in-home/relative provider: (a) Contacts the office which sent them the notice; or (b) Writes to the office of administrative hearings, P.O. Box 42488, Olympia, WA 98504-2488; and (c) Makes the request for a hearing within: (i) Ninety days of the date a decision is received for consumers; or (ii) Twenty-eight days of the date a decision is received for providers.</p> <p>(4) The office of administrative hearings administrative law judge enters orders in overpayment cases under WAC 388-02-0217.</p> <p>(5) To request a hearing under the seasonal child care program, see WAC 170-290-3910 and 170-290-3920.</p>	<p><b>WAC 170-290-0280 Right to request an administrative hearing.</b></p> <p>(1) WCCC consumers have a right to request a hearing under chapter 388-02 WAC on any action affecting WCCC benefits except for mass changes resulting from a change in policy or law.</p> <p>(2) Licensed or certified child care providers or in-home/relative providers may request hearings under <del>this chapter</del> and chapter 388-02 WAC only for WCCC overpayments.</p> <p>(3) To request a hearing, a consumer, the licensed/certified provider, or in-home/relative provider: (a) Contacts the <u>DSHS</u> office which sent them the notice; or (b) Writes to the office of administrative hearings, P.O. Box 4248<u>98</u>, Olympia, WA 98504-248<u>98</u>; and (c) Makes the request for a hearing within: (i) Ninety days of the date a decision is received for consumers; or (ii) Twenty-eight days of the date a decision is received for providers.</p> <p>(4) The office of administrative hearings administrative law judge enters <u>initial or final orders as provided</u> <del>orders in overpayment cases</del> under WAC 388-02-0217. <u>Initial orders may be appealed to a DSHS review judge under chapter 388-02 WAC.</u></p> <p>(5) To request a hearing under the seasonal child care program, see WAC 170-290-<del>3910</del><u>3860</u> and 170-290-<del>3920</del><u>3865</u>.</p>
<p>Reason: As a result of a comment received on the proposal, the rule was revised for clarity and accuracy.</p>	
<p><b>WAC 170-290-0285 Receipt of WCCC benefits pending the outcome of an administrative hearing.</b> <i>(Subsection (1) only)</i></p> <p>(1) A consumer may receive WCCC benefits pending the outcome of a hearing if he or she requests the hearing:</p> <p>(a) On or before the effective date of an action; or</p> <p>(b) No more than ten days after DSHS sends the consumer a notice of adverse action.</p> <p>"Adverse action" means an action to reduce or terminate a consumer's WCCC benefits.</p>	<p><b>WAC 170-290-0285 Receipt of WCCC benefits pending the outcome of an administrative hearing.</b></p> <p>(1) A consumer may receive WCCC benefits pending the outcome of a hearing if he or she requests the hearing:</p> <p>(a) On or before the effective date of an action; or</p> <p>(b) No more than ten days after DSHS sends the consumer a notice of adverse action.</p> <p><u>As used in this section,</u> "adverse action" means an action to reduce or terminate a consumer's WCCC benefits. <i>(Other portions of this WAC are unchanged.)</i></p>
<p>Reason: The added wording clarifies that the definition of the term "adverse action" applies only to this WAC section, and not to the term as it may be used in other DEL rules.</p>	
<p><b>Part III</b> <b>Seasonal Child Care Program</b></p>	
<p><b>WAC 170-290-3540 Eligibility—Family size.</b> <i>(Lead paragraph and subsection (1) only)</i></p>	<p><b>WAC 170-290-3540 Eligibility—Family size.</b></p>
<p>DEL determines a consumer's family size by reviewing those individuals who live together in the same household as follows:</p>	<p>DEL determines a consumer's family size <del>by reviewing those individuals who live together in the same household</del> as follows:</p>

Rule as Proposed		Rule as Adopted	
(1) If a consumer is:	<b>DSHS counts the following individuals as part of the family for WCCC eligibility:</b>	(1) If a consumer's <u>family includes is:</u>	<b>Then DEL counts the following individuals as part of the family for WCCC eligibility:</b>
(a) A single parent, including a minor parent living independently.	The consumer and the consumer's children.	(a) A single parent, including a minor parent living independently.	The consumer and the consumer's children.
(b) Unmarried parents who have at least one mutual child.	Both parents and all their children living in the household.	(b) Unmarried parents who have at least one mutual child.	Both parents and all their children living in the household.
(c) Unmarried parents with no mutual children.	Unmarried parents and their respective children living in the household as separate WCCC families.	(c) Unmarried parents with no mutual children.	Unmarried parents and their respective children living in the household as separate WCCC families.
(d) Married parents.	Both parents and all their children living in the household.	(d) Married parents.	Both parents and all their children living in the household.
(e) A legal guardian verified by a legal or court document; adult sibling or step-sibling; nephew, niece, aunt, uncle, grandparent; or great-nephew, great-niece, great-aunt, great-uncle, or great-grandparent.	The children only (the children and their income are counted).	(e) A legal guardian verified by a legal or court document; adult sibling or step-sibling; nephew, niece, aunt, uncle, grandparent; or great-nephew, great-niece, great-aunt, great-uncle, or great-grandparent.	The children only (the children and their income are counted).
(f) A family member who is out of the household because of employer requirements, such as the military or training, and is expected to return to the household.	The consumer, the absent individual, and the children.	(f) A <del>family member</del> <u>parent</u> who is out of the household because of employer requirements, such as the military or training, and is expected to return to the household.	The consumer, the absent <u>parent</u> <del>individual</del> , and the children.
(g) A family member who is voluntarily out of the household for reasons other than requirements of the employer, such as unapproved schooling and visiting family members, and is expected to return to the household.	The consumer, the absent individual and the children. Subsection (1)(b) and (d) of this section apply as well as WAC 170-290-0020.	(g) A <del>family member</del> <u>parent</u> who is voluntarily out of the household for reasons other than requirements of the employer, such as unapproved schooling and visiting family members, and is expected to return to the household.	The consumer, the absent <del>individual</del> <u>parent</u> and the children. Subsection (1)(b) and (d) of this section apply as well as WAC 170-290-0020.

Rule as Proposed		Rule as Adopted	
(h) An incarcerated family member.	The absent individual is removed from the household. We count all remaining household members. All other family rules in this section apply.	(h) An incarcerated <del>family member</del> <u>parent</u> .	The <del>incarcerated absent</del> individual is <u>not part of the household count in determining income and eligibility.</u> <del>removed from the household.</del> We count all remaining household members. All other family rules in this section apply.
		<i>(Other portions of this rule are unchanged.)</i>	
Reason: The changes clarify the rule without altering its intended effect and make the rule consistent with current practice.			
<b>WAC 170-290-3555 Eligibility—Approved activities.</b> (3) Travel time between the child care location and the employment location only;  (4) Job search, of no more than five days, if the consumer's seasonally available agricultural related work ends and he or she is still eligible and continues to need child care; and (5) Sleep time, up to eight hours per day when needed, if the consumer works nights and sleeps days.		<b>WAC 170-290-3555 Eligibility—Approved activities.</b> (3) <u>The SCC contractor may authorize care for:</u> (a) Travel time between the child care location and the employment location only; ( <del>4</del> )(b) Job search, of no more than five days, if the consumer's seasonally available agricultural related work ends and he or she is still eligible and continues to need child care; <del>and or</del> ( <del>5</del> )(c) Sleep time, up to eight hours per day when needed, if the consumer works nights and sleeps days. <i>(Other subsections of this rule are unchanged.)</i>	
Reason: The change is needed for clarity, otherwise proposed subsections (3), (4) and (5) (subsections (3)(a), (b) and (c) in the final rule) would not have a clear context.			
<b>WAC 170-290-3565 Consumers' responsibilities.</b> <i>(Subsections (5) and (8) only)</i> When a consumer applies for or receives SCC benefits, he or she must: ... (5) Pay, or make arrangements for someone to pay, the consumer's SCC copayment directly to the child care provider. The child care plan tells the consumer and the provider that the subsidy benefits are approved, when the subsidy benefits begin and when benefits stop, and how many hours a day benefits are approved; ... (8) Provide the information requested by the SCC contractor or the department of social and health services fraud early detection (FRED) investigator. If the consumer refuses to provide the information requested within ten days, it could affect his or her benefits. If the SCC contractor determines that a consumer is not cooperating with the requested information, the consumer will not be eligible for SCC benefits. The consumer may become eligible again when he or she meets SCC requirements in part III of this chapter, or when thirty days have passed since the consumer became eligible.		<b>WAC 170-290-3565 Consumers' responsibilities.</b> When a consumer applies for or receives SCC benefits, he or she must: ... (5) Pay, or make arrangements for someone to pay, the consumer's SCC copayment directly to the child care provider. <del>The child care plan tells the consumer and the provider that the subsidy benefits are approved, when the subsidy benefits begin and when benefits stop, and how many hours a day benefits are approved;</del> ... (8) Provide the information requested by the SCC contractor or the department of social and health services fraud early detection (FRED) investigator. If the consumer refuses to provide the information requested within <del>ten</del> <u>fourteen</u> days, it could affect his or her benefits. If the SCC contractor determines that a consumer is not cooperating <u>by supplying with</u> the requested information, the consumer will not be eligible for SCC benefits. The consumer may become eligible again when he or she meets SCC requirements in part III of this chapter, <del>or when thirty days have passed since the consumer became eligible.</del> <i>(Other subsections of this WAC are unchanged.)</i>	
Reason: <ul style="list-style-type: none"> <li>The description of the "child care plan" in proposed subsection (5) duplicates the definition in WAC 170-290-3510, making the description unnecessary.</li> <li>Deleted wording in subsection (8) is not consistent with department practice and is deleted or changed as appropriate. A consumer may reapply for SCC benefits without a waiting period.</li> </ul>			

Rule as Proposed	Rule as Adopted
<p><b>WAC 170-290-3590 SCC contractor's responsibilities to consumers.</b>  <i>(Subsection (7) only)</i>                      SCC contractors are community agencies that contract with DEL to perform SCC program authorizations. The SCC contractors and their staff must:                      ... (7) Authorize payments only to a child care provider of a consumer's choice who meets the requirements in WAC 170-290-3750, and who allows the consumer to access his or her children whenever they are in care;</p>	<p><b>WAC 170-290-3590 SCC contractor's responsibilities to consumers.</b>                      SCC contractors are community agencies that contract with DEL to perform SCC program authorizations. The SCC contractors and their staff must:                      ... (7) Authorize payments only to a child care provider of a consumer's choice who meets the requirements in WAC 170-290-3750, <del>and who allows the consumer to access his or her children whenever they are in care;</del>  <i>(Other subsections of this rule are unchanged.)</i></p>
<p>Reason: The deleted wording in WAC 170-290-3590(7) duplicates a requirement in the DEL child care licensing rules and DEL contracts with seasonal day camps.</p>	
<p><b>WAC 170-290-3640 Determining income eligibility and copayment.</b>  <i>(Subsection (2) only)</i>                      (2) If a consumer's family's income is above the FPG as defined in WAC 170-290-0075, his or her family is not eligible for the SCC program.</p>	<p><b>WAC 170-290-3640 Determining income eligibility and copayment.</b>                      (2) If a consumer's family's income is above <u>two hundred percent</u> of the FPG as defined in WAC 170-290-0075, his or her family is not eligible for the SCC program.  <i>(Other portions of this WAC section are unchanged.)</i></p>
<p>Reason: The words "two hundred percent of" were left out inadvertently. The change makes this rule consistent with WAC 170-290-0075.</p>	
<p><b>WAC 170-290-3650 Change in copayment.</b>                      A consumer's SCC program copayment could change when:                      (1) DEL makes a mass change in subsidy benefits due to a change in law or program funding;                      (2) The consumer's family size increases;                      (3) The SCC contractor makes an error in the consumer's copayment computation;                      (4) The consumer did not report all income, activity and household information at the time of eligibility determination or application/reapplication; or                      (5) The consumer is approved for a new eligibility period; or                      (6) If a consumer's copayment changes during his or her eligibility period, the change is effective:                      (a) On the first day of the month following the change, when:                      (i) The report is made to the SCC contractor or the information is learned by the contractor within ten or more days after the change as provided in WAC 170-290-3570;                      (ii) The consumer receives ten days written notice; and                      (iii) The copayment is increasing; or                      (b) On the first day of the month that the change occurred when;                      (i) The report is made to the SCC contractor or the information is learned by the contractor within ten days or less after the change as provided in WAC 170-290-3570; and                      (ii) The copayment is decreasing.</p>	<p><b>WAC 170-290-3650 Change in copayment.</b>                      (1) A consumer's SCC program copayment could change when:                      (1a) DEL makes a mass change in subsidy benefits due to a change in law or program funding;                      (2b) The consumer's family size increases;                      (c) The SCC contractor makes an error in the consumer's copayment computation;                      (d) The consumer did not report all income, activity and household information at the time of eligibility determination or application/reapplication; or                      (e) The consumer is approved for a new eligibility period; or                      (2) If a consumer's copayment changes during his or her eligibility period, the change is effective:                      (a) On the first day of the month following the change, when:                      (i) The report is made to the SCC contractor or the information is learned by the contractor within ten or more days after the change as provided in WAC 170-290-3570;                      (ii) The consumer receives ten days written notice; and                      (iii) The copayment is increasing; or                      (b) On the first day of the month that the change occurred when;                      (i) The report is made to the SCC contractor or the information is learned by the contractor within ten days or less after the change as provided in WAC 170-290-3570; and                      (ii) The copayment is decreasing.</p>

Rule as Proposed	Rule as Adopted
Reason: Subsections of this rule are renumbered for clarity. Subsection (1) and subsection (2) in the final rule are separate requirements.	
<p><b>WAC 170-290-3750 Eligible child care providers.</b> <i>(Subsection (4) only)</i></p> <p>To receive payment under the SCC program, a consumer's child care provider must be:</p> <p>... (4) Seasonal day camps that have a contract with DEL to provide subsidized child care and are:</p> <p>(a) Of a duration of three months or less;</p> <p>(b) Engaged primarily in recreational or educational activities; and</p> <p>(c) Accredited by the American Camping Association (ACA).</p>	<p><b>WAC 170-290-3750 Eligible child care providers.</b></p> <p>To receive payment under the SCC program, a consumer's child care provider must be:</p> <p>... (4) Seasonal day camps that have a contract with DEL to provide subsidized child care and are:</p> <p>(a) Of a duration of three months or less;</p> <p>(b) Engaged primarily in recreational or educational activities; and</p> <p>(c) Accredited by the American Camping Association (ACA). <i>(Other subsections of this rule are unchanged.)</i></p>
Reason: The wording in subsection (4)(a), (b) and (c) is covered in the DEL contracts with eligible seasonal day camps, and is not needed in the rule.	
<p><b>WAC 170-290-3790 When additional SCC subsidy payments are authorized.</b> <i>(First paragraph only)</i></p> <p>DEL may authorize additional SCC program subsidy payments for more than the basic child care subsidy daily rate when:...</p>	<p><b>WAC 170-290-3790 When additional SCC subsidy payments are authorized.</b></p> <p>DEL may authorize additional SCC program subsidy payments for more than the basic child care subsidy daily rate when:...</p> <p><i>(Other subsections of this rule are unchanged.)</i></p>
Reason: This change was made for clarity and does not change the intent of the rule.	
<p><b>WAC 170-290-3860 Right to request an administrative hearing.</b></p> <p>(1) SCC consumers have a right to request a hearing under chapters 170-03 WAC and 34.05 RCW on any action affecting SCC benefits except for mass changes resulting from a change in policy or law.</p> <p>(2) Licensed or certified child care providers may request hearings under this chapter, chapters 170-03 WAC and 34.05 RCW, only for SCC overpayments.</p> <p>(3) To request an administrative hearing, consumers must write to the office of administrative hearings at the address in WAC 170-03-0070 within ninety days of the date any decision of an action is received.</p>	<p><b>WAC 170-290-3860 Right to request an administrative hearing.</b></p> <p>(1) SCC consumers, licensed or certified child care providers, and DEL-contracted seasonal day camps must follow <del>have a right to request a hearing under chapters</del> <u>chapter 170-03 WAC to request a hearing and 34.05 RCW.</u></p> <p>(2) SCC consumers have a right to request a hearing on any action affecting SCC benefits except for mass changes resulting from a change in policy or law.</p> <p><del>(2)(3) Under this part,</del> <u>licensed or certified child care providers, or DEL-contracted seasonal day camps have a right to may request hearings under this chapter, chapters 170-03 WAC and 34.05 RCW, only for SCC overpayments.</u></p> <p><del>(4)(3) A SCC consumer, licensed or certified child care provider, or DEL-contracted seasonal day camp must make a request for a hearing as required by WAC 170-03-0050 and 170-03-0060.</del> <u>(a) A SCC consumer must request a hearing To request an administrative hearing, consumers must write to the office of administrative hearings at the address in WAC 170-03-0070 within ninety days of the date any decision of an action is received.</u></p> <p><u>(b) A licensed or certified child care provider or DEL-contracted seasonal day camp must request a hearing within twenty eight days of the date a decision is received.</u></p>
Reason: As a result of comment received, the rule was changed for clarity and accuracy. DEL will propose an amendment to WAC 170-05-0050 (DEL hearing rules) to make that WAC consistent with the change to WAC 170-290-3865 (4)(a) allowing SCC consumers ninety days to appeal a decision affecting the consumer's SCC benefits, which has been department practice.	

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 45, Amended 52, Repealed 43.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 45, Amended 52, Repealed 43.

Date Adopted: October 28, 2009.

Elizabeth M. Hyde  
Director

## Chapter 170-290 WAC

### WORKING CONNECTIONS AND SEASONAL CHILD CARE SUBSIDY PROGRAMS

#### PART I. INTRODUCTION

AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

**WAC 170-290-0001** (~~What is the purpose of the working connections child care program?~~) **Purpose and intent.** (1) This chapter establishes the requirements for eligible families to receive subsidized child care through the working connections child care (WCCC) and seasonal child care (SCC) programs under applicable state and federal law, to the extent of available funds.

(2) The purpose of (~~working connections child care~~) WCCC(+) as provided in part II of this chapter, is to:

~~((1) Help families with children pay child care costs for approvable activities to find jobs, keep their jobs, and get better jobs))~~ (a) Assist eligible families in obtaining child care subsidies for approvable activities that enable them to work, attend training, or enroll in educational programs; and

~~((2))~~ (b) Consider the health and safety of children while they are in care and receiving child care subsidies.

(3) The purpose of SCC, as provided in part III of this chapter, is to:

(a) Assist eligible families who are seasonally employed in agriculturally related work to pay for licensed child care; and

(b) Consider the health and safety of children while they are in care and receiving child care subsidies.

#### NEW SECTION

##### **WAC 170-290-0002 Scope of agency responsibilities.**

(1) The responsibilities of the department of early learning (DEL) include, but are not limited to:

(a) Determining child care subsidy policy for the WCCC and SCC programs, including determining thresholds for eligibility and copayment amounts and establishing rights and responsibilities. DEL is also designated as the lead agency for child care and development funds (CCDF) and oversees expenditure of CCDF funds;

(b) Contracting with community organizations to meet with families to see if they are eligible for the SCC program. SCC contractors are located in several communities across the state, and must follow the rules that DEL has established for the SCC program; and

(c) Serving as the designated representative for the state to implement the collective bargaining agreement under RCW 41.56.028 for in-home/relative providers as defined in WAC 170-290-0003(7), and for all licensed family child care providers.

(2) The responsibilities of the department of social and health services (DSHS) include, but are not limited to, service delivery for the working connections child care (WCCC) program, including determining who is eligible for WCCC benefits, authorizing payments, and managing payments made to providers that receive WCCC subsidies.

(3) This allocation between DEL and DSHS is pursuant to section 501(2), chapter 265, Laws of 2006 (2SHB 2964), in which the legislature transferred all of the powers, duties, and functions relating to the WCCC program from DSHS to DEL, except for eligibility staffing and eligibility payment functions, which remain in DSHS.

#### NEW SECTION

**WAC 170-290-0003 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) **"Collective bargaining agreement"** or **"CBA"** means the most recent agreement that has been negotiated and entered into between the exclusive bargaining representative for all licensed and license-exempt family child care providers as defined in chapter 41.56 RCW.

(2) **"Consumer"** or **"eligible consumer"** means the person applying for or receiving:

(a) WCCC benefits as described in part II of this chapter; or

(b) SCC benefits as described in part III of this chapter.

(3) **"Copayment"** means the amount of money the consumer is responsible to pay the child care provider toward the cost of child care each month.

(4) **"DEL"** means the department of early learning.

(5) **"DSHS"** means the department of social and health services.

(6) **"Days"** means calendar days unless otherwise specified.

(7) **"In-home/relative provider,"** referred to in the collective bargaining agreement as **"license-exempt provider,"** means those providers who meet the requirements in WAC 170-290-0130 through 170-290-0167.

(8) **"In loco parentis"** means the adult caring for an eligible child in the absence of the biological, adoptive, or step-parents, and who is not a relative, court-ordered guardian, or custodian.

(9) "SCC" means the seasonal child care program, which is a child care subsidy program described in part III of this chapter that assists eligible families who are seasonally employed in agriculturally related work to pay for licensed child care.

(10) "WCCC" means the working connections child care program, which is a child care subsidy program described in part II of this chapter that assists eligible families in obtaining child care subsidies for approvable activities that enable them to work, attend training, or enroll in educational programs.

## PART II. WORKING CONNECTIONS CHILD CARE

### Eligibility Requirements

AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

**WAC 170-290-0005** (~~(Who is considered a consumer for the WCCC program?)~~) Consumers. ((For the purposes of this chapter, "you" and "your" refer to the consumer. If you apply for or receive WCCC, we consider you to be the consumer.))

(1) In WCCC, an eligible consumer ((is one of the following individuals who)) has parental control of one or more children, lives in the state of Washington, and is the child's:

- (a) Parent, either biological or adopted;
- (b) Stepparent;
- (c) Legal guardian verified by a legal or court document;
- (d) Adult sibling or step-sibling;
- (e) Nephew or niece;
- (f) Aunt;
- (g) Uncle;
- (h) Grandparent; or
- (i) Any of the relatives in (f) ((through)), (g), or (h) of this subsection with the prefix great((-such as)) (for example, great-aunt).

(2) ((You are not an eligible consumer when you:

- (a) Are the only parent in the household; and
- (b) Will be away from the home for more than thirty days in a row.))

Consumers may be eligible for WCCC benefits if they:

(a) Meet eligibility requirements for WCCC described under part II of this chapter;

(b) Participate in an approved activity under WAC 170-290-0040, 170-290-0045, 170-290-0050, or have been approved per WAC 170-290-0055;

(c) Comply with any special circumstances that might affect WCCC eligibility under WAC 170-290-0020; and

(d) Have countable income at or below two hundred percent of the federal poverty guidelines (FPG) (under WAC 170-290-0065).

(3) A consumer is not eligible for WCCC benefits when he or she:

(a) Is the only parent in the family and will be away from the home for more than thirty days in a row; or

(b) Has a monthly copayment that is higher than the rate the state will pay for all eligible children in care.

AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

**WAC 170-290-0012** (~~(When do I need to verify?)~~) Verifying consumers' information((?)), (1) ((When you apply for benefits, we require you to provide information that helps us decide your eligibility. We call this "verification."

(2) After you apply, we ask you to give us new verification when:

(a) You report a change;

(b) We find out that your circumstances have changed;

or

(c) The information we have is questionable, confusing or outdated.

(3) Whenever we ask for verification, we give you a notice as described in WAC 388-458-0020.

(4) We)) A consumer must provide information to DSHS to determine eligibility when:

(a) The consumer initially applies for benefits;

(b) The consumer reapplies for benefits;

(c) A change of circumstances occurs, which is either reported by the consumer or determined by DSHS;

(d) DSHS finds out that the consumer's circumstances may have changed; or

(e) The information DSHS has is inconsistent, conflicting, or outdated.

(2) DSHS may accept any verification that ((you)) the consumer can easily ((get)) obtain when it reasonably supports ((your)) the consumer's statement or circumstances. The verification ((you give to us)) that the consumer gives to DSHS must:

(a) Clearly relate to ((what you are trying to verify)) the information DSHS is requesting;

(b) Be from a reliable source; and

(c) Be accurate, complete, and consistent.

((5) We cannot make you give us a specific type or form of verification.

(6) If the only type of verification that you can get costs money, we pay for it.

(7)) (3) If DSHS requires verification from a consumer that costs money, DSHS must pay for the consumer's reasonable costs.

(4) If the verification that ((you give to us)) a consumer provides to DSHS is ((questionable or confusing)) inconsistent, conflicting, or outdated, ((we)) DSHS may:

(a) Ask ((you to give us)) the consumer to provide DSHS with more verification or provide a collateral contact (a "collateral contact" is a statement from someone outside of ((your)) the consumer's residence that knows ((your)) the consumer's situation); or

(b) Send an investigator from the division of fraud investigations (DFI) to make an unannounced visit to ((your)) the consumer's home to verify ((your)) the consumer's circumstances. See WAC ((388-290-0025(10))) 170-290-0025(9).

((8) If you do not give us all of the verification that we have asked for, we determine if you are eligible based on the information that we already have. If we cannot determine that you are eligible based on this information, we deny or stop your benefits per WAC 388-290-0107 or 388-290-0115.)) (5) If a consumer does not provide all of the verification

requested, DSHS will determine if a consumer is eligible based on the information already available to DSHS.

AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

**WAC 170-290-0015** ~~((How does the WCCC program determine my family size for eligibility?))~~ **Eligibility—Family size.** ~~((We))~~ DSHS determines ~~((your))~~ a consumer's family size ~~((by reviewing those individuals who live together in the same household))~~ as follows:

<b>(1) If <del>((you are))</del> a consumer's family includes:</b>	<b><del>((We))</del> DSHS counts the following individuals as part of the family for WCCC eligibility:</b>
(a) A single parent, including a minor parent living independently <del>((;))</del> .	<del>((You and your))</del> The consumer and the consumer's children.
(b) Unmarried parents who have at least one mutual child <del>((;))</del> .	Both parents and all their children living in the household.
(c) Unmarried parents with no mutual children <del>((;))</del> .	Unmarried parents and their respective children living in the household as separate WCCC families.
(d) Married parents <del>((;))</del> .	Both parents and all their children living in the household.
(e) Undocumented parents <del>((;))</del> .	Parents and children, documented and undocumented, as long as the child needing care is a U.S. citizen or legally residing in the United States. All other family rules in this section apply.
(f) <del>((A consumer as defined in WAC 388-290-0005-<del>(1)(e)</del> through <del>(i);</del>))</del> A legal guardian verified by a legal or court document; adult sibling or step-sibling; nephew, niece, aunt, uncle, grandparent; or great-nephew, great-niece, great-aunt, great-uncle, or great-grandparent.	The children only <del>((-))</del> (the children and their income are counted <del>((-))</del> ) .
(g) A minor parent with children and lives with a parent/guardian <del>((;))</del> .	Only the minor parent and their children.

(h) A <del>((family member))</del> parent who is out of the household because of employer requirements, such as the military or training, and is expected to return to the household.	<del>((You))</del> The consumer, the absent <del>((individual))</del> parent, and the children. Subsection (1)(b) and (d) of this section apply.
(i) A <del>((family member))</del> parent who is voluntarily out of the household for reasons other than requirements of the employer, such as unapproved schooling and visiting family members, and is expected to return to the household.	<del>((You))</del> The consumer, the absent <del>((individual))</del> parent, and the children. Subsection (1)(b) and (d) of this section apply as well as WAC <del>((388-290-0020))</del> 170-290-0020.
(j) An incarcerated <del>((family member))</del> parent.	The <del>((absent))</del> incarcerated individual is <del>((removed from the household))</del> not part of the household count in determining income and eligibility. <del>((We))</del> DSHS counts all remaining household members. All other family rules in this section apply.
<b>(2) If <del>((your))</del> the consumer's household includes:</b>	<b><del>((We))</del> DSHS counts the following individuals as part of the family for WCCC eligibility:</b>
(a) Eighteen year old siblings of the children who require care and are enrolled in high school or general equivalency diploma (GED) program.	The eighteen year olds (unless they are a parent themselves), until they turn nineteen or complete high school/GED, whichever comes first. All other family rules in this section apply.
(b) Siblings of the children requiring care who are up to twenty-one years of age and who are participating in an approved program through the school district's special education department under RCW 28A.155.020.	The individual participating in an approved program through RCW 28A.155.020 up to twenty-one years of age (unless they are a parent themselves). All other family rules in this section apply.

AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

**WAC 170-290-0020** ~~((Are there))~~ **Eligibility—Special circumstances** ~~((that might affect my WCCC eligibility?))~~. (1) ~~((You might))~~ A consumer may be eligible for WCCC if ~~((you are))~~ he or she is:

(a) An employee ~~((of the same))~~ at a child care center where ~~((your children))~~ the consumer's child receives care

and ~~((you do))~~ the consumer does not provide direct care to ~~((your))~~ his or her own children during the time WCCC is requested;

(b) A sanctioned WorkFirst participant or an applicant who was terminated by a sanction review panel and in an activity needed to remove a sanction penalty or to reopen ~~((your))~~ his or her case;

(c) A parent in a two-parent family and one parent is not able or available to provide care for ~~((your))~~ the children while the other is working, looking for work, or preparing for work;

(i) "Able" means physically and mentally capable of caring for a child in a responsible manner. If ~~((you))~~ a consumer claims one parent is unable to care for the children, ~~((you))~~ the consumer must provide written documentation from a licensed professional (see WAC 388-448-0020) that states the:

(A) Reason the parent is unable to care for the children;

(B) Expected duration and severity of the condition that keeps ~~((them))~~ the parent from caring for the children; and

(C) Treatment plan if the parent is expected to improve enough to be able to care for the children. The parent must provide evidence from a medical professional showing ~~((they are))~~ he or she is cooperating with treatment and ~~((are))~~ is still unable to care for the children.

(ii) "Available" means free to provide care when not participating in an approved work activity under WAC ~~((388-290-0040, 388-290-0045, 388-290-0050, or 388-290-0055))~~ 170-290-0040, 170-290-0045, 170-290-0050, or 170-290-0055 during the time child care is needed~~((:))~~; or

(d) A married consumer described under WAC ~~((388-290-0005))~~ 170-290-0005 (1)(d) through (i). Only ~~((you))~~ the consumer or ~~((your))~~ the consumer's spouse must be participating in activities under WAC ~~((388-290-0040, 388-290-0045, 388-290-0050, or 388-290-0055))~~ 170-290-0040, 170-290-0045, 170-290-0050, or 170-290-0055.

(2) ~~((You))~~ A consumer might be eligible for WCCC if ~~((your))~~ his or her children are legally residing in the country, are living in Washington state, and are:

(a) Less than age thirteen; or

(b) Less than age nineteen; and:

(i) Have a verified special need, according to WAC ~~((388-290-0220))~~ 170-290-0220; or

(ii) Are under court supervision.

(3) Any of ~~((your))~~ a consumer's children who receive care at the same place where ~~((you))~~ the consumer works (other than (1)(a) of this ~~((subsection))~~ section) are not eligible for WCCC payments but ~~((can))~~ may be included in ~~((your))~~ the consumer's household if they meet the requirements of WAC ~~((388-290-0015))~~ 170-290-0015. This includes if ~~((you))~~ a consumer works:

(a) In a family home child care in any capacity and ~~((your))~~ his or her children are receiving care at the same home during ~~((your))~~ the consumer's hours of employment; or

(b) In ~~((your))~~ their own home or another location and ~~((your))~~ his or her children receive care at the same location during ~~((your))~~ the consumer's hours of employment.

## Rights and Responsibilities

AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

WAC 170-290-0025 ((What)) Consumers' rights ((do I have when I apply for or receive WCCC benefits?)). When ~~((you apply))~~ a consumer applies for or receives WCCC benefits ~~((you have))~~, the consumer has the right to:

(1) Be ~~((treated politely and fairly without regard to race, color, creed, religion, sex, presence of any sensory, mental or physical disability, sexual orientation, political affiliation, national origin, religion, age, gender, disability, or birthplace))~~ free from discrimination in accordance with all applicable federal and state nondiscrimination laws, regulations, and policies;

(2) Have WCCC eligibility determined within thirty days from ~~((your))~~ his or her application date per WAC ~~((388-290-0100))~~ 170-290-0100(2);

(3) Be informed, in writing, of ~~((your))~~ his or her legal rights and responsibilities related to WCCC benefits;

(4) ~~((Only have your information shared with other agencies when required by federal or state regulations;~~

~~((5) Get))~~ Receive a written notice at least ten days before ~~((we))~~ DSHS makes changes to lower or stop benefits except as stated in WAC ~~((388-290-0120))~~ 170-290-0120;

~~((6))~~ (5) Ask for ~~((a fair))~~ an administrative hearing if ~~((you do))~~ he or she does not agree with ~~((us))~~ DSHS about a decision per WAC ~~((388-290-0260))~~ 170-290-0280;

~~((7))~~ (6) Ask a supervisor or administrator to review a decision or action affecting ~~((your))~~ the consumer's benefits without affecting the right to ~~((a fair))~~ an administrative hearing;

~~((8))~~ (7) Have an interpreter or translator service provided by DSHS within a reasonable amount of time and at no cost to ~~((you))~~ the consumer;

~~((9))~~ (8) Choose ~~((your))~~ a provider as long as the provider meets the requirements in WAC ~~((388-290-0125))~~ 170-290-0125; ~~((and~~

~~((10))~~ (9) Ask the fraud early detection (FRED) investigator from the division of fraud investigations (DFI) to come back at another time. ~~((You do))~~ A consumer does not have to let an investigator into ~~((your))~~ his or her home. ~~((You may ask the investigator to come back at another time.))~~ This request will not affect ~~((your))~~ the consumer's eligibility for benefits. If ~~((you))~~ the consumer refuses to cooperate (provide the information requested) with the investigator, it could affect ~~((your))~~ his or her benefits;

(10) Access his or her child at all times while the child is in child care;

(11) Terminate child care without cause and without notice to the provider. Notice must be given to DSHS within five days of termination;

(12) Not be charged by the consumer's licensed or certified provider, or be made to pay for:

(a) The difference between the provider's private rate and the state maximum rate, when the provider's private rate for child care or the registration fee is higher;

(b) Any day when the consumer's child is absent;

(c) Vacation days when the provider chooses to close;

(d) A higher amount than the state allows for field trips. If the consumer requests, and the provider has a policy in place, the consumer may voluntarily pay the difference between the amount that the state allows and the actual field trip cost;

(e) A preschool tuition fee in addition to regular child care services; or

(f) Child care services after the final day of care, when the provider chooses to stop caring for the consumer's children.

AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

**WAC 170-290-0030** ~~((What must I do when I apply for or receive WCCC benefits?))~~ **Consumers' responsibilities.** When ~~((you apply))~~ a consumer applies for or receives WCCC benefits ~~((you))~~, the consumer must:

(1) Give ~~((us))~~ DSHS correct and current information so ~~((we))~~ DSHS can determine ~~((your))~~ eligibility and authorize child care payments correctly;

(2) Choose a provider who meets requirements of WAC ~~((388-290-0125))~~ 170-290-0125;

(3) Pay, or make a plan to have someone pay, ~~((your))~~ the WCCC copayment directly to ((your)) the child care provider;

(4) ~~((Leave your children with your provider))~~ Only use WCCC benefits while ((you are)) the consumer is in WCCC approved activities. If ((you are)) the consumer is not in an approved activity and ((you)) wants to use the provider, ((you)) he or she must make a plan to pay the provider ((yourself)) if the provider wants payment. The provider may charge the consumer the same rate that the provider charges to other parents who are not in the WCCC program;

(5) ~~((If you use an in-home/relative provider, make sure))~~ Pay the provider the same late fees that are charged to other families, if the consumer pays a copayment late or picks up the child late;

(6) Ensure that care is ((being)) provided in the ((right)) correct home per WAC ((388-290-0130).

~~((6) Cooperate (provide the information requested) with the quality assurance review process to remain eligible for WCCC. You become ineligible for WCCC benefits upon a determination of noncooperation by quality assurance and remain ineligible until you meet quality assurance requirements or thirty days from the determination of noncooperation.~~

~~((7) Cooperate with))~~ 170-290-130 if the consumer uses an in-home/relative provider, and monitor the in-home/relative provider's quality of care to ensure that the child's environmental, physical, nutritional, emotional, cognitive, safety, and social needs are being met;

(7) Cooperate (provide the information requested) with the quality assurance review process to remain eligible for WCCC. A consumer becomes ineligible for WCCC benefits upon a determination of noncooperation by quality assurance and remains ineligible until he or she meets quality assurance requirements. If DSHS determines that a consumer is not cooperating, the consumer will not be eligible for WCCC

benefits. The consumer may become eligible again when he or she meets WCCC requirements in part II of this chapter;

(8) Provide the information requested by DSHS's WCCC staff or the fraud early detection (FRED) investigator. If ((you)) the consumer refuses to ((cooperate-)) provide the information requested ~~((with the investigator))~~ within four-teen days, it could affect ((your)) his or her benefits;

(9) Document the children's attendance as described in WAC 170-290-0138, 170-295-7030, 170-296-0520, or 170-151-460, as applicable, for that type of provider; and

(10) Provide to his or her in-home/relative provider the names, addresses, and telephone numbers of persons who are authorized to pick up the child from care.

AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

**WAC 170-290-0031** ~~((What))~~ **Notification of changes** ~~((do I need to report when I apply for or receive WCCC?)).~~ When a consumer applies for or receives WCCC benefits, he or she must:

(1) Notify DSHS's WCCC staff, within five days, of any change in providers;

(2) Notify ~~((your))~~ the consumer's provider within ten days when ~~((we))~~ DSHS changes ~~((your))~~ his or her child care authorization;

(3) ~~((Provide notice to))~~ Notify DSHS's WCCC staff within ten days of any change in:

(a) The number of child care hours ~~((you))~~ the consumer needs (more or less hours);

(b) ~~((Your))~~ The consumer's household income, including any TANF grant or child support increases or decreases;

(c) ~~((Your))~~ The consumer's household size such as any family member moving in or out of ~~((your))~~ his or her home;

(d) Employment, school or approved TANF activity (starting, stopping or changing);

(e) The address and telephone number of ~~((your))~~ the consumer's in-home/relative provider;

(f) ~~((Your))~~ The consumer's home address and telephone number; and

(g) ~~((Your))~~ The consumer's legal obligation to pay child support((-);

(4) Report to ~~((your child care authorizing worker))~~ DSHS's WCCC staff, within twenty-four hours, any pending charges or conviction information ~~((you))~~ the consumer learns about ~~((your))~~ his or her in-home/relative provider((-); and

(5) Report to ~~((the child care authorizing worker))~~ DSHS's WCCC staff, within twenty-four hours, any pending charges or conviction information ~~((you))~~ the consumer learns about anyone sixteen years of age and older who lives with the provider when care occurs outside of the child's home.

AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

**WAC 170-290-0032** ~~((What are the consequences if I do not report changes within the specified time frames?))~~ **Failure to report changes.** ~~((If you fail))~~ A consumer's failure to report ~~((any))~~ changes as required in WAC ~~((388-290-~~

~~0031))~~ 170-290-0031 within the stated time frames (~~we may establish an overpayment per WAC 388-290-0271 or you might have to pay more than your normal share of child care costs, such as~~) may cause:

~~(1) ((Paying higher))~~ A copayment error. The consumer may be required to pay a higher copayment as stated in WAC 170-290-0085; or

~~(2) ((Paying for extra hours of care when your activity requires more than ten hours a day of care;~~

~~(3) Receiving))~~ A WCCC payment error. If an overpayment occurs, the consumer may receive an overpayment for ((the number of days your child was absent including the absences the licensed/certified or DSHS seasonal contracted day care)) what the provider is allowed to bill, including billing for absent days (see publication *Child Care Subsidies, A Booklet for Licensed and Certified Child Care Providers, ((DSHS)) DEL 22-877, revised 2009*). ((An overpayment for absent days can occur when care is used when you are not eligible for WCCC and can be up to five days a month;))

AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

WAC 170-290-0035 ((What responsibilities does the WCCC program staff have?)) DSHS's responsibilities to consumers. ((The WCCC program staff are)) DSHS's WCCC staff is responsible to:

~~(1) Treat consumers in accordance with all applicable federal and state nondiscrimination laws, regulations, and policies;~~

~~(2) Determine ((your)) a consumer's eligibility within thirty days from the date ((you)) the consumer applied (application date as described in WAC ((388-290-0100)) 170-290-0100(2))(-);~~

~~((2)) (3) Allow ((you)) a consumer to choose ((your)) his or her provider as long as ((they)) the provider meets the requirements in WAC ((388-290-0125)) 170-290-0125;~~

~~((3)) (4) Review ((your)) a consumer's chosen in-home/relative provider's background ((information-)) check results;~~

~~((4)) (5) Authorize payments only to child care providers who allow ((you)) a consumer to ((see your)) access his or her children whenever they are in care;~~

~~((5)) (6) Only authorize payment when no adult in ((your WCCC)) a consumer's family (under WAC 170-290-0015) is "able" or "available" (under WAC 170-290-0020) to care for ((your)) the consumer's children ((under WAC 388-290-0020-));~~

~~((6)) (7) Inform ((you)) a consumer of:~~

~~(a) ((Your)) His or her rights and responsibilities under the WCCC program at the time of application and reapplication;~~

~~(b) The types of child care providers ((we)) DSHS can pay;~~

~~(c) The community resources that can help ((you)) a consumer select child care when needed; and~~

~~(d) Any change in ((your)) a consumer's copayment during the authorization period except under WAC ((388-290-0120)) 170-290-0120(5).~~

~~((7)) (8) Respond to ((you)) a consumer within ten days if ((you)) the consumer reports a change of circumstance that affects ((your)) the consumer's:~~

~~(a) WCCC eligibility;~~

~~(b) Copayment; or~~

~~(c) Providers.~~

~~((8)) (9) Provide prompt child care payments to ((your)) a consumer's child care provider; and~~

~~(10) Provide an interpreter or translator service within a reasonable amount of time and at no cost to the consumer.~~

### Approved Activities

AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

WAC 170-290-0040 ((If I receive a temporary assistance for needy families (TANF) grant, what activities must I be involved in to be eligible for WCCC benefits?))

Approved activities for TANF consumers. If ((you)) a consumer receives a temporary assistance for needy families (TANF) grant, ((you)) he or she may be eligible for WCCC benefits, for activities in ((your)) his or her individual responsibility plan (IRP), for up to a maximum of sixteen hours ((maximum)) per day for ((your)) his or her hours of participation in the following:

~~(1) An approved WorkFirst activity under WAC 388-310-0200;~~

~~(2) Employment or self-employment. ((We consider)) "Employment" or "work" ((to)) means:~~

~~(a) Engaging in any legal, income generating activity that is taxable under the United States Tax Code or that would be taxable with or without a treaty between an Indian Nation and the United States; or~~

~~(b) Working in a federal or state paid work study program. ((You)) The consumer may receive WCCC for paid work study and transportation hours (not for the time ((you are)) the consumer is in an unapproved activity).~~

~~(3) Transportation time between the location of child care and ((your)) the consumer's place of employment or approved activity;~~

~~(4) Up to ten hours per week of study time before or after regularly scheduled classes or up to three hours of study time per day when needed to cover time between approved classes; and~~

~~(5) Up to eight hours per day of sleep time when it is needed, such as if ((you)) the consumer works nights and sleeps days.~~

AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

WAC 170-290-0045 ((If I don't get a temporary assistance for needy families (TANF) grant, what activities must I be involved in to be eligible for WCCC benefits?))

Approved activities for consumers not receiving TANF. ((+)) If ((you do)) a consumer does not receive TANF, ((you)) he or she may be eligible for WCCC benefits for:

~~(1) Up to a maximum of sixteen hours ((maximum)) per day, including travel, study, and sleep time, for the hours of ((your)) his or her participation in the following:~~

(a) ~~Full- or part-time~~ employment or self-employment under WAC ~~((388-290-0050))~~ 170-290-0050. ~~((We consider))~~ "Employment" or "work" ~~((to))~~ means:

(i) Legal, income generating activity taxable under the United States Tax Code or that would be taxable with or without a treaty between an Indian Nation and the United States~~((:))~~; or

(ii) Federal or state paid work study.

(b) VISTA volunteers, AmeriCorps, JobCorps, and Washington Service Corps (WSC) if the income is taxed~~((:))~~;

(c) High school (HS) or general equivalency diploma (GED) program until ~~((you reach your))~~ the consumer reaches his or her twenty-second birthday ~~((you can))~~ the consumer may be enrolled in a HS or GED program without a minimum number of employment hours~~((:))~~;

(d) Approved WorkFirst activities according to WAC 388-310-0200 or 388-310-0700 if ~~((you are))~~ the consumer is a TANF applicant~~((:))~~; or

(e) Food stamp employment and training program under chapter 388-444 WAC.

(2) If ~~((you are))~~ a consumer is participating in an activity listed in subsections (3) through (8) of this section, ~~((you))~~ he or she may be eligible for WCCC benefits as described in subsection (1) of this section if ~~((you are))~~ the consumer is actually working either:

(a) Twenty or more hours per week; or

(b) Sixteen or more hours per week in a paid federal or state work study program.

(3) Adult basic education (ABE).

(4) English as a second language (ESL).

(5) High school or GED completion if ~~((you are))~~ the consumer is twenty-two years of age or older.

(6) Vocational education (Voc Ed). The Voc Ed program must:

(a) ~~((Must))~~ Lead to a degree or certificate in a specific occupation~~((:))~~;

(b) Cannot include prerequisite classes or programs~~((:))~~; and

Be offered by the following accredited entities only:

(i) Public and private technical college or school~~((:))~~;

(ii) Community college~~((:))~~; or

(iii) Tribal college.

(7) Job skills training: For no more than fourteen consecutive days. Job skills training is not tied to a specific occupation but is training in specific skills directly related to employment, such as CPR/First Aid, keyboarding, computer programs, project management, and oral and written communication skills. Training offered or required by a current employer, at or off ~~((your))~~ the consumer's job site, may extend past the fourteen consecutive day limit.

(8) Post-employment services under WAC 388-310-1800.

(9) Child care for participation in Voc Ed is limited to thirty-six months regardless of the length of the educational program. The thirty-six months includes the months in which the following occurred at the same time:

(a) WCCC benefits were paid to support ~~((your))~~ the consumer's participation in a Voc Ed program~~((:))~~; or

(b) ~~((You))~~ The consumer or someone in ~~((your))~~ his or her household received TANF benefits.

(10) WCCC may be approved for activities listed in WAC ~~((388-290-0040 (3) through (5)))~~ 170-290-0040 (2)(b) through (d), when needed.

AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

**WAC 170-290-0050 ((If I am self-employed, can I get WCCC benefits?)) Additional requirements for self-employed WCCC consumers.** ~~((You may be eligible for WCCC benefits for up to sixteen hours maximum per day when you are self-employed.~~

~~((1))~~ ~~We consider~~ "employment" or "work" to mean engaging in any legal, income generating activity that is taxable under the United States Tax Code or that would be taxable with or without a treaty between an Indian Nation and the United States;

~~((2))~~ You are eligible for the calculation discussed in subsection (4)(a) of this section one time only, for one self-employment venture. If you change self-employment, any months left up to the first six months are covered by child care according to subsection (4)(a)(i) of this section.

~~((3))~~ If you get TANF and are self-employed:

(a) You must have an approved self-employment plan under WAC 388-310-1700;

(b) The amount of WCCC you get for self-employment is equal to the number of hours in your approved plan; and

(c) Income from self-employment while you are receiving TANF is determined by WAC 388-450-0085.

~~((4))~~ If you don't get TANF at the time of application for WCCC and it is a:

(a) New self-employment business (established less than six months):

(i) The hours of care you are eligible to receive for the first six months is based on your report of how many hours are needed, up to sixteen hours per day; and

(ii) Your self-employment income is based on WAC 388-290-0060.

(b) For a self-employment business (established for six months or more) the number of hours of care you are eligible to receive is based on whichever is more:

(i) Your work hours reported in your business records; or

(ii) The average number of monthly hours equal to dividing your monthly self-employment income by the federal or state minimum wage (whichever minimum wage is lower).

~~((c))~~ After the first six months, the number of hours of WCCC you can get each month is based on the lesser of subsections (4)(b)(i) or (ii) of this section. **(1) Consumers receiving TANF.** If a consumer receives TANF and is also self-employed:

(a) The consumer must have an approved self-employment plan in the consumer's IRP under WAC 388-310-1700;

(b) The amount of WCCC a consumer receives for self-employment is equal to the number of hours in his or her approved plan; and

(c) Income from self-employment while the consumer is receiving TANF is determined by WAC 388-450-0085.

**(2) Consumers not receiving TANF.** If a consumer does not receive TANF at the time of application for WCCC

and is establishing a new self-employment business (established less than six months):

(a) The hours of care the consumer is eligible to receive for the first six months is based on his or her report of how many hours are needed, up to sixteen hours per day; and

(b) The consumer's self-employment income is based on WAC 170-290-0060.

(c) A consumer is eligible for the calculation discussed in (a) of this subsection one time only. If the consumer changes self-employment during the initial six-month period, any months left are covered by child care according to (a) of this subsection.

(d) After the first six months of self-employment, the number of hours of WCCC a consumer can receive each month is based on the lesser of (e)(i) or (ii) of this subsection.

(e) For an established self-employment business (established for six months or more) the number of hours of child care the consumer is eligible to receive is based on whichever is greater:

(i) The consumer's work hours reported in his or her business records; or

(ii) The average number of monthly hours equal to dividing the consumer's monthly self-employment income by the federal or state minimum wage (whichever minimum wage is lower).

AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

**WAC 170-290-0055** ~~((If I am not working or in an approved activity right now, can I get WCCC benefits?))~~ **Receipt of benefits when not engaged in approved activities.** When care is approved in the situations described in subsections (1) and (2) of this section, the child needs to attend for the provider to bill.

(1) ~~((We can authorize WCCC payments for a child's attendance in child care for up to fourteen consecutive days when you're waiting to enter an approved activity under WAC 388-290-0040 or 388-290-0045.~~

(2) ~~We can authorize WCCC payments for a child's attendance in child care for up to twenty-eight consecutive days if you or the other parent in the household experience a gap in your approved activity.~~

(3) ~~Your household may be eligible for payment described in subsection (2) of this section:~~

(a) ~~Twice in a calendar year;~~

(b) ~~For the same number of units open while you were in the approved activity, not to exceed two hundred thirty hours a month;~~

(c) ~~If you report the loss of activity or employment timely following WAC 388-290-0031; and~~

(d) ~~If you receive WCCC immediately before the loss of employment or approved activity; and:~~

(i) ~~Your employment, or the approved activity, will resume within that period; or~~

(ii) ~~You are looking for another job.)~~ **Fourteen-day wait period.** DSHS may authorize WCCC payments for a child's attendance in child care for up to fourteen consecutive days when a consumer is waiting to enter an approved activity under WAC 170-290-0040 or 170-290-0045.

(2) **Twenty-eight-day gap period.** DSHS may authorize WCCC payments to ensure a child's continuing attendance in child care for up to twenty-eight consecutive days when a consumer experiences a gap in his or her employment or approved activity. The consumer may be eligible for this twenty-eight-day gap period:

(a) ~~Twice in a calendar year; and~~

(b) ~~For the same number of units open while the consumer is in the approved activity, not to exceed two hundred thirty hours a month.~~

(3) ~~In order for a consumer to qualify for the twenty-eight-day gap period:~~

(a) ~~The consumer must be currently receiving WCCC benefits;~~

(b) ~~The consumer must report to DSHS within ten days the loss of his or her employment or approved activity; and~~

(c) ~~The consumer must:~~

(i) ~~Be looking for another job; or~~

(ii) ~~Have verbal or written assurance from the consumer's employer or approved activity that the employment or approved activity will resume within the twenty-eight-day gap period.~~

(4) ~~A consumer is eligible for the minimum copayment during the fourteen-day wait period or twenty-eight-day gap period.~~

### Income and Copayment Calculations

AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

**WAC 170-290-0060** ~~((What))~~ **Countable income** ~~((does the WCCC program count when determining eligibility and copayments?))~~. ~~((The WCCC program))~~ DSHS counts income as money ~~((you get))~~ a consumer earns or receives from:

(1) ~~A TANF grant, except when ((exempt under WAC 388-290-0070 (1)(h))) the grant is for the first three consecutive calendar months after the consumer starts a new job. The first calendar month is the month in which he or she starts working;~~

(2) ~~Child support payments;~~

(3) ~~Supplemental Security Income (SSI);~~

(4) ~~Other Social Security payments, such as SSA and SSDI;~~

(5) ~~Refugee assistance payments;~~

(6) ~~Payments from the Veterans' Administration, disability payments, or payments from labor and industries (L&I);~~

(7) ~~Unemployment compensation;~~

(8) ~~Other types of income not listed in WAC ((388-290-0070)) 170-290-0070;~~

(9) ~~VISTA volunteers, ((AmeriCorps)) AmeriCorps, and Washington Service Corps (WSC) if the income is taxed;~~

(10) ~~Gross wages from employment or self-employment. Gross wages includes any wages that are taxable. "Self-employment income" means ((you)) a consumer's gross income from self-employment minus allowable business expenses in WAC 388-450-0085;~~

(11) Lump sums as money ~~((you get))~~ a consumer receives from a one-time payment such as back child support, an inheritance, or gambling winnings; and

(12) Income for the sale of property as follows:

(a) If ~~((you))~~ a consumer sold the property before application, ~~((we))~~ DSHS considers the proceeds an asset and ~~((do))~~ does not count as income;

(b) If ~~((you))~~ a consumer sold the property in the month ~~((you apply))~~ he or she applies or during ~~((your))~~ his or her eligibility period, ~~((we))~~ DSHS counts it as a lump sum payment as described in WAC ~~((388-290-0065(3-)))~~ 170-290-0065(2);

(c) Property does not include small personal items such as furniture, clothes, and jewelry.

AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

**WAC 170-290-0065 (~~How does the WCCC program define and use my~~) Calculation of income(??).** ~~((We))~~ DSHS uses ~~((your))~~ a consumer's countable income when determining ~~((your))~~ his or her income eligibility and copayment. ~~((Your))~~ A consumer's countable income is the sum of all income listed in WAC ~~((388-290-0060))~~ 170-290-0060 minus any child support paid out (through a court order, division of child support administrative order, or tribal government order).

(1) To determine ~~((your))~~ a consumer's income ~~((we))~~, DSHS:

(a) Determines the number of months, weeks or pay periods it took ~~((your family))~~ the consumer's WCCC household to earn the income and divide the income by the same number of months, weeks or pay periods to ~~((get))~~ determine an average monthly amount; or

(b) Uses the best available estimate of ~~((your family's))~~ the consumer's WCCC household's current income when ~~((you))~~ he or she begins new employment, or if ~~((you don't))~~ the consumer does not have an income history to make an accurate estimate of ~~((your))~~ his or her future income, ~~((we))~~ DSHS may ask ~~((your))~~ the consumer's employer to verify ~~((your))~~ his or her income.

(2) If ~~((you))~~ a consumer receives a lump sum payment (such as money from the sale of property or back child support payment) in the month of application or during ~~((your))~~ his or her WCCC eligibility ~~((we))~~:

(a) DSHS divides the lump sum payment by twelve to come up with a monthly amount; ~~((and))~~

(b) DSHS adds the monthly amount to ~~((your))~~ the consumer's expected average monthly income for the month it was received and the remaining months of the current authorization period; and

(c) ~~((You))~~ The consumer must meet income guidelines for WCCC after the lump sum payment is applied to remain eligible for WCCC.

AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

**WAC 170-290-0070 (~~What income types and deductions does the WCCC program disregard when figuring my income eligibility and for WCCC benefits?~~) Excluded**

**income and deductions.** (1) The WCCC program does not count the following income types when ~~((figuring your))~~ determining a consumer's income eligibility and copayment:

(a) Income types as defined in WAC 388-450-0035, 388-450-0040, and 388-450-0055;

(b) Compensatory awards, such as an insurance settlement or court-ordered payment for personal injury, damage, or loss of property;

(c) Adoption support assistance and foster care payments;

(d) Reimbursements, such as an income tax refund;

(e) Diversion cash assistance;

(f) Income in-kind that is untaxed, such as working for rent;

(g) Military housing and food allowance;

(h) The TANF grant for the first three consecutive calendar months after ~~((you))~~ the consumer starts a new job. The first calendar month is the month in which ~~((you))~~ he or she starts working;

(i) Payments to ~~((you))~~ the consumer from ~~((your))~~ his or her employer for benefits such as medical plans;

(j) Earned income of a WCCC family member defined under WAC ~~((388-290-0015))~~ 170-290-0015(2);

(k) Income of consumers described in WAC ~~((388-290-0005))~~ 170-290-0005 (1)(c) through (i);

(l) Earned income from a minor child who ~~((we))~~ DSHS counts as part of ~~((your))~~ the consumer's WCCC household; and

(m) Benefits received by children of Vietnam War veterans who are diagnosed with ~~((all))~~ any forms ~~((of))~~ of manifestations of spina bifida ~~((except))~~ spina bifida occulta~~((s))~~.

(2) WCCC deducts the amount ~~((you))~~ a consumer pays for child support under court order, division of child support administrative order, or tribal government order, from ~~((your))~~ the consumer's other countable income when figuring ~~((your))~~ his or her eligibility and ~~((copy))~~ copayment for the WCCC program.

AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

**WAC 170-290-0075 (~~What steps does the WCCC program take to determine my family's WCCC~~) Determining income eligibility and copayment amounts(??).**

(1) ~~((The WCCC program))~~ DSHS takes the following steps to determine ~~((your WCCC income))~~ a consumer's eligibility and copayment:

(a) Determine ~~((your))~~ the consumer's family size (under WAC ~~((388-290-0015))~~ 170-290-0015); and

(b) Determine ~~((your))~~ the consumer's countable income (under WAC ~~((388-290-0065))~~ 170-290-0065).

(2) If ~~((your))~~ the consumer's family's countable monthly income falls within the range below, then ~~((your))~~ his or her copayment is:

<del>((YOUR))</del> IF A CONSUMER'S INCOME IS:	<del>((YOUR))</del> THEN THE CONSUMER'S COPAYMENT <del>((is))</del> IS:
At or below 82% of the <del>((FPL))</del> federal poverty guidelines (FPG)	\$15
Above 82% of the <del>((FPL))</del> FPG up to 137.5% of the <del>((FPL))</del> FPG	\$50

<del>((YOUR))</del> IF A CONSUMER'S INCOME IS:	<del>((YOUR))</del> THEN THE CONSUMER'S COPAYMENT <del>((is))</del> IS:
Above 137.5% of the <del>((FPL))</del> FPG through 200% of the <del>((FPL))</del> FPG	The dollar amount equal to subtracting 137.5% of <del>((FPL))</del> FPG from countable income, multiplying by 44%, then adding \$50
<del>((Income))</del> Above 200% of the <del>((FPL))</del> FPG, <del>((you are))</del> a consumer is not eligible for WCCC benefits.	

(3) ~~((We do))~~ DSHS does not prorate the copayment when ~~((you))~~ a consumer uses care for part of a month.

(4) The FPG is updated every year on April 1. The WCCC eligibility level is updated at the same time every year to remain current with the FPG.

AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

**WAC 170-290-0082 ~~((When I am approved, how long is my))~~ Eligibility period~~((?))~~.** ~~((We can))~~ DSHS may approve ~~((you))~~ a consumer for a period up to six months. ~~((Your))~~ A consumer's eligibility ~~((can))~~ may end ~~((prior to your))~~ before his or her end date as stated in WAC ~~((388-290-0110))~~ 170-290-0110.

AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

**WAC 170-290-0085 ~~((When might my WCCC copayment))~~ Change~~((?))~~ in copayment.** (1) Once ~~((we))~~ DSHS determines that ~~((you are))~~ a consumer is eligible for WCCC benefits, ~~((your))~~ his or her copayment ~~((could))~~ may change when:

- ~~((Your))~~ The consumer's monthly income decreases;
- ~~((Your))~~ The consumer's family size increases;
- ~~((We))~~ DSHS makes an error in ~~((your))~~ the consumer's copayment computation;
- ~~((You))~~ The consumer did not report all income, activity and household information at the time of eligibility determination or application/reapplication;
- ~~((You are))~~ The consumer is no longer eligible for the minimum copayment under WAC ~~((388-290-0090))~~ 170-290-0090;
- ~~((We))~~ DEL makes a mass change in benefits due to a change in law or program funding; ~~((or))~~
- ~~((You are))~~ The consumer is approved for a new eligibility period; or
- The consumer is approved for the fourteen-day wait period or twenty-eight-day gap period as provided in WAC 170-290-0055.

(2) If ~~((your))~~ a consumer's copayment changes during ~~((your))~~ his or her eligibility period, the change is effective on the first day of the month following ~~((our))~~ DSHS becoming aware of the change.

(3) ~~((We do))~~ DSHS does not increase ~~((your))~~ a consumer's copayment during ~~((your))~~ his or her current eligibility period when ~~((your))~~ his or her countable income remains at or below two hundred percent of the ~~((FPL))~~ FPG, and:

- ~~((Your))~~ The consumer's monthly countable income increases; or

- ~~((Your))~~ The consumer's family size decreases.

AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

**WAC 170-290-0090 ~~((When do I pay the))~~ Minimum copayment~~((?))~~.** ~~((You pay the minimum copayment:~~

(1) ~~If your countable monthly income is at or below eighty-two percent of the FPL;~~

(2) ~~If you are a minor parent, and are:~~

(a) ~~Receiving TANF; or~~

(b) ~~Part of your parent's or relative's TANF assistance unit.~~

(3) ~~For the first full month following the month you get a job or apply for WCCC and we pay benefits;~~

(4) ~~If there is a break of at least thirty days in your WCCC benefits due to your activity ending; or~~

(5) ~~If you received child care benefits within the last thirty days immediately prior to the eligibility period and you do not meet the qualifications in subsections (1) through (4) of this section, your copayment will be computed according to WAC 388-290-0075.)~~ (1) The minimum copayment is paid when the consumer has countable monthly income at or below eighty-two percent of the federal poverty guidelines.

(2) **First application.** The consumer pays the minimum copayment when he or she first applies for WCCC, and benefits are paid. The consumer pays the minimum copayment beginning in the month that DSHS pays for WCCC child care services, and the first full calendar month thereafter.

(3) **Reapplication.** The consumer pays the minimum copayment when the consumer reapplies for WCCC after a break of at least thirty days in his or her approved activity. The consumer pays the minimum copayment beginning in the month that DSHS pays for WCCC child care services, and the first full calendar month thereafter.

(4) The consumer pays the minimum copayment when he or she is a minor parent, and:

(a) ~~Receives TANF; or~~

(b) ~~Is part of the parent's or relative's TANF assistance unit.~~

### Start Dates and Eligibility Period

AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

**WAC 170-290-0095 ~~((If I receive temporary assistance for needy families (TANF) and I am determined eligible for WCCC, when do my benefits begin?))~~ When WCCC benefits start for TANF consumers.** When ~~((you))~~ a consumer receives TANF~~((?))~~ and ~~((are))~~ is eligible for WCCC, ~~((your))~~ his or her benefits begin when ~~((your))~~:

(1) The consumer's eligible provider (under WAC ~~((388-290-0125))~~ 170-290-0125) is caring for ~~((your))~~ his or her children; and

~~((you are))~~ (2) The consumer is participating in an approved activity under WAC ~~((388-290-0040 or 388-290-0055))~~ 170-290-0040 or 170-290-0055.

AMENDATORY SECTION (Amending WSR08-08-047, filed 3/27/08, effective 3/27/08)

**WAC 170-290-0100** ~~((If I do not receive temporary assistance for needy families (TANF) and I am determined eligible for WCCC, when do my benefits begin?))~~

**When WCCC benefits start for consumers not receiving TANF.** (1) If ~~((you do))~~ a consumer does not receive TANF and ~~((are))~~ is eligible for WCCC ~~((your))~~, his or her benefits begin as described in WAC ~~((388-290-0055))~~ 170-290-0055(1) or the date ~~((you apply))~~ the consumer applies for WCCC and the following requirements are met:

(a) ~~((You have))~~ The consumer has turned in all ~~((your))~~ information within thirty days of ~~((your))~~ his or her application date;

(b) ~~((You))~~ The consumer meets all eligibility requirements; and

(c) ~~((Your))~~ The consumer's eligible provider (under WAC ~~((388-290-0125))~~ 170-290-0125) is caring for ~~((your))~~ his or her children.

(2) ~~((Your))~~ The consumer's application date is whichever is earlier:

(a) The date ~~((your))~~ the consumer's application is entered into ~~((our))~~ DSHS's automated system; or

(b) The date ~~((your))~~ the consumer's application is date stamped as received.

(3) If ~~((you))~~ a consumer fails to turn in all ~~((your))~~ information within thirty days from ~~((your))~~ his or her application date ~~((you))~~, the consumer must restart ~~((your))~~ the application process. ~~((Your))~~ The consumer's begin date for benefits is described in subsection (2) of this section.

AMENDATORY SECTION (Amending WSR08-08-047, filed 3/27/08, effective 3/27/08)

**WAC 170-290-0107** ~~((When do I receive a denial letter?))~~ **Denial of benefits—Date of redetermining eligibility.** ~~((We))~~ DSHS sends ~~((you))~~ a consumer a denial letter when ~~((you have))~~ the consumer has applied for child care and ~~((you))~~ the consumer:

(1) Withdraws ~~((your))~~ his or her request;

(2) ~~((Are))~~ Is not eligible due to ~~((your))~~ the consumer's:

(a) Family composition;

(b) Income; or

(c) Activity.

(3) Did not provide information ~~((necessary))~~ required to determine ~~((your))~~ the consumer's eligibility according to WAC ~~((388-290-0012))~~ 170-290-0012;

(4) If a consumer turns in information or otherwise meets eligibility requirements after DSHS sends the consumer a denial letter, DSHS determines the consumer's benefit begin date by:

(a) WAC 170-290-0095 if the consumer is a TANF consumer; or

(b) WAC 170-290-0100 if the consumer is not receiving TANF.

#### NEW SECTION

**WAC 170-290-0109** **New eligibility period.** (1) If a consumer wants to receive child care benefits for another eli-

gibility period, he or she must reapply for WCCC benefits before the end of the current eligibility period. To determine if a consumer is eligible, DSHS:

(a) Requests application information before the end date of the consumer's current WCCC eligibility period; and

(b) Verifies the requested information for completeness and accuracy.

(2) A consumer may be eligible for WCCC benefits for a new eligibility period if:

(a) DSHS receives the consumer's application information no later than the last day of the current eligibility period;

(b) The consumer's provider is eligible for payment under WAC 170-290-0125; and

(c) The consumer meets all WCCC eligibility requirements.

(3) If DSHS determines that a consumer is eligible for WCCC benefits based on his or her application information, DSHS notifies the consumer of the new eligibility period and copayment.

(4) When a TANF consumer submits an application after the last day of his or her current eligibility period, the consumer's benefits begin when:

(a) The consumer is participating in an approved TANF/WorkFirst activity; and

(b) The consumer's child is being cared for by his or her eligible WCCC provider.

(5) When a consumer who is not receiving TANF submits an application after the last day of his or her current eligibility period, his or her benefits begin:

(a) On the date that the consumer's application is date-stamped as received in DSHS's community service office (CSO) or entered into the CSO automated system, whichever date is earlier;

(b) When the consumer is participating in an approved activity; and

(c) The consumer's child is being cared for by his or her eligible WCCC provider.

AMENDATORY SECTION (Amending WSR08-08-047, filed 3/27/08, effective 3/27/08)

**WAC 170-290-0110** ~~((What circumstances might affect my eligibility for WCCC benefits and when might I be eligible again?))~~ **Termination of and redetermining eligibility for benefits.** (1) ~~((We))~~ DSHS stops ~~((your))~~ a consumer's eligibility for WCCC benefits when ~~((you do not))~~:

(a) The consumer's monthly copayment is higher than the state maximum monthly rate for all of the consumer's children in care under WAC 170-290-0005; or

(b) The consumer does not:

(i) Pay copayment fees assessed by ~~((us))~~ DSHS and ~~((you do))~~ the consumer does not make mutually acceptable arrangements with ~~((your))~~ his or her child care provider to pay the copayment;

~~((b))~~ (ii) Complete the requested ~~((reapplication))~~ application before the deadline noted in WAC ~~((388-290-0105))~~ 170-290-0109 (2)(a);

~~((e))~~ (iii) Meet other WCCC eligibility requirements related to family size, income and approved activities; or

~~((4))~~ (iv) Cooperate with the quality assurance review process or with the DSHS division of fraud investigations.

(2) ~~((You might))~~ A consumer may be eligible for WCCC again when ~~((you))~~ the consumer meets all WCCC eligibility requirements, and:

(a) ~~The consumer paid back copayment fees ((are paid));~~

(b) ~~((You make))~~ The consumer made mutually acceptable payment arrangements with ~~((your))~~ his or her child care provider; or

(c) ~~((You cooperate))~~ The consumer cooperated with the quality assurance review process or with the DSHS division of fraud investigations.

### Notice

AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

~~WAC 170-290-0115 ((When does the WCCC program provide me with advance and adequate))~~ **Notice of payment changes((?)).** ~~((1) The WCCC program))~~ DSHS provides ~~((you))~~ WCCC consumers with ~~((advance and adequate))~~ at least ten days written notice for changes ~~((#))~~ to payments ~~((when the change results in a))~~ related to suspension, reduction, or termination of benefits, or forces a change in child care arrangements, except as noted in WAC ~~((388-290-0120))~~ 170-290-0120.

~~((2) "Advance and adequate notice," means a written notice of a WCCC reduction, suspension, or termination that is mailed at least ten days before the date of the intended action which includes the Washington Administrative Code (WAC) supporting the action, and your right to request a fair hearing.))~~

AMENDATORY SECTION (Amending WSR08-08-047, filed 3/27/08, effective 3/27/08)

**WAC 170-290-0120 When ~~((doesn't advance and adequate))~~ notice of payment changes ~~((apply to me?))~~ is not required.** ~~((We do))~~ DSHS does not give ~~((you advance and adequate))~~ a consumer notice in the following circumstances:

(1) ~~((You))~~ The consumer tells ~~((us you))~~ DSHS that he or she no longer wants WCCC;

(2) ~~((Your))~~ The consumer's whereabouts are unknown to ~~((us))~~ DSHS;

(3) ~~((You are))~~ The consumer is receiving duplicate child care benefits;

(4) ~~((Your))~~ The consumer's current eligibility period is scheduled to end;

(5) ~~((Your))~~ The consumer's new eligibility period results in a change in child care benefits;

(6) The location where child care occurs does not meet requirements under WAC ~~((388-290-0130(2)))~~ 170-290-0130; or

(7) ~~((We))~~ DSHS determines ~~((your))~~ that a consumer's in-home/relative provider:

(a) Is not of suitable character and competence;

(b) May cause a risk of harm to ~~((your))~~ the consumer's children based on the provider's physical or mental health; or

(c) Has been convicted of, or has charges pending for crimes ~~((posted))~~ on the ~~((DSHS secretary's list of permanently disqualifying convictions for ESA. You can find the complete list at http://www1.dshs.wa.gov/esa/decel/))~~ DEL director's list in WAC 170-06-0120.

### Eligible Child Care Providers

AMENDATORY SECTION (Amending WSR08-08-047, filed 3/27/08, effective 3/27/08)

**WAC 170-290-0125 ~~((What child care providers can I choose under the WCCC program?))~~ Eligible child care providers.** To receive payment under the WCCC program, ~~((your))~~ a consumer's child care provider must be:

(1) **A licensed, certified, or DEL-contracted provider.**

(a) Licensed providers are:

(i) Currently licensed as required by chapter ~~((74-15))~~ 43.215 RCW and chapters ~~((388-155, 388-295, or 388-151))~~ 170-295, 170-296, or 170-151 WAC; or

~~((2))~~ (ii) Meeting ~~((their))~~ the provider's state's licensing regulations, for providers who care for children in states bordering Washington. ~~((We))~~ DSHS pays the lesser of the following to qualified child care facilities in bordering states:

~~((a))~~ (A) The provider's ~~((usual daily))~~ private pay rate for that child; or

~~((b))~~ (B) The DSHS maximum child care subsidy daily rate for the DSHS region where the child resides.

~~((3))~~ (b) Certified providers are exempt from licensing but certified by ~~((us))~~ DEL, such as:

~~((a))~~ (i) Tribal child care facilities that meet the requirements of tribal law;

~~((b))~~ (ii) Child care facilities on a military installation; and

~~((c))~~ (iii) Child care facilities operated on public school property by a school district.

~~((4))~~ (c) DEL-contracted seasonal day camp~~((s that))~~ have a contract with ~~((us))~~ DEL to provide subsidized child care ~~((and are:~~

(a) Of a duration of three months or less;

(b) Engaged primarily in recreational or educational activities; and

(c) Accredited by the American Camping Association (ACA);

~~((5) An in-home/relative meeting); or~~

**(2) An in-home/relative provider.** Providers other than those specified in subsection (1) of this section must meet the requirements in WAC ~~((388-290-0130))~~ 170-290-0130.

AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

**WAC 170-290-0130 ~~((What in-home/relative providers can I choose under the WCCC program?))~~ In-home/relative providers—Eligibility.** (1) To be eligible as an in-home/relative provider ~~((the person must:~~

(a) Be an adult who is a U.S. citizen or legally residing in the United States;

(b) Meet the requirements in WAC 388-290-0135; and

(c) Be one of the following adults providing care in the home of either the child or the adult:

- (i) A sibling living outside the child's home;
- (ii) An extended tribal family member according to chapter 74.15 RCW; or
- (iii) A grandparent, aunt, uncle, or great grandparent, great-aunt or great-uncle.

(2) An adult not listed in (1)(c)(i), (ii), or (iii) of this section must:

(a) Meet the requirements in subsection (1)(a) and (b) of this section; and

(b) Provide care in the child's home.

(3) If you use an in-home/relative provider you can:

(a) Have no more than two in-home/relative providers authorized for payment during your eligibility period at the same time (not including back-up providers);

(b) Have one back-up provider (licensed or an in-home/relative provider.)) to care for children under WCCC, the applicant must be:

(a) Eighteen years of age or older;

(b) A citizen or legal resident of the U.S.; and

(c) Meet all of the requirements listed in WAC 170-290-0135.

(2) Additionally, eligible in-home/relative providers must:

(a) Meet all applicable background check requirements in part II of this chapter;

(b) Agree to provide care, supervision, and daily activities based on the child's developmental needs, including environmental, physical, nutritional, emotional, cognitive, safety, and social needs; and

(c) Bill only for actual hours of care provided. Those hours must be authorized by DSHS, and used by the parent for his or her DSHS approved activities or work hours.

(3) The following eligible in-home/relative providers, except those providers residing with a disqualified person, may provide care in either their home or the child's home:

(a) Adult siblings that live outside the child's home;

(b) Extended tribal family members;

(c) Grandparent or great-grandparent; or

(d) Aunt or uncle, or great-aunt or great-uncle.

(4) All other eligible providers, including other family members, friends, neighbors, or nannies must provide care in the child's home only.

(5) The following persons are not eligible to provide in-home/relative care under part II of this chapter:

(a) The child's biological, adoptive, or step-parent;

(b) The child's legal guardian or the guardian's spouse or live-in partner; or

(c) Another adult acting in loco parentis or that adult's spouse or live-in partner.

(6) WCCC consumers may have up to two in-home/relative providers authorized for payment during the consumer's eligibility period, plus one back-up provider, either licensed or in-home/relative also authorized to care for the consumer's children.

(7) WCCC consumers who choose in-home/relative care are responsible to monitor the environment and child care services they receive from their provider. WCCC consumers must ensure that their children who receive subsidized child care outside of their own home are current on all Washington

state immunizations, except in cases based on religious preference or medical conditions.

AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

WAC 170-290-0135 ((When I choose an in-home/relative provider, what information must I give the department?)) **In-home/relative providers—Information provided to DSHS.** ((When you choose in-home/relative child care, you must complete certain forms and give us the following:

(1) The in-home/relative child care provider's legal name, address and telephone number;

(2) A copy of the provider's valid Social Security card;

(3) A copy of the provider's photo identification;

(4) A completed background check authorization; and

(5) A form supplied by us, completed and signed by you and the provider in which both of you attest to the following:

(a) The provider is:

(i) Of suitable character and competence;

(ii) Of sufficient physical and mental health to meet the needs of the children in care. If we request it, you must provide written evidence that the in-home child care provider of your choice is of sufficient physical and mental health to be a safe child care provider;

(iii) Able to work with the children without using corporal punishment or psychological abuse;

(iv) Able to accept and follow instructions;

(v) Able to maintain personal cleanliness;

(vi) Prompt and regular in job attendance;

(vii) Informed about basic health practices, prevention and control of infectious disease, immunizations; and

(viii) Able to provide constant care, supervision and activities based on the child's developmental needs.

(b) The children are current on the immunization schedule as described in the National Immunization Guidelines, developed by the American Academy of Pediatrics and the Advisory Committee on Immunization Practices;

(c) The home where care is provided is safe for the care of the children.)) (1) When a consumer chooses in-home/relative child care, the consumer and the provider must give DSHS the following information:

(a) The in-home/relative provider's legal name, address, and telephone number;

(b) A copy of the provider's valid Social Security card;

(c) A copy of the provider's photo identification;

(d) A completed, signed and dated background check form; and

(e) A completed WCCC application form, signed and dated by the consumer and the provider, in which they both attest that the provider is:

(i) Of suitable character and competence;

(ii) Of sufficient physical and mental health to be a safe child care provider and meet the needs of the children in care;

(iii) Able to work with the children without using corporal punishment or psychological abuse;

(iv) Able to accept and follow instructions;

(v) Able to maintain personal cleanliness;

(vi) Prompt and regular in job attendance; and

(vii) Informed about basic health practices, prevention and control of infectious disease, and immunizations.

(2) If DSHS requests it, the consumer and/or the provider must provide written medical or legal evidence that the in-home/relative provider is of sufficient physical and mental health to provide safe, reliable and developmentally appropriate child care services.

AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

**WAC 170-290-0138 ((~~What responsibilities does my eligible in-home/relative provider have?~~) ~~In-home/relative providers—Responsibilities.~~ ((~~Your in-home/relative provider must:~~**

(1) Report within ten days changes in their legal name, address or telephone number;

(2) Report within twenty-four hours pending charges or convictions they have;

(3) Report within twenty-four hours pending charges or convictions for anyone sixteen years of age and older who lives with the provider when care occurs outside of the child's home;

(4) Bill WCCC only for care he/she provided;

(5) Not bill WCCC for more than six children at one time for the same hours of care; and

(6) Keep correct attendance records. Records must:

(a) Show both days and times the care was provided;

(b) Be kept for five years; and

(c) Be given to us, within fourteen consecutive calendar days, if we ask for them.)) An in-home/relative provider must:

(1) Provide care, supervision, and daily activities based on the child's developmental needs;

(2) Report to DSHS within ten days any changes to their legal name, address or telephone number;

(3) Report to DSHS within twenty-four hours any pending charges or convictions they have;

(4) Report to DSHS within twenty-four hours any pending charges or convictions for anyone sixteen years of age and older who lives with the provider, including any person sixteen years of age or older who newly resides with the provider, when the provider cares for the child in the provider's home. Background checks must be completed for these persons as provided in WAC 170-290-0143;

(5) Bill only for actual hours of care provided. Those hours must be authorized by DSHS, and used by the consumer for his or her DSHS approved activities;

(6) Bill for no more than six children at one time during the same hours of care;

(7) Keep attendance records for five years documenting the days and hours of care provided;

(8) Have the consumer sign and date the records at least weekly, verifying the accuracy of the dates and times;

(9) Repay any overpayments under WAC 170-290-0268; and

(10) Provide any of the records in subsections (7) and (8) of this section that are requested by DSHS or DEL, within fourteen consecutive calendar days of the request.

AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

**WAC 170-290-0140 ((~~When is my in-home/relative provider not eligible for WCCC payment?~~) ~~In-home/relative providers—Ineligibility.~~ ((~~We do not pay for the cost of in-home/relative care if:~~**

(1) Your provider does not meet the requirements in WAC 388-290-0130, 388-290-0135, and 388-290-0138;

(2) Your in-home/relative provider has been convicted of, or has charges pending for crimes posted on the DSHS secretary's crime and action list for background checks for ESA. You can find the complete list at <http://www1.dshs.wa.gov/esa/decel/policy.shtml>;

(3) We do not have background check results according to WAC 388-290-0143;

(4) The provider is:

(a) The child's biological, adoptive or step-parent;

(b) The child's nonneedy or needy relative or relative's spouse or live-in partner;

(c) The child's legal guardian or the guardian's spouse or live-in partner; or

(d) Another adult acting in loco parentis or that adult's spouse or live-in partner.

(5) We do not have the results of all applicable criminal background checks under WAC 388-290-0143(1) and 388-290-0150. An in-home/relative provider is not an eligible provider (per WAC 388-290-0095 and 388-290-0100) prior to receiving these background results. Providers other than in-home/relative providers you can use are described in WAC 388-290-0125; or

(6) We determine your provider is not of suitable character and competence or of sufficient physical or mental health to meet the needs of the child in care, or the household may be at risk of harm by this provider, as indicated by information other than conviction information. We will use criteria, such as the following, when reviewing information about incidents/issues/reports/findings:

(a) Recency;

(b) Seriousness;

(c) Type;

(d) Frequency; and

(e) Relationship to the direct care of a child including health, mental health, learning, and safety.)) DSHS does not pay for the cost of child care provided by an in-home/relative provider if:

(1) The provider does not meet the requirements listed in WAC 170-290-0130, 170-290-0135, and 170-290-0138;

(2) The provider has been convicted of, or has charges pending for crimes on the DEL director's list in WAC 170-06-0120;

(3) DSHS has not received all background check results under WAC 170-290-0143(1) and 170-290-0150; or

(4) DSHS determines a consumer's provider is not of suitable character and competence or of sufficient physical or mental health to meet the needs of the child in care, or the consumer's child may be at risk of harm by this provider, as indicated by information other than conviction information. DSHS will use criteria, such as the following, when reviewing information about incidents, issues, reports, and findings:

(a) Recency;

(b) Seriousness;

(c) Type;

(d) Frequency; and

(e) Relationship of the information obtained to the direct care of a child, including but not limited to, impacts to the child's environmental, physical, nutritional, emotional, cognitive, safety, and social needs.

AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

**WAC 170-290-0143** (~~Who must have a~~) **In-home/relative providers—Background checks** (~~for the WCCC program and how often is the check done?~~)—**Required persons.** (1) Background checks for eligible licensed and certified providers are covered under chapter 170-06 WAC.

(2) A background check must be completed for:

(a) All in-home/relative providers who apply to care for a WCCC consumer's child; and

(b) Any individual sixteen years of age or older who is residing with a provider when the provider cares (~~occurs outside of the child's~~) for the child in the provider's own home.

~~((2))~~ (3) A background check must be completed for individuals listed in subsection ~~((4))~~ (2)(a) and (b) of this section at least every two years.

~~((3))~~ (4) Additional background checks must be completed for individuals listed in subsection ~~((4))~~ (2)(a) and (b) of this section when:

(a) Any individual sixteen years of age or older is newly residing with a provider when the provider cares (~~occurs outside of the child's~~) for the child in the provider's own home;

(b) ~~((We have))~~ DSHS has a valid reason to (~~do a~~) check more frequently;

(c) An in-home/relative provider applies to provide care for a family, such as when:

(i) A break in service occurs to the current consumer;

(ii) There is a break in consumer eligibility; or

(iii) A provider is currently providing care and there are no prior background results for this provider.

~~((4 We do))~~ (5) DSHS does not need to request a new background check for an individual in subsection ~~((4))~~ (2)(a) or (b) if:

(a) ~~((We have))~~ DSHS has results that were received no more than ninety days prior to the current requested start date of care; and

(b) The results indicate ~~((that))~~ there is no record.

AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

**WAC 170-290-0145** (~~Why is a~~) **In-home/relative providers—Background checks** (~~required and will I be notified of the results?~~)—**Reasons and notification.** (1) ~~((We))~~ DSHS requires (~~the~~) background checks to:

(a) Help safeguard the health, safety, and well-being of children;

(b) Reduce the possible risk of harm from persons who have been convicted or have charges pending of certain crimes having access to WCCC children; and

(c) Help ~~((you))~~ consumers make informed decisions about individuals who have access to ~~((your))~~ their children.

(2) ~~((We notify you,))~~ DSHS notifies the WCCC consumer(~~:~~

(a) ~~Whether we can approve the provider for the WCCC program; and~~

~~(b) Of the following results from the background check:~~  
~~(i)),~~ after receiving the results of the background checks, if the consumer's chosen provider is an eligible provider under the WCCC rules.

(3) DSHS also notifies the consumer of the following results from the completed background checks:

(a) No background information is found given current sources of information;

~~((ii))~~ (b) Background information is found, but the information will not disqualify the individual being checked; or

~~((iii))~~ (c) Background information is found that disqualifies the individual being checked.

AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

**WAC 170-290-0150** (~~What information does the background check contain and where does it come from?~~) **In-home/relative providers—Background checks—Included information and sources.** (1) ~~((The background information includes, at a minimum, criminal convictions and pending charges.~~

~~(2))~~ DSHS obtains background information, at a minimum, from the Washington state patrol under chapter 10.97 RCW and RCW 43.43.830 through 43.43.837 via the background check central unit (BCCU).

(2) The background information includes, at a minimum, criminal convictions and pending charges. Additional sources may include:

(a) Child/adult protective service case information;  
~~((and))~~

(b) Civil judgments, determinations, or disciplinary board final decisions of abuse or neglect(~~:~~

~~(3) We obtain background information, at a minimum, from the Washington state patrol under chapter 10.97 RCW via the background check central unit (BCCU).~~

~~(4) Additional sources of the background information may be obtained from:~~

~~(a) Child/adult protective service case files;~~

~~(b) Other states and federally recognized Indian tribes;~~

~~(c) The department of corrections and the courts;~~

~~(d) Law enforcement records of convictions and pending charges in other states or locations if:~~

~~(i) The individual being checked has lived in another state; and~~

~~(ii) Reports from credible community sources indicate a need to investigate another state's records.~~

~~(e) The individual being checked self-discloses information);~~

~~(c) Other states and federally recognized Indian tribes;~~

~~(d) The department of corrections and the courts;~~

~~(e) The individual being checked, if he or she self-discloses information; and~~

~~(f) Law enforcement records of convictions and pending charges in other states or locations if reports from credible~~

community sources indicate a need to investigate another state's records.

AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

**WAC 170-290-0155** ~~((What happens after the WCCC program receives the background information?))~~ **In-home/relative providers—Background checks—Subsequent steps.** After ~~((we))~~ DSHS receives the background information ~~((we))~~, DSHS:

(1) Compares the background information with convictions ~~((posted on the DSHS secretary's crime and action list for background checks for economic services administration (ESA). You can find the complete list at <http://www1.dshs.wa.gov/esa/decel/policy.shtml>))~~ of, or charges pending for crimes on the DEL director's list in WAC 170-06-0120;

(2) Reviews the background information using the following rules:

(a) ~~((We))~~ DSHS gives the same weight to a pending charge for a crime as a conviction;

(b) If the conviction has been renamed, ~~((we))~~ DSHS gives the same weight as the previous named conviction. For example, larceny is now called theft;

(c) ~~((We))~~ DSHS gives convictions whose titles are preceded with the word "attempted" the same weight as those titles without the word "attempted"; and

(d) ~~((We do))~~ DSHS does not consider the crime a conviction for the purposes of WCCC when:

(i) It has been pardoned; or

(ii) A court of law acts to expunge, dismiss, or vacate the conviction record.

(3) ~~((Notify you whether or not we are able to approve the provider for WCCC.~~

(4) ~~Allow you, the consumer, to decide character and suitability of the provider when an individual is not automatically disqualified due to the background information from the record of arrests and prosecutions (RAP) sheet.~~

(5) ~~Deny or stop payment when the background information disqualifies the individual being checked.~~

(6) ~~Assist you in finding other child care arrangements.))~~ Notifies the consumer whether or not the provider has been disqualified for WCCC:

(4) Allows the consumer to decide character and suitability of the provider when an individual is not automatically disqualified due to the background information from the record of arrests and prosecutions (RAP) sheet or other information available to DSHS; and

(5) Denies or stops payment when the background information disqualifies the individual being checked.

AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

**WAC 170-290-0160** ~~((What convictions would cause the WCCC program to permanently disqualify my))~~ **In-home/relative providers(?)—Background checks—Disqualified providers.** (1) If ~~((you))~~ a consumer's provider or an individual listed in WAC ~~((388-290-0143(1)))~~ 170-290-0143(2) has a background containing a permanently disqual-

ifying conviction ~~((posted on the DSHS secretary's list of disqualifying convictions for ESA, we permanently disqualify the person as an in-home/relative child care provider for WCCC. You can find the complete list at <http://www1.dshs.wa.gov/esa/decel/>))~~ for crimes on the DEL director's list in WAC 170-06-0120(1), DSHS permanently disqualifies the person as an in-home/relative provider for WCCC.

(2) If the conditions in WAC ~~((388-290-0167))~~ 170-290-0167 (1)(a) and (b) are met, the disqualifying background of an individual sixteen years of age or over living with the provider may not permanently disqualify the provider.

AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

**WAC 170-290-0165** ~~((Is there other background information or convictions that will disqualify my))~~ **In-home/relative providers(?)—Background checks—Other disqualifying information.** (1) ~~((We))~~ DSHS can disqualify ~~((you))~~ a consumer's in-home/relative provider if the individual being checked has a background containing information other than conviction information that ~~((we))~~ DSHS determines:

(a) Makes the individual not of suitable character and competence or of sufficient physical or mental health to meet the needs of the child in care; or

(b) Puts the ~~((household))~~ consumer's child at risk for harm.

(2) If an individual being checked has a background containing a five-year disqualifying conviction ~~((posted))~~ for crimes on the ~~((DSHS secretary's list of disqualifying convictions for ESA))~~ DEL director's list in WAC 170-06-0120(2), ~~((you))~~ the consumer's provider is disqualified as an in-home/relative ~~((child care))~~ provider for WCCC for five years after the conviction date. ~~((You can find the complete list at <http://www1.dshs.wa.gov/esa/decel/>))~~

(3) If an individual being checked has:

(a) A conviction listed in subsection (2) of this section, and it has been more than five years; or

(b) Any conviction other than those ~~((posted))~~ crimes on the ~~((DSHS secretary's list of disqualifying convictions for ESA we will))~~ DEL director's list in WAC 170-06-0120, DSHS allows ~~((you))~~ the consumer to determine the provider's character, suitability, and competence by reviewing important information such as the:

(i) Amount of time that has passed since the conviction;

(ii) Seriousness of the crime that led to the conviction;

(iii) Individual's age at the time of conviction;

(iv) Individual's behavior since the conviction;

(v) Number and types of convictions in the individual's background; and

(vi) Individual's verification, if any, of successful completion of all court-ordered programs and restitution.

(4) If conditions in WAC ~~((388-290-0167))~~ 170-290-0167 (1)(a) and (b) are met, the disqualifying background of an individual sixteen years of age or over living with the provider may not disqualify the provider.

AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

**WAC 170-290-0167** (~~What happens if my~~) ~~In-home/relative providers~~~~(, who provides care in their home, is disqualified based solely on the disqualifying background of an individual living with that provider?)~~ **Background checks—Disqualified person living with the provider.** ~~((1) If we disqualify your provider based solely on the disqualifying background of an individual living with that provider, we require that:~~

~~(a) Child care occurs in the child's home away from the disqualified individual, if you wish to continue using that provider; and~~

~~(b) The parent and provider sign an agreement with us indicating that:~~

~~(i) Care occurs in the child's home; and~~

~~(ii) There is no contact between the child and disqualified individual during child care hours.~~

~~(2) The parent may choose a licensed provider or submit an application for a different in-home/relative provider.~~

~~(3) If we become aware that the parent and provider are not meeting the conditions in subsection (1)(a) and (b) of this section:~~

~~(a) We terminate care without advance and adequate notice;~~

~~(b) You need to find a different provider; and~~

~~(c) You may be subject to an overpayment under WAC 388-290-0270.) (1) If a consumer's in-home/relative provider is disqualified based only on the disqualifying background of a person living with the provider, then:~~

~~(a) Child care is allowed only in the child's home away from the disqualified individual, regardless of whether or not the provider meets the other qualifications listed in WAC 170-290-0130; and~~

~~(b) The consumer and provider sign an agreement with DSHS stating that:~~

~~(i) Care will occur only in the child's home; and~~

~~(ii) There is no contact between the child and disqualified person during child care hours.~~

~~(2) The consumer may also choose to select a licensed child care center or family child care home provider, or submit an application for a different in-home/relative provider.~~

~~(3) If DSHS becomes aware that the consumer and provider are not meeting the conditions in subsection (1)(a) and (b) of this section:~~

~~(a) DSHS may terminate payments without notice; and~~

~~(b) The consumer may be subject to an overpayment under WAC 170-290-0271.~~

### Subsidy Rates and Fees

AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

**WAC 170-290-0180** (~~When are the WCCC program subsidy rates in this chapter effective?~~) **WCCC subsidy rates—Effective date.** ~~((DSHS)) State child care subsidy rates (full-day, half-day and hourly) in part II of this chapter are effective on ((or after November)) July 1, ((2005)) 2009, and are subject to legislative change.~~

AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

**WAC 170-290-0185** (~~How does the WCCC program set rates when my child is five years old?~~) **WCCC subsidy rates—Five-year-old children.** The rate paid for a five-year-old child is:

(1) The preschool rate for a child who has not entered kindergarten; or

(2) The school-age rate for a child who has entered kindergarten.

AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

**WAC 170-290-0190** (~~What does the WCCC program pay for and when can the program pay more?~~) **WCCC authorized and additional payments—Determining units of care.** (1) ~~((We)) DSHS may pay for the following child care hours:~~

~~(a) ((Basic child care hours, either full-day,)) Half-day ((or hourly. We)) care, which is less than one hundred ten hours per calendar month; and~~

~~(b) Full-day care, which is one hundred ten or more hours per calendar month.~~

~~(2) DSHS authorizes:~~

~~((i)) (a) Full-day child care to licensed or certified facilities and ((DSHS)) DEL contracted seasonal day camps when ((your)) a consumer's children need care for five or more hours per day;~~

~~((ii)) (b) Half-day child care to licensed or certified facilities and ((DSHS)) DEL contracted seasonal day camps when ((your)) a consumer's children need care for less than five hours per day; ((and~~

~~((iii)) (c) Hourly child care for in-home/relative child care((-);~~

~~((b)) (d) A registration fee (under WAC ((388-290-0245)) 170-290-0245);~~

~~((e)) (e) A field trip fee (under WAC ((388-290-0245)) 170-290-0247); ((and~~

~~((f)) (f) Special needs care when the child has a documented need for a higher level of care (under WAC ((388-290-0220, 388-290-0225, 388-290-0230, and 388-290-0235)) 170-290-0220, 170-290-0225, 170-290-0230, and 170-290-0235); and~~

~~(g) A nonstandard hours bonus under WAC 170-290-0249.~~

~~((2) We)) (3) DSHS may authorize up to the provider's ((usual daily)) private pay rate if:~~

(a) The parent is a ~~((mandatory))~~ WorkFirst participant; and

(b) Appropriate child care, at the ~~((DSHS))~~ state rate, is not available within a reasonable distance from the home or work (activity) site.

"Appropriate" means licensed or certified child care ~~((approvable))~~ under WAC ~~((388-290-0125))~~ 170-290-0125, or an approved in-home/relative provider under WAC 170-290-0130.

"Reasonable distance" is determined by comparing what other local families must travel to access appropriate child care.

~~((3) We)~~ (4) DSHS authorizes an additional amount of care if:

- (a) More than ten hours of care is provided per day (up to a maximum of sixteen hours a day); and
- (b) The provider's policy is to charge all families for these extra hours.

AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

**WAC 170-290-0200** ~~((What)) Daily ((rates does DSHS pay for)) child care ((in a) rates—Licensed or certified child care centers ((or DSHS)) and DEL contracted seasonal day camps((?)).~~ (1) ~~((We))~~ DSHS pays the lesser of the following to a licensed or certified child care center or ~~((DSHS))~~ DEL contracted seasonal day camp:

- (a) The provider's ~~((usual daily))~~ private pay rate for that child; or
- (b) The ~~((DSHS))~~ maximum child care subsidy daily rate for that child as listed in the following table:

		Infants (One month - 11 mos.)	Toddlers (12 - 29 mos.)	Preschool (30 mos. - 5 yrs)	School-age (5 - 12 yrs)
Region 1	Full-Day	<del>\$(25.89)</del> <u>28.53</u>	<del>\$(21.77)</del> <u>23.99</u>	<del>\$(20.57)</del> <u>22.67</u>	<del>\$(19.36)</del> <u>21.34</u>
	Half-Day	<del>\$(12.95)</del> <u>14.28</u>	<del>\$(10.89)</del> <u>12.00</u>	<del>\$(10.29)</del> <u>11.34</u>	<del>\$(9.68)</del> <u>10.67</u>
Spokane County	Full-Day	<del>\$(26.48)</del> <u>29.18</u>	<del>\$(22.27)</del> <u>24.54</u>	<del>\$(21.04)</del> <u>23.19</u>	<del>\$(19.80)</del> <u>21.83</u>
	Half-Day	<del>\$(13.25)</del> <u>14.61</u>	<del>\$(11.14)</del> <u>12.28</u>	<del>\$(10.53)</del> <u>11.61</u>	<del>\$(9.90)</del> <u>10.91</u>
Region 2	Full-Day	<del>\$(26.14)</del> <u>28.81</u>	<del>\$(21.83)</del> <u>24.05</u>	<del>\$(20.23)</del> <u>22.30</u>	<del>\$(17.91)</del> <u>19.73</u>
	Half-Day	<del>\$(13.07)</del> <u>14.41</u>	<del>\$(10.92)</del> <u>12.03</u>	<del>\$(10.12)</del> <u>11.15</u>	<del>\$(8.96)</del> <u>9.88</u>
Region 3	Full-Day	<del>\$(34.60)</del> <u>38.13</u>	<del>\$(28.84)</del> <u>31.79</u>	<del>\$(24.92)</del> <u>27.46</u>	<del>\$(24.20)</del> <u>26.67</u>
	Half-Day	<del>\$(17.30)</del> <u>19.07</u>	<del>\$(14.42)</del> <u>15.89</u>	<del>\$(12.46)</del> <u>13.73</u>	<del>\$(12.10)</del> <u>13.34</u>
Region 4	Full-Day	<del>\$(40.27)</del> <u>44.38</u>	<del>\$(33.63)</del> <u>37.06</u>	<del>\$(28.21)</del> <u>31.09</u>	<del>\$(25.40)</del> <u>28.00</u>
	Half-Day	<del>\$(20.14)</del> <u>22.63</u>	<del>\$(16.82)</del> <u>18.54</u>	<del>\$(14.11)</del> <u>15.55</u>	<del>\$(12.70)</del> <u>14.00</u>
Region 5	Full-Day	<del>\$(29.52)</del> <u>32.54</u>	<del>\$(25.40)</del> <u>28.00</u>	<del>\$(22.36)</del> <u>24.65</u>	<del>\$(19.85)</del> <u>21.88</u>
	Half-Day	<del>\$(14.76)</del> <u>16.26</u>	<del>\$(12.70)</del> <u>14.00</u>	<del>\$(11.18)</del> <u>12.32</u>	<del>\$(9.93)</del> <u>10.95</u>

		Infants (Birth - 11 mos.)	Enhanced Toddlers (12 - 17 mos.)	Toddlers ((12) 18 - 29 mos.)	Preschool (30 mos. - 5 yrs)	School-age (5 - 11 yrs)
Region 1	Full-Day	<del>\$(21.29)</del> <u>24.29</u>	<u>\$24.29</u>	<del>\$(19.16)</del> <u>21.12</u>	<del>\$(19.16)</del> <u>21.12</u>	<del>\$(17.04)</del> <u>18.78</u>
	Half-Day	<del>\$(10.65)</del> <u>12.14</u>	<u>\$12.14</u>	<del>\$(9.58)</del> <u>10.56</u>	<del>\$(9.58)</del> <u>10.56</u>	<del>\$(8.52)</del> <u>9.39</u>
Spokane County	Full-Day	<del>\$(21.78)</del> <u>24.84</u>	<u>\$24.84</u>	<del>\$(19.60)</del> <u>21.60</u>	<del>\$(19.60)</del> <u>21.60</u>	<del>\$(17.43)</del> <u>19.21</u>
	Half-Day	<del>\$(10.89)</del> <u>12.42</u>	<u>\$12.42</u>	<del>\$(9.80)</del> <u>10.80</u>	<del>\$(9.80)</del> <u>10.80</u>	<del>\$(8.71)</del> <u>9.60</u>
Region 2	Full-Day	<del>\$(21.29)</del> <u>25.65</u>	<u>\$25.65</u>	<del>\$(20.23)</del> <u>22.30</u>	<del>\$(18.10)</del> <u>19.95</u>	<del>\$(18.10)</del> <u>19.95</u>
	Half-Day	<del>\$(10.65)</del> <u>12.82</u>	<u>\$12.82</u>	<del>\$(10.12)</del> <u>11.15</u>	<del>\$(9.05)</del> <u>9.97</u>	<del>\$(9.05)</del> <u>9.97</u>
Region 3	Full-Day	<del>\$(30.88)</del> <u>34.03</u>	<u>\$34.03</u>	<del>\$(26.62)</del> <u>29.33</u>	<del>\$(23.42)</del> <u>25.81</u>	<del>\$(21.29)</del> <u>23.46</u>
	Half-Day	<del>\$(15.44)</del> <u>17.02</u>	<u>\$17.02</u>	<del>\$(13.31)</del> <u>14.67</u>	<del>\$(11.71)</del> <u>12.91</u>	<del>\$(10.65)</del> <u>11.74</u>

		Infants (One month - 11 mos.)	Toddlers (12 - 29 mos.)	Preschool (30 mos. - 5 yrs)	School-age (5 - 12 yrs)
Region 6	Full-Day	<del>\$(29.03)</del> <u>31.99</u>	<del>\$(24.92)</del> <u>27.46</u>	<del>\$(21.77)</del> <u>23.99</u>	<del>\$(21.29)</del> <u>23.46</u>
	Half-Day	<del>\$(14.52)</del> <u>16.01</u>	<del>\$(12.46)</del> <u>13.73</u>	<del>\$(10.89)</del> <u>12.00</u>	<del>\$(10.65)</del> <u>11.74</u>

(i) Centers in Clark County are paid Region 3 rates.

(ii) Centers in Benton, Walla Walla, and Whitman counties are paid Region 6 rates.

(2) The child care center WAC ~~((388-295-0010))~~ 170-295-0010 allows providers to care for children from one month up to and including the day before their thirteenth birthday. The provider must obtain a child-specific and time-limited waiver from their child care licensor to provide care for a child outside the age listed on ~~((their))~~ the center's license. If the provider has a waiver to care for a child who has reached his or her thirteenth birthday, the payment rate is the same as subsection (1) of this section, and the five to twelve year age range column is used for comparison.

(3) If the center provider cares for a child who is thirteen or older, the provider must have a child-specific and time-limited waiver and the child must meet the special needs requirement according to WAC ~~((388-290-0220))~~ 170-290-0220.

~~((4) Rates for Spokane County are subject to special funding allocated by the Legislature in the state operating budget. If the special funds are not allocated Region 1 rates apply to Spokane County.)~~

AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

**WAC 170-290-0205** ~~((What daily rates does DSHS pay for child care in a licensed or certified family home child care?))~~ Daily child care rates—Licensed or certified family home child care providers. (1) ~~((We))~~ DSHS pays the lesser of the following to a licensed or certified family home child care provider:

- (a) The provider's ~~((usual daily))~~ private pay rate for that child; or
- (b) The ~~((DSHS))~~ maximum child care subsidy daily rate for that child as listed in the following table.

		Infants (Birth - 11 mos.)	<u>Enhanced</u> Toddlers (12 - 17 mos.)	Toddlers ((12) 18 - 29 mos.)	Preschool (30 mos. - 5 yrs)	School-age (5 - 11 yrs)
Region 4	Full-Day	\$((31-94)) 40.04	\$40.04	\$((31-59)) 34.81	\$((26-62)) 29.33	\$((25-55)) 28.16
	Half-Day	\$((15-97)) 20.03	\$20.03	\$((15-80)) 17.42	\$((13-31)) 14.67	\$((12-78)) 14.08
Region 5	Full-Day	\$((23-42)) 26.99	\$26.99	\$((21-29)) 23.46	\$((20-23)) 22.30	\$((18-10)) 19.95
	Half-Day	\$((11-71)) 13.50	\$13.50	\$((10-65)) 11.74	\$((10-12)) 11.15	\$((9-05)) 9.97
Region 6	Full-Day	\$((23-42)) 26.99	\$26.99	\$((21-29)) 23.46	\$((21-29)) 23.46	\$((20-23)) 22.30
	Half-Day	\$((11-71)) 13.50	\$13.50	\$((10-65)) 11.74	\$((10-65)) 11.74	\$((10-12)) 11.15

(2) The family home child care WAC ((388-296-0020 and 388-296-1350)) 170-296-0020 and 170-296-1350 allows providers to care for children from birth up to and including the day before their twelfth birthday. The provider must obtain a child-specific and time-limited waiver from their child care licensor to provide care for a child outside the age listed on their license. If the provider has a waiver to care for a child who has reached their twelfth birthday, the payment rate is the same as subsection (1) of this section, and the five to eleven year age range column is used for comparison.

(3) If the family home provider cares for a child who is thirteen or older, the provider must have a child-specific and time-limited waiver and the child must meet the special needs requirement according to WAC ((388-290-0220)) 170-290-0220.

(4) ((We)) DSHS pays family home child care providers at the licensed home rate regardless of their relation to the children (with the exception listed in subsection (5) of this section). Refer to subsection (1) and the five to eleven year age range column for comparisons.

(5) ((We)) DSHS cannot pay family home child care providers to provide care for children in their care if the provider is:

- (a) The child's biological, adoptive or step-parent;
  - (b) ((The child's nonneeded or needy relative or that relative's spouse or live-in partner;
  - (c)) The child's legal guardian or the guardian's spouse or live-in partner; or
  - ((d)) (c) Another adult acting in loco parentis or that adult's spouse or live-in partner.
- ((6) Rates for Spokane County are subject to special funding allocated by the Legislature in the state operating budget. If the special funds are not allocated Region 1 rates apply to Spokane County.)

AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

**WAC 170-290-0220 ((How does DSHS determine that my child qualifies for a)) Special needs ((daily)) rates((?))—Qualification.** To qualify for the ((DSHS child care programs)) special needs ((subsidy)) daily rate your child must either:

- (1) Be thirteen up to nineteen years old and be under court supervision; or
- (2) Be ((under)) less than nineteen years old((:)) and((:))
  - (a) Have a verified physical, mental, emotional, or behavioral condition that requires a higher level of care while in the care of ((the)) a licensed or certified facility, a ((DSHS)) DEL contracted seasonal day camp or an in-home/relative provider; and

(b) Have their condition and need for higher level of care verified by an individual who is not employed by the child care facility and is either a:

- (i) Health, mental health, education or social service professional with at least a master's degree; or
- (ii) Registered nurse.

AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

**WAC 170-290-0225 ((What is the additional subsidy daily rate for children with)) Special needs ((in a licensed or certified)) rates—Child care centers ((or DSHS contracted)) and seasonal day camps((?)).** (1) In addition to the rate listed in WAC ((388-290-0200)) 170-290-0200, ((we)) DSHS authorizes special needs daily rates to licensed or certified child care centers or ((DSHS)) DEL contracted seasonal day camps after a consumer has verified that his or her child has a special need and requires a higher level of care according to WAC 170-290-0220, according to whichever of the following is greater:

- (a) The provider's reasonable documented additional cost associated with the care of the child; or
- (b) The daily rate listed in the table below ((after you have verified that your child has a special need and requires a higher level of care according to WAC 388-290-0220)).

		Infants (One month - 11 mos.)	Toddlers (12 - 29 mos.)	Preschool (30 mos. - 5 yrs)	School-age (5 - 12 yrs)
Region 1	Full-Day	\$7.30	\$6.14	\$5.80	\$5.45
	Half-Day	\$3.65	\$3.07	\$2.90	\$2.73
Region 2	Full-Day	\$7.36	\$6.15	\$5.70	\$5.05
	Half-Day	\$3.68	\$3.08	\$2.85	\$2.52
Region 3	Full-Day	\$9.75	\$8.13	\$7.02	\$6.82
	Half-Day	\$4.88	\$4.06	\$3.51	\$3.41
Region 4	Full-Day	\$11.35	\$9.48	\$7.95	\$7.16
	Half-Day	\$5.67	\$4.74	\$3.98	\$3.58
Region 5	Full-Day	\$8.32	\$7.16	\$6.30	\$5.59
	Half-Day	\$4.16	\$3.58	\$3.15	\$2.80
Region 6	Full-Day	\$8.18	\$7.02	\$6.14	\$6.00
	Half-Day	\$4.09	\$3.51	\$3.07	\$3.00

- (i) Centers in Clark County are paid Region 3 rates.
- (ii) Centers in Benton, Walla Walla, and Whitman counties are paid Region 6 rates.

(2) The child care provider must verify the child's additional care needs when they request a rate above that listed in subsection (1)(b) of this section. The verification should include details about all of the child's additional needs in relevant areas such as environmental accommodations, ambulation, eating, personal hygiene, communication, and behavior.

(3) If a provider is requesting one-on-one supervision or direct care for the child with special needs the person providing the one-on-one care must be:

- (a) At least eighteen years of age; and
  - (b) Meet the requirements for being an assistant under chapter ~~((388-295))~~ 170-295 WAC.
- (4) If the provider has a waiver to care for a child who:

- (a) Is thirteen years or older; and
- (b) Has special needs according to WAC ~~((388-290-0220))~~ 170-290-0220, ~~((we))~~ DSHS authorizes the special needs payment rate as described in subsection (1) of this section using the five to twelve year age range for comparison.

AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

**WAC 170-290-0230** ~~((What is the additional subsidy daily rate for children with))~~ **Special needs** ~~((in a licensed or certified))~~ **rates—Family home child care** ~~((?))~~ **providers.** (1) In addition to the rate listed in WAC ~~((388-290-0205))~~ 170-290-0205, ~~((we))~~ DSHS authorizes special needs daily rates to licensed or certified family home child care providers after the consumer has verified that his or her child has a special need and requires a higher level of care according to WAC 170-290-0220, according to whichever of the following is greater:

- (a) The provider's reasonable documented additional cost associated with the care of the child; or
- (b) The daily rate listed in the table below ~~((after you have verified that your child has a special need and requires a higher level of care according to WAC 388-290-0220))~~:

		Infants (Birth - 11 mos.)	Toddlers (12 - 29 mos.)	Preschool (30 mos. - 5 yrs)	School-age (5 - 11 yrs)
Region 1	Full-Day	\$6.00	\$5.40	\$5.40	\$4.80
	Half-Day	\$3.00	\$2.70	\$2.70	\$2.40
Region 2	Full-Day	\$6.00	\$5.70	\$5.10	\$5.10
	Half-Day	\$3.00	\$2.85	\$2.55	\$2.55
Region 3	Full-Day	\$8.70	\$7.50	\$6.60	\$6.00
	Half-Day	\$4.35	\$3.75	\$3.30	\$3.00
Region 4	Full-Day	\$9.00	\$8.90	\$7.50	\$7.20
	Half-Day	\$4.50	\$4.45	\$3.75	\$3.60
Region 5	Full-Day	\$6.60	\$6.00	\$5.70	\$5.10
	Half-Day	\$3.30	\$3.00	\$2.85	\$2.55
Region 6	Full-Day	\$6.60	\$6.00	\$6.00	\$5.70
	Half-Day	\$3.30	\$3.00	\$3.00	\$2.85

(2) A family home child care provider must verify the child's additional care needs when they request a rate above that listed in subsection (1)(b) of this section. The verification should include details about all of the child's additional needs in relevant areas such as environmental accommodations, ambulation, eating, personal hygiene, communication, and behavior.

- (3) If the provider has a waiver to care for a child who:
  - (a) Is twelve years or older; and
  - (b) Has special needs according to WAC ~~((388-290-0220))~~ 170-290-0220, ~~((we))~~ DSHS authorizes the special needs payment rate as described in subsection (1) of this section using the five to eleven year age range for comparison.

(4) If a provider is requesting one-on-one supervision/direct care for the child with special needs ~~((?))~~, the person providing the one-on-one care must be:

- (a) At least eighteen years old; and
- (b) Meet the requirements for being an assistant under chapter ~~((388-155))~~ 170-296 WAC.

AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

**WAC 170-290-0235** ~~((What is the DSHS in-home/relative child care daily rate for children with))~~ **Special needs** ~~((?))~~ **rates—In-home/relative providers.** (1) ~~((We))~~ DSHS authorizes a base rate of two dollars and ~~((six))~~ twenty cents an hour for in-home/relative child care when a child has verified special needs and requires a higher level of care according to WAC ~~((388-290-0220))~~ 170-290-0220.

(2) In addition to the base rate, ~~((we))~~ the state authorizes whichever of the following is greater:

- (a) Sixty-two cents per hour, for a total of two dollars and eighty-two cents per hour; or
- (b) The provider's reasonable documented additional cost associated with the care for that child.

(3) The in-home/relative provider must verify the child's additional care needs when they request a rate above that listed in subsection ~~((+))~~ (2)(a) of this section. The verification must include details about all the child's additional needs in relevant areas such as environmental accommodations, ambulation, eating, personal hygiene, communication, and behavior.

(4) If other children in the home are also authorized for in-home/relative care with the same provider, ~~((we))~~ DSHS authorizes ~~((?))~~

~~((a))~~ two dollars and ~~((six cents an hour for the child needing the most care; and~~

~~((b) One dollar and three cents an hour for any additional children))~~ twenty cents per hour for the child who needs the greatest number of hours of care and two dollars and seven-teen cents per hour for the care of each additional child in the family.

AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

**WAC 170-290-0240** ~~((What is the DSHS child care subsidy rate for in-home/relative child care and how is it paid?))~~ **Child care subsidy rates—In-home/relative providers.** (1) When ~~((you))~~ a consumer employs an in-home/relative provider, the maximum ~~((we))~~ DSHS pays for child care is ~~((the lesser of the following:~~

- ~~((a))~~ two dollars and ~~((six))~~ twenty cents per hour for the child who needs the greatest number of hours of care and ~~((one))~~ two dollars and ~~((three))~~ seventeen cents per hour for the care of each additional child in the family ~~((? or~~
- ~~((b) The provider's usual hourly rate for that care)).~~

(2) ~~((We))~~ DSHS may pay above the maximum hourly rate for children who have special needs under WAC ~~((388-290-0235))~~ 170-290-0235.

(3) ~~((We))~~ DSHS makes the WCCC payment directly to ~~((your))~~ a consumer's eligible provider.

(4) When appropriate, ~~((we))~~ DSHS pays ~~((your-))~~ the employer's ~~((s))~~ share of the following:

- (a) Social Security and medicare taxes (FICA) up to the wage limit;
  - (b) Federal Unemployment Taxes (FUTA); and
  - (c) State unemployment taxes (SUTA) when applicable.
- (5) If an in-home/relative ~~((child-care))~~ provider receives less than the wage base limit per family in a calendar year, ~~((we))~~ DSHS refunds all withheld taxes to the provider.

AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

**WAC 170-290-0245** ~~((When can the WCCC program authorize payment of fees for))~~ **Registration ~~((?))~~ fees.** (1) ~~((We))~~ DSHS may pay licensed or certified child care providers and ~~((DSHS))~~ DEL contracted seasonal day camps a registration fee ~~((once per calendar year of fifty dollars per child or the provider's usual fee, whichever is less only if the fees are:~~

~~((a) Required of all parents whose children are in care with that provider; and~~

~~((b) Needed to maintain the child care arrangement.~~

~~((2) The registration fee may be authorized more than once per calendar year when:~~

~~((a) There is a break in your child care services for more than sixty days and the provider's policy is to charge an additional registration fee when there is a break in care; or~~

~~((b) The children change child care providers and the new provider meets subsection (1)(a) and (b) of this section.))~~ when:

~~((a) A child is first enrolled by the consumer for child care with a provider;~~

~~((b) A consumer enrolls their child with a new child care provider during their eligibility period; or~~

~~((c) A child has more than a sixty-day break in child care services with the same provider, and it is the provider's policy to charge all parents this fee when there is a break in service.~~

~~((2) A registration fee will be paid only once per calendar year for children who are cared for by the same provider, even if the provider receives subsidy payments under different subsidy programs during this time period for the enrolled children, unless there is a break of sixty days or more as provided in subsection (1)(c) of this section.~~

AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

**WAC 170-290-0247** ~~((When can the WCCC program authorize payment for))~~ **Field trip fees ~~((?))~~.** (1) ~~((We))~~ DSHS pays licensed or certified child care providers and ~~((DSHS))~~ DEL contracted seasonal day camps a monthly field trip fee up to twenty dollars per child or the provider's actual cost for the field trip, whichever is less, only if the fees ~~((meet the conditions in subsection (1)(a) and (b) of WAC 388-290-0245))~~ are required of all parents whose children are in the provider's care. The field trip fee is to cover the provider's actual expenses for:

(a) Admission;

(b) Transportation (not to include the provider's gas and insurance); and

(c) The cost of hiring a nonemployee to provide an in-house field trip activity.

(2) The field trip fee can only be reimbursed for children three years of age and older.

#### NEW SECTION

**WAC 170-290-0249 Nonstandard hours bonus.** (1) A consumer's provider may receive a nonstandard hours bonus (NSHB) payment of fifty dollars per child per month for care provided in January 2008 or later if:

(a) The provider is licensed or certified;

(b) The provider provides at least forty hours of nonstandard hours care during one month; and

(c) The total cost of the NSHB to the state does not exceed the amount appropriated for this purpose by the legislature for the current state fiscal year.

(2) Nonstandard hours are defined as:

(a) Weekdays before 6 a.m. or after 6 p.m.;

(b) Saturdays and Sundays; and

(c) Legal holidays, as defined in RCW 1.16.050.

#### **Payment Discrepancies**

#### NEW SECTION

**WAC 170-290-0266 Payment discrepancies—Generally.** (1) Payment discrepancies include both underpayments and overpayments.

(2) For providers or consumers not covered under WAC 170-290-0267 through 170-290-0275, payment discrepancies are subject to chapter 388-410 WAC (benefit errors).

(3) For providers covered under the collective bargaining agreement, all other payment discrepancy issues are covered under WAC 170-290-0275.

#### NEW SECTION

**WAC 170-290-0267 Payment discrepancies—Provider underpayments.** (1) Underpayments to a provider occur if DSHS pays less than the amount the provider is eligible to receive.

(2) Underpayment requests will only be considered by DSHS if the provider submitted his or her original invoice for payment to DSHS no later than twelve months after the date of service.

#### NEW SECTION

**WAC 170-290-0268 Payment discrepancies—Provider overpayments.** (1) An overpayment occurs when a provider receives payment that is more than the provider is eligible to receive. Provider overpayments are established when that provider:

(a) Bills and receives payment for services not provided;

(b) Bills without attendance records that support their billing;

(c) Bills and receives payment for more than they are eligible to bill; or

(d) With respect to licensed or certified providers only, is caring for a WCCC child outside their licensed allowable age range without a waiver.

(2) DEL's or DSHS's WCCC program staff may request documentation from a provider when preparing to establish an overpayment. The provider has fourteen consecutive calendar days to supply any requested documentation.

(3) Providers are required to repay any payments that they were not eligible to receive.

(4) If an overpayment was made through departmental error, the provider is still required to repay that amount.

#### NEW SECTION

**WAC 170-290-0269 Payment discrepancies—Consumer underpayments.** If a copayment amount determined by DSHS for a consumer results in an underpayment, the consumer may request reimbursement within three years of the date of child care service, if he or she:

(1) Meets all WCCC eligibility requirements during the time he or she is claiming an underpayment; and

(2) Verifies all copayments made by the consumer to the provider during the time the consumer is claiming an underpayment.

AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

**WAC 170-290-0271 (~~When might I get an~~) Payment discrepancies—Consumer overpayments(?).** ~~(You get WCCC overpayments whether you are a current or past WCCC consumer, when we make payment for WCCC benefits and)~~ (1) DSHS establishes overpayments for past or current consumers when the consumer:

~~((1) You are no longer)~~ (a) Received benefits when he or she was not eligible ((or you are eligible for a smaller amount of care, such as using));

(b) Used care for an unapproved activity or for children not in ((your)) his or her WCCC household;

~~((2) You fail)~~ (c) Failed to report information to ((us that results)) DSHS resulting in an error in ((our determination of:

~~(a) Your)) determining eligibility((;~~ (b) The)) amount of care authorized((;), or

~~((c) The amount of your)) copayment((-);~~ ((3) Your)) (d) Used a provider ((is) that was not ((an)) eligible ((provider)) per WAC ((388-290-0140)) 170-290-0125; or

~~((4) Your)) (e) Received benefits for a child ((is) who was not eligible per WAC ((388-290-0015 or 388-290-0020)) 170-290-0015 or 170-290-0020.~~

(2) DEL's or DSHS's staff may request documentation from a consumer when preparing to establish an overpayment. The consumer has fourteen consecutive calendar days to supply any requested documentation.

(3) Consumers are required to repay any benefits paid by DSHS that they were not eligible to receive.

(4) If an overpayment was made through departmental error, the consumer is still required to repay that amount.

(5) If a consumer is not eligible under WAC 170-290-0032 and the provider has billed correctly, the consumer is

responsible for the entire overpayment, including any absent days.

#### NEW SECTION

**WAC 170-290-0275 Payment discrepancies—Providers covered under collective bargaining.** (1) This section applies to any provider covered under the collective bargaining agreement.

(2) For in-home/relative and licensed family home child care providers, disputes regarding underpayments shall be grievable.

(3) Beginning July 1, 2007, there are different time frames for how far back a payment discrepancy may be corrected. The time frames, as provided in this subsection are based on:

(a) When services were provided;

(b) When the request for the underpayment was made; and

(c) The type of provider: Family home or in-home/relative provider.

(4) Family home and in-home/relative providers must submit a claim for payment no later than twelve months after the date of service. "Submitting a claim for payment" means turning the original invoice in to DSHS for services no later than twelve months after the date of service. If the claim for payment is made within the twelve-month period, the time limits for correcting payment errors are:

(a) Two years back if the error is on rates paid by age and/or region, unless discovered by a federal audit. This means the provider has up to two years after the date of service to ask for a corrected payment; or

(b) Three years back if the error was for any other reason, including those discovered by a federal audit. This means the provider has up to three years after the date of service to ask for a corrected payment.

#### **Administrative Hearings - WCCC**

#### NEW SECTION

**WAC 170-290-0280 Right to request an administrative hearing.** (1) WCCC consumers have a right to request a hearing under chapter 388-02 WAC on any action affecting WCCC benefits except for mass changes resulting from a change in policy or law.

(2) Licensed or certified child care providers or in-home/relative providers may request hearings under chapter 388-02 WAC only for WCCC overpayments.

(3) To request a hearing, a consumer, the licensed/certified provider, or in-home/relative provider:

(a) Contacts the DSHS office which sent them the notice; or

(b) Writes to the office of administrative hearings, P.O. Box 42489, Olympia, WA 98504-2489; and

(c) Makes the request for a hearing within:

(i) Ninety days of the date a decision is received for consumers; or

(ii) Twenty-eight days of the date a decision is received for providers.

(4) The office of administrative hearings administrative law judge enters initial or final orders as provided in WAC 388-02-0217. Initial orders may be appealed to a DSHS review judge under chapter 388-02 WAC.

(5) To request a hearing under the seasonal child care program, see WAC 170-290-3860 and 170-290-3865.

#### NEW SECTION

**WAC 170-290-0285 Receipt of WCCC benefits pending the outcome of an administrative hearing.** (1) A consumer may receive WCCC benefits pending the outcome of a hearing if he or she requests the hearing:

- (a) On or before the effective date of an action; or
- (b) No more than ten days after DSHS sends the consumer a notice of adverse action.

As used in this section, "adverse action" means an action to reduce or terminate a consumer's WCCC benefits.

(2) If a consumer loses a hearing, any WCCC benefit that a consumer uses between the date of the adverse action and the date of the hearing decision is an overpayment to the consumer.

(3) A consumer may not receive WCCC benefits pending the outcome of a hearing if he or she requests payment to a provider who is not eligible under WAC 170-290-0125.

(4) A consumer may receive WCCC benefits for another eligible provider, pending the outcome of the hearing.

### **PART III. SEASONAL CHILD CARE**

#### **Introduction**

#### NEW SECTION

**WAC 170-290-3501 Program funding—Waiting lists.** The seasonal child care (SCC) program is subject to available funds and creates waiting lists when budget limits occur.

#### NEW SECTION

**WAC 170-290-3510 SCC definitions.** The following definitions apply only to part III of this chapter relating to seasonal child care (SCC):

(1) "Application interview date" means the first date a consumer, as defined in WAC 170-290-0003, meets with the SCC contractor to see if the consumer is eligible for subsidy benefits.

(2) "Child care plan" means a state form filled out by the SCC contractor that tells the consumer and provider:

- (a) When benefits start and end;
- (b) The amount of the copayment; and
- (c) The approved hours of care.

(3) "SCC contractor" means the agency that DEL has contracted with to meet with families to see if they are eligible for the seasonal child care program. SCC contractors are located in several communities across the state. SCC contractors are responsible to follow the SCC rules that DEL has established.

(4) "Seasonally available labor" or "seasonally available agricultural related work" means labor that is available only

in a specific season during part of the calendar year. The labor is directly related to the cultivation, production, harvesting or processing of fruit trees or crops.

(5) "Waiting list" means a list of families who are currently working and waiting for seasonal child care subsidies when funding is not available to meet the requests from all eligible families.

#### **Eligibility Requirements**

#### NEW SECTION

**WAC 170-290-3520 Eligible consumers.** (1) In SCC, an eligible consumer is not currently receiving temporary aid for needy families (TANF), lives in the state of Washington, has parental control of one or more children, and is the child's:

- (a) Parent, either biological or adopted;
- (b) Stepparent;
- (c) Legal guardian as verified by a legal or court document;
- (d) Adult sibling or step-sibling;
- (e) Aunt;
- (f) Uncle;
- (g) Niece or nephew;
- (h) Grandparent; or
- (i) Any of the above relatives in (e), (f), or (h) of this subsection, with the prefix "great," such as great-aunt.

(2) Consumers may be eligible for SCC benefits if they:

- (a) Meet eligibility requirements in this chapter;
- (b) Participate in an approved activity under WAC 170-290-3555; and

(c) Have countable income at or below two hundred percent of the federal poverty guidelines (FPG) described in WAC 170-290-3640.

(3) Consumers are not eligible for SCC benefits if they:

- (a) Have a copayment, under WAC 170-290-0075, that is higher than the maximum monthly state rate for all of the consumer's children in care;
- (b) Were employed with one employer more than eleven months in the previous twelve months;
- (c) Are receiving TANF benefits; or
- (d) Are the only parent in the household and will be away from the home for more than thirty days in a row.

#### NEW SECTION

**WAC 170-290-3530 Verifying consumers' information.** (1) A consumer must provide information to the SCC contractor to determine eligibility when:

- (a) The consumer initially applies for benefits;
  - (b) The consumer reapplies for benefits; or
  - (c) A change of circumstances occurs.
- (2) The SCC contractor may accept any verification that the consumer can easily obtain when it reasonably supports the consumer's statement of his or her circumstances. The verification that the consumer gives to the SCC contractor must:

- (a) Clearly relate to information the SCC contractor is requesting;
- (b) Be from a reliable source; and

(c) Be accurate, complete, current and consistent.

(3) The SCC contractor will accept a variety of forms of verification to show the consumer is eligible. For example, any of the following documents are accepted to show the child is in the home: School records, immunization records or birth certificates, or other type of documents.

(4) If the verification that a consumer gives to the SCC contractor is inconsistent, conflicting, outdated or confusing, the SCC contractor may:

(a) Ask a consumer to provide the SCC contractor with more information or documentation or provide a collateral contact (a "collateral contact" is a statement from someone outside of the consumer's residence that knows the consumer's situation); or

(b) Ask for an investigator from the DSHS division of fraud investigations (DFI) to make an unannounced visit to the consumer's home to verify the consumer's circumstances.

(5) If a consumer does not provide the SCC contractor with all of the verification that the SCC contractor has requested, the SCC contractor will determine if the consumer is eligible based on the information already available to the SCC contractor.

NEW SECTION

**WAC 170-290-3540 Eligibility—Family size.** DEL determines a consumer's family size as follows:

<b>(1) If a consumer's family includes:</b>	<b>Then DEL counts the following individuals as part of the family for SCC program eligibility:</b>
(a) A single parent, including a minor parent, living independently or residing in her/his parent's home with her/his children.	The consumer and the consumer's children.
(b) Unmarried parents living together who have at least one mutual child.	Both parents and all their children living in the household.
(c) Unmarried parents living together with no mutual children.	Each parent and their own children, as separate families.
(d) Married parents living together.	Both parents and all their children living in the household.
(e) A legal guardian verified by a legal or court document; adult sibling or step-sibling; nephew or niece; aunt; uncle; grandparent; or great-aunt, great-uncle, or great-grandparent.	Only the children and their income.

(f) A parent who is voluntarily out of the household for reasons other than employment, such as visiting a family member.	The consumer, the absent parent and the children.
(g) A parent who is out of the household because of employer requirements, such as working in a different community, and is expected to return to the household.	The consumer, the absent parent, and the children. Subsection (1)(b) and (d) of this section apply.
(h) An incarcerated parent.	The incarcerated person is not part of the household count in determining income and eligibility. DEL counts all remaining household members. All other family rules in this section apply.
<b>(2) If the consumer's household includes:</b>	<b>Then in addition, DEL counts the sibling as part of the family for SCC program eligibility as follows:</b>
(a) Eighteen year old siblings of the children who require care and are enrolled in secondary education or general equivalency diploma (GED) program.	The eighteen year olds (unless they are a parent themselves), until they turn nineteen or complete high school/GED, whichever comes first. All other family rules in this section apply.
(b) Siblings of the children requiring care who are up to twenty-one years old who are participating in a program through the school district's special education department under RCW 28A.155.020.	The person participating in the approved program through RCW 28A.155.020 up to twenty-one years of age (unless they are a parent themselves). All other family rules in this section apply.

NEW SECTION

**WAC 170-290-3550 Eligibility—Special circumstances.** (1) A consumer may be eligible for the SCC program when he or she:

(a) Has children living with them in Washington state who are:

- (i) Younger than age thirteen; or
- (ii) Thirteen to nineteen years old and under court supervision; or
- (iii) Less than nineteen years old and have a verified special need according to WAC 170-290-0220;

(b) Is a parent in a two-parent family in which both parents work in seasonally available agricultural related work.

(2) If both parents are not employed in seasonally agricultural related work, the consumer may be eligible for SCC

only when the other parent is "unable" to provide care for the children because of physical or mental restrictions. If a consumer claims one parent is unable to care for the children, the consumer must provide written documentation from a licensed medical or mental health professional that states the:

- (a) Reason the parent is unable to care for the children; and
  - (b) Expected duration and severity of the condition that keeps the parent from caring for the children.
- (3) For the previous twelve months before applying for SCC benefits, fifty percent or more of the family's earned income must have come from seasonally available agricultural related work.

#### NEW SECTION

##### **WAC 170-290-3555 Eligibility—Approved activities.**

- (1) A consumer may be eligible for SCC benefits for up to sixteen hours per day for the time he or she is involved in seasonally available agricultural related work in:
- (a) Washington state; or
  - (b) A bordering state within forty miles of Washington state.
- (2) When the consumer is part of a two-parent family, both parents must be employed as described in subsection (1) of this section;
- (3) The SCC contractor may authorize care for:
- (a) Travel time between the child care location and the employment location only;
  - (b) Job search, of no more than five days, if the consumer's seasonally available agricultural related work ends and he or she is still eligible and continues to need child care; or
  - (c) Sleep time, up to eight hours per day when needed, if the consumer works nights and sleeps days.

#### **Rights and Responsibilities**

#### NEW SECTION

**WAC 170-290-3560 Consumers' rights.** When a consumer applies for or receives SCC benefits, he or she has the right to:

- (1) Be free from discrimination in accordance with all applicable federal and state nondiscrimination laws, regulations and policies;
- (2) Have the consumer's application accepted and acted upon within thirty days;
- (3) Be informed, in writing, of the consumer's legal rights and responsibilities related to SCC benefits;
- (4) Have the consumer's information shared with other agencies only when required by federal or state regulations;
- (5) Be allowed to choose a provider as long as the provider meets requirements in WAC 170-290-3750;
- (6) Receive a written notice at least ten days before changes are made to lower or stop benefits except as stated in WAC 170-290-3730;
- (7) Ask for an administrative hearing if the consumer does not agree with a decision per WAC 170-290-3860;
- (8) Ask to speak to the SCC contractor's supervisor or administrator to review a decision or action affecting the con-

sumer's benefits without affecting the consumer's right to an administrative hearing;

(9) Have interpreter or translator services provided by the SCC contractor within a reasonable amount of time and at no cost to the consumer;

(10) Refuse to speak to a fraud early detection (FRED) investigator from the department of social and health services division of fraud investigations when they ask to come into your home. This request will not affect eligibility for SCC program subsidies. If the consumer refuses to cooperate with the investigator at a later date, it could affect his or her benefits;

(11) Access his or her child at all times while the child is in child care;

(12) Terminate child care without cause and without notice to the provider. Notice must be given to the SCC contractor within five days of termination; and

(13) Not be charged by the consumer's licensed or certified provider, or be made to pay, for:

- (a) The difference between their private rate and the state maximum child care subsidy rate, when their private rate for child care or the registration fee is higher;
- (b) Any day when the consumer's child is absent;
- (c) Vacation days when the provider chooses to close;
- (d) A higher amount than the state allows for field trips;
- (e) A preschool tuition fee in addition to regular child care services; or
- (f) Child care services after the final day of care, when the provider chooses to stop caring for the consumer's children.

#### NEW SECTION

##### **WAC 170-290-3565 Consumers' responsibilities.**

When a consumer applies for or receives SCC benefits, he or she must:

- (1) Give the SCC contractor correct and current information so that the SCC contractor can determine the consumer's eligibility and authorize child care payments correctly;
- (2) Choose a provider who meets requirements of WAC 170-292-3750;
- (3) Leave the consumer's children with his or her provider while the consumer is in SCC approved activities. If the consumer is not in an approved activity and wants to use the provider, he or she must pay the provider if the provider wants payment;
- (4) Pay for additional child care that exceeds the authorization based on the same fees that are charged to other families;
- (5) Pay, or make arrangements for someone to pay, the consumer's SCC copayment directly to the child care provider;
- (6) Pay the provider the same late fees that are charged to other families, if the consumer pays a copayment late or picks up the child late;
- (7) Sign his or her children in and out of child care as provided in WAC 170-295-7030, 170-296-0520, or 170-151-460, as applicable, for that type of provider; and
- (8) Provide the information requested by the SCC contractor or the department of social and health services fraud

early detection (FRED) investigator. If the consumer refuses to provide the information requested within fourteen days, it could affect his or her benefits. If the SCC contractor determines that a consumer is not cooperating by supplying the requested information, the consumer will not be eligible for SCC benefits. The consumer may become eligible again when he or she meets SCC requirements in part III of this chapter.

#### NEW SECTION

**WAC 170-290-3570 Notification of changes.** When a consumer applies for or receives SCC benefits, he or she must:

- (1) Notify the SCC contractor, within five days, of any change in providers;
- (2) Notify his or her provider within ten days when the SCC contractor changes his or her child care authorization;
- (3) Notify the SCC contractor within ten days of any change in the consumer's:
  - (a) Number of child care hours needed (more or less hours);
  - (b) Child becoming eligible for migrant Head Start or another child care program;
  - (c) Household income, including any new receipt of a TANF grant or child support increases or decreases;
  - (d) Household size such as any family member moving in or out of his or her home;
  - (e) Employment hours such as starting, stopping or changing employers;
  - (f) Home address and telephone number; or
  - (g) Child support payments made by the consumer.

#### NEW SECTION

**WAC 170-290-3580 Failure to report changes.** (1) If a consumer fails to report any changes as required in WAC 170-290-3570 within the stated time frames, DEL may establish an overpayment to the consumer per WAC 170-290-3850 or the consumer may have to pay additional costs, such as a higher copayment.

(2) The consumer may receive an overpayment for what the provider is allowed to bill to include billing for absent days (see publication *Child Care Subsidies, A Booklet for Licensed and Certified Child Care Providers*, DEL 22-877, revised 2009).

#### NEW SECTION

**WAC 170-290-3590 SCC contractor's responsibilities to consumers.** SCC contractors are community agencies that contract with DEL to perform SCC program authorizations. The SCC contractors and their staff must:

- (1) Treat consumers in accordance with all applicable federal and state nondiscrimination laws, regulations and policies;
- (2) Authorize SCC program subsidies for a consumer's children based on eligibility criteria established by DEL, as defined in this chapter;
- (3) Ask if a consumer has received, or is currently receiving, child care services from another subsidy program;

and if he or she has received a copy of his or her termination letter from that program;

(4) Ask if a consumer has applied, and been denied, for working connections child care (WCCC); and if he or she has, verify his or her denial from that program;

(5) Complete intake documents in a consumer's presence, based on information he or she provides;

(6) Accept a variety of forms of verification and may not specify the type of documentation required;

(7) Authorize payments only to a child care provider of a consumer's choice who meets the requirements in WAC 170-290-3750;

(8) Authorize payments only when no adult in a consumer's family (under WAC 170-290-3540) is able or available to care for the consumer's children as defined in WAC 170-290-3550;

(9) Give a consumer a SCC program approved child care plan in order to enroll his or her children in licensed or certified child care;

(10) Inform a consumer of:

(a) The consumer's copayment amount as determined in WAC 170-290-3620 and defined in WAC 170-290-0075;

(b) The consumer's rights and responsibilities under the SCC program when he or she applies or reapplies;

(c) The types of child care providers the SCC program will pay;

(d) The community resources that can help the consumer select child care when needed;

(e) Other options for child care subsidies, if the consumer does not qualify for SCC program subsidies; and

(f) The consumer's rights to an administrative hearing under the SCC program;

(11) Provide prompt child care authorizations to a consumer's child care provider;

(12) Respond to a consumer within ten days if the consumer reports a change of circumstance that affects the consumer's:

(a) SCC eligibility;

(b) Copayment; or

(c) Providers; and

(13) Provide an interpreter or translator service at no cost to the consumer to explain information related to the SCC program.

### **Income and Copayment Calculations**

#### NEW SECTION

**WAC 170-290-3610 Countable income.** DEL counts income as money a consumer earns or receives from:

(1) Wages and commissions earned from employment;

(2) Unemployment compensation;

(3) A TANF or other welfare grant;

(4) Child support payments received;

(5) Supplemental Security Income (SSI);

(6) Other Social Security payments, such as Social Security Administration (SSA) and Social Security disability insurance (SSDI);

(7) Refugee assistance payments;

(8) Payments from the Veterans' Administration;

- (9) Pensions or retirement income;
- (10) Payments from labor and industries (L&I), or disability payments;
- (11) Inheritance;
- (12) Reportable gambling winnings; and
- (13) Other types of income not listed in WAC 170-290-3630.

NEW SECTION

**WAC 170-290-3620 Calculation of income.** For the SCC program, DEL uses a consumer's countable income when determining his or her income eligibility and copayment. DEL determines a consumer's average monthly income by totaling all income earned in the past twelve months, as listed in WAC 170-290-3610, and dividing by twelve. The last month of income that is counted is the month before the consumer applies for SCC.

NEW SECTION

**WAC 170-290-3630 Excluded income and deductions.** (1) The SCC program does not count the following income types when determining a consumer's income eligibility and copayment:

- (a) Savings accounts;
  - (b) Money received from sale of real property, such as a house, or personal property, such as a car;
  - (c) Tax refunds;
  - (d) Earned income credits;
  - (e) One-time insurance settlement payments;
  - (f) Capital gains;
  - (g) Basic Food program;
  - (h) Income earned by children as described in WAC 170-290-3540;
  - (i) Benefits received by children of Vietnam War veterans who are diagnosed with any form or manifestation of spina bifida except spina bifida occulta; and
  - (j) Government economic stimulus payments.
- (2) SCC deducts the amount a consumer pays for child support from his or her countable income when figuring his or her eligibility and copayment for the SCC.

NEW SECTION

**WAC 170-290-3640 Determining income eligibility and copayment.** (1) For the SCC program, DEL determines a consumer's family's income eligibility and copayment by:

- (a) The consumer's family size as defined under WAC 170-290-3540;
  - (b) The consumer's average monthly income as calculated under WAC 170-290-3620;
  - (c) The consumer's family's average monthly income as compared to the federal poverty guidelines (FPG); and
  - (d) The consumer's family's average monthly income as compared to the copayment chart defined in WAC 170-290-0075.
- (2) If a consumer's family's income is above two hundred percent of the FPG as defined in WAC 170-290-0075, his or her family is not eligible for the SCC program.

(3) SCC does not prorate the copayment when a consumer uses care for part of a month.

(4) The FPG is updated every year on April 1. The SCC eligibility level is updated at the same time every year to remain current with the FPG.

(5) SCC shall assign a copayment amount based on the family's countable income. The copayment amount will be on the consumer's child care plan. The consumer pays the copayment directly to the provider.

NEW SECTION

**WAC 170-290-3650 Change in copayment.** (1) A consumer's SCC program copayment could change when:

- (a) DEL makes a mass change in subsidy benefits due to a change in law or program funding;
- (b) The consumer's family size increases;
- (c) The SCC contractor makes an error in the consumer's copayment computation;
- (d) The consumer did not report all income, activity and household information at the time of eligibility determination or application/reapplication; or
- (e) The consumer is approved for a new eligibility period.

(2) If a consumer's copayment changes during his or her eligibility period, the change is effective:

- (a) On the first day of the month following the change, when:
  - (i) The report is made to the SCC contractor or the information is learned by the contractor within ten or more days after the change as provided in WAC 170-290-3570;
  - (ii) The consumer receives ten days written notice; and
  - (iii) The copayment is increasing; or
- (b) On the first day of the month that the change occurred when:
  - (i) The report is made to the SCC contractor or the information is learned by the contractor within ten days or less after the change as provided in WAC 170-290-3570; and
  - (ii) The copayment is decreasing.

NEW SECTION

**WAC 170-290-3660 Eligibility period.** The SCC contractor may approve a consumer for a period up to six months. The first month of eligibility is the same month that child care begins. A consumer's eligibility may end before his or her end date as stated in WAC 170-290-3855.

**Start Dates and Eligibility Period**NEW SECTION

**WAC 170-290-3665 When SCC benefits start.** The consumer's child care plan will tell the consumer when the benefits start and end.

- (1) The SCC contractor authorizes child care subsidies when:
  - (a) The consumer turns in all of his or her eligibility paperwork to the SCC contractor;
  - (b) The SCC contractor determines that the consumer is eligible for the program; and

(c) The consumer starts his or her children in care with an approved child care provider.

(2) After the SCC contractor decides that a consumer is eligible, the date the subsidy begins depends upon when the consumer applied and when the consumer turned in all of the paperwork needed as follows:

<b>If at the time of application the consumer:</b>	<b>And the consumer turns all paperwork in:</b>	<b>Then the child care benefits begin:</b>
(a) Has not begun work yet,	Within 14 days of the job starting,	The first day of the job.
(b) Has not begun work yet,	15-29 days after the job starts,	The day after the paperwork is turned in.
(c) Has not begun work yet,	30 days after the job starts,	The application is denied and the consumer must reapply.
(d) Is working,	Within 14 days of the application interview date,	The day the consumer either calls or comes into the SCC contractor's office to apply for SCC benefits.
(e) Is working,	15-29 days after the application interview date,	The day after the paperwork is turned in.
(f) Is working,	30 days after the application interview date,	The application is denied and the consumer must reapply.

NEW SECTION

**WAC 170-290-3670 Preauthorization for the SCC program.** (1) A consumer may be preauthorized for the SCC program, before his or her job starts, if:

- (a) The consumer meets all eligibility criteria for the SCC program;
  - (b) The consumer has employment verification that shows a future start date; and
  - (c) The program does not have a waiting list.
- (2) Child care benefits begin according to the table in 170-290-3665.

NEW SECTION

**WAC 170-290-3690 Denial of benefits—Date of re-determining eligibility.** (1) The SCC contractor sends a consumer a denial letter when the consumer has applied for child care and the consumer:

- (a) Is not eligible due to the consumer's:
  - (i) Family composition;
  - (ii) Income; or

(iii) Activity; or

(b) Did not provide information required to determine the consumer's eligibility according to WAC 170-290-3530.

(2) If a consumer turns in information or otherwise meets eligibility requirements after the denial letter is sent, the consumer's benefits begin according to WAC 170-290-3665.

**Notice**

NEW SECTION

**WAC 170-290-3720 Notice of payment changes.** The SCC contractor provides SCC consumers with at least ten days written notice of changes to payments related to the suspension, reduction, or termination of benefits, in child care arrangements, except as noted in WAC 170-290-3730.

NEW SECTION

**WAC 170-290-3730 Notice of payment changes is not required.** The SCC contractor does not give a consumer notice if the consumer:

- (1) Tells the SCC contractor that he or she no longer wants SCC;
- (2) Has moved and his or her whereabouts are unknown to the SCC contractor;
- (3) Is receiving duplicate child care benefits;
- (4) Has a current eligibility period that is scheduled to end;
- (5) Has a new eligibility period that results in a change in child care benefits; or
- (6) Is receiving child care at a location that does not meet requirements under WAC 170-290-3750.

**Eligible Providers and Rates**

NEW SECTION

**WAC 170-290-3750 Eligible child care providers.** To receive payment under the SCC program, a consumer's child care provider must be:

- (1) Currently licensed as required by chapter 43.215 RCW and chapters 170-295, 170-296, or 170-151 WAC;
- (2) Meeting their state's licensing regulations, for providers who care for children in states bordering Washington. SCC pays the lesser of the following to qualified child care facilities in bordering states:
  - (a) The provider's private pay rate for that child; or
  - (b) The state maximum child care subsidy rate for the DSHS region where the child resides;
  - (3) Exempt from licensing but certified by DEL, such as:
    - (a) Tribal child care facilities that meet the requirements of tribal law;
    - (b) Child care facilities on a military installation; and
    - (c) Child care facilities operated on public school property by a school district;
    - (4) Seasonal day camps that have a contract with DEL to provide subsidized child care.

NEW SECTION

**WAC 170-290-3760 SCC subsidy rates—Effective date.** DEL child care subsidy rates in this part are effective as of the date stated in WAC 170-290-0180.

NEW SECTION

**WAC 170-290-3770 Authorized SCC payments.** The SCC program may authorize payments to licensed/certified child care providers for:

(1) Basic child care either full day or half day, at rates listed in the chart in WAC 170-290-0200 and 170-290-0205, including on Saturdays and Sundays:

(a) A full day of child care when care is needed for five to ten hours per day;

(b) A half day of child care when care is needed for less than five hours per day;

(2) A registration fee, according to WAC 170-290-0245;

(3) Subsidy rates for five-year old children according to WAC 170-290-0185;

(4) The field trip fees in WAC 170-290-0247;

(5) The nonstandard hours bonus in WAC 170-290-0249; and

(6) Special needs care when the child has a documented special need and a documented need for a higher level of care, according to WAC 170-290-0220, 170-290-0225, and 170-290-0230.

NEW SECTION

**WAC 170-290-3790 When additional SCC subsidy payments are authorized.** The SCC contractor may authorize additional child care when:

(1) Needed to accommodate a family's work schedule;

(2) Employer verification of work schedule is presented; and

(3) More than ten hours of care is provided per day (up to a maximum of sixteen hours a day) and the provider's policy is to charge all families for these extra hours.

**Review Process**NEW SECTION

**WAC 170-290-3820 Review of eligibility and copayment information.** A consumer's eligibility and copayment information for the SCC program are looked at:

(1) When the consumer applies for the SCC program; and

(2) At least every six months.

NEW SECTION

**WAC 170-290-3830 Redetermination of SCC benefits.** (1) At least every six months, the SCC contractor reviews a consumer's information to determine if he or she may keep receiving subsidies. A consumer may receive subsidy benefits for less than six months when:

(a) The consumer's employer says that the consumer might be working less than six months; or

(b) The consumer's child or children may not be eligible for the next six months because of their age.

(2) The SCC contractor will:

(a) Review the consumer's updated information; and

(b) Redetermine the consumer's eligibility.

NEW SECTION

**WAC 170-290-3840 New eligibility period.** (1) If a consumer wants to receive child care benefits for another eligibility period, he or she must reapply for SCC benefits before the end of the current eligibility period listed on the child care plan. To determine if a consumer is eligible, the consumer calls or comes into the SCC contractor's office on or before the end date of the consumer's current SCC eligibility period to request an application interview date.

(2) A consumer may be eligible for SCC benefits for a new eligibility period with no break in child care subsidies if:

(a) The consumer calls or comes into the SCC contractor's office on or before the end date of the consumer's current SCC eligibility period to request an application interview date;

(b) The consumer's provider is eligible for payment under WAC 170-290-3750; and

(c) The consumer meets all SCC eligibility requirements.

(3) If the SCC contractor determines that a consumer is eligible for SCC benefits based on his or her application information, the SCC contractor notifies the consumer of the new eligibility period and copayment.

(4) If a consumer fails to call or come into a SCC contractor's office on or before the end date of the consumer's current SCC eligibility period to request an application interview date, he or she must reapply according to WAC 170-290-3665.

**Payment Discrepancies**NEW SECTION

**WAC 170-290-3850 Payment discrepancies generally.** DEL child care subsidy payment discrepancies are described in WAC 170-290-0266 through 170-290-0275, with the exception of underpayments requested by licensed child care centers, which will only be considered for twelve months after the date of services.

NEW SECTION

**WAC 170-290-3855 Termination of and redetermining eligibility for benefits.** (1) A consumer's continued eligibility for SCC program subsidies stops when:

(a) The consumer's monthly copayment is higher than the state maximum monthly rate for all of the consumer's children in care; or

(b) The consumer:

(i) Is not participating in an approved activity as defined in WAC 170-290-3555;

(ii) Does not meet other SCC eligibility requirements related to family size, income and approved activities;

(iii) Does not pay the copayment fees to the consumer's child care provider or does not make mutually acceptable

arrangements with the consumer's child care provider for their payment; or

(iv) Refuses to cooperate with investigations conducted by quality assurance staff or the division of fraud investigations.

(2) A consumer might be eligible for SCC program subsidies again when:

(a) The consumer meets all SCC program eligibility requirements;

(b) The consumer paid back copayment fees or made mutually acceptable payment arrangements with his or her child care provider; or

(c) The consumer cooperated with the quality assurance review process or with the DSHS division of fraud investigations.

**Administrative Hearings—SCC**

NEW SECTION

**WAC 170-290-3860 Right to request an administrative hearing.** (1) SCC consumers, licensed or certified child care providers, and DEL-contracted seasonal day camps must follow chapter 170-03 WAC to request a hearing.

(2) SCC consumers have a right to request a hearing on any action affecting SCC benefits except for mass changes resulting from a change in policy or law.

(3) Under this part, licensed or certified child care providers, or DEL-contracted seasonal day camps have a right to request a hearing only for SCC overpayments.

(4) An SCC consumer, licensed or certified child care provider, or DEL-contracted seasonal day camp must make a request for a hearing as required by WAC 170-03-0050 and 170-03-0060.

(a) An SCC consumer must request a hearing within ninety days of the date a decision is received.

(b) A licensed or certified child care provider or DEL-contracted seasonal day camp must request a hearing within twenty-eight days of the date a decision is received.

NEW SECTION

**WAC 170-290-3865 Receipt of SCC benefits pending the outcome of an administrative hearing.** (1) A consumer may receive SCC benefits while waiting for the outcome of a hearing, if he or she is currently authorized for the SCC program and:

(a) The consumer requests a hearing:

(i) On or before the effective date of an action; or

(ii) No more than ten days after the consumer receives a notice of adverse action ("adverse action" for the purposes of this section means an action to reduce or terminate the consumer's SCC subsidies); or

(b) The consumer requests payments for child care payable to an eligible provider according to WAC 170-290-3750.

(2) If a consumer loses a hearing, any SCC program benefit that a consumer uses between the date of the adverse action and the date of the hearing decision (final order) is an overpayment to the consumer.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 170-290-0010 What makes me eligible for WCCC benefits?
- WAC 170-290-0105 How do I reapply for WCCC when my eligibility period is ending?
- WAC 170-290-0108 What happens if I meet eligibility requirements after I receive a denial letter?
- WAC 170-290-0260 Who has a right to ask for a hearing and how do they ask for one?
- WAC 170-290-0265 When can I get WCCC benefits pending the outcome of a hearing?
- WAC 170-290-0270 What is a WCCC overpayment and what can be included?
- WAC 170-290-0273 When would my licensed or certified provider or DSHS contracted seasonal day camp get an overpayment?
- WAC 170-290-0274 When would my in-home/relative provider get an overpayment?

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 170-292-0001 Introduction.
- WAC 170-292-0003 What is the purpose of the seasonal child care program?
- WAC 170-292-0005 Am I eligible for the SCC program?
- WAC 170-292-0010 How is my family size defined for SCC program eligibility purposes?
- WAC 170-292-0015 Are there special circumstances when I might be eligible for the SCC program?
- WAC 170-292-0020 What activities must I be involved in to be eligible for the SCC program?
- WAC 170-292-0025 What additional criteria does my family need to meet to be eligible for SCC program subsidies?

WAC 170-292-0030	When might my ongoing eligibility for SCC subsidies stop, and when might I be eligible again?	WAC 170-292-0100	What services can be authorized for the SCC program, and at what rates?
WAC 170-292-0035	What income is counted when determining eligibility and copayment for the SCC program?	WAC 170-292-0102	When can my child care provider charge me more than the amount authorized by the SCC program?
WAC 170-292-0040	How is my family's average monthly income calculated for the SCC program?	WAC 170-292-0105	When can additional SCC program subsidy payments be authorized?
WAC 170-292-0045	What is not counted, or is deducted, when figuring income eligibility for the SCC program?	WAC 170-292-0110	What additional SCC program subsidy payments can be authorized?
WAC 170-292-0050	How is my family's income eligibility and copayment amount determined for the SCC program?	WAC 170-292-0115	If I am determined eligible for the SCC program, when does my child care subsidy begin?
WAC 170-292-0055	When might my SCC program copayment change?	WAC 170-292-0120	Can I be authorized for the SCC program before I start a job?
WAC 170-292-0060	What rights do I have when I apply for or receive SCC program subsidies?	WAC 170-292-0125	I am preauthorized for the SCC program, when do my SCC program child care subsidies begin?
WAC 170-292-0065	What responsibilities do I have when I apply for or receive SCC program subsidies?	WAC 170-292-0130	If I am reauthorized for the SCC program, when do my SCC program subsidies begin?
WAC 170-292-0070	Who are the SCC program staff and what responsibilities do they have?	WAC 170-292-0135	When are my eligibility and copayment information for the SCC program looked at?
WAC 170-292-0075	Do I have the right to ask for a hearing regarding SCC program subsidy payments, and how do I request one?	WAC 170-292-0140	How are my SCC program subsidies reauthorized and when may they continue?
WAC 170-292-0080	Can I use SCC programs subsidies while waiting for the outcome of a hearing, and when might it need to be repaid?	WAC 170-292-0145	When might I receive advance and adequate notice of change in my SCC program subsidies?
WAC 170-292-0085	What child care providers can I choose under the SCC program?	WAC 170-292-0150	When won't I receive advance and adequate notice of changes in my SCC program subsidies?
WAC 170-292-0090	When are the DSHS child care subsidy rates, used by the SCC program in this chapter, effective?	WAC 170-292-0155	What is an overpayment and when might I receive one?
WAC 170-292-0095	What DSHS child care subsidy rate does the SCC program use when my child is five years old?	WAC 170-292-0160	When might a child care provider receive an overpayment?

**WSR 09-23-009**  
**PERMANENT RULES**  
**GROWTH MANAGEMENT**  
**HEARINGS BOARDS**

[Filed November 5, 2009, 10:22 a.m., effective December 6, 2009]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The purpose of these amendments to the rules is to reflect the consolidation of the administrative functions of the three growth management hearings boards into a single office. Amendments are needed to provide accurate, clarifying information and facilitate efficiency of document filing based on this consolidation.

Citation of Existing Rules Affected by this Order: Amending WAC 242-02-052, 242-02-080, 242-02-140, 242-02-210, 242-02-230, 242-02-240, 242-02-250, 242-02-292, 242-02-320, 242-02-330, 242-02-340, 242-02-530, and 242-02-534.

Statutory Authority for Adoption: RCW 36.70A.270(7).

Adopted under notice filed as WSR 09-15-165 on July 21, 2009.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 13, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 13, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 28, 2009.

James McNamara  
 Chair, Rules Committee

AMENDATORY SECTION (Amending WSR 03-15-047, filed 7/11/03, effective 8/11/03)

**WAC 242-02-052 Petition for rule making.** (1) Right to petition for rule making. Any person may petition the joint boards for the adoption, amendment, or repeal of any rule. Said petition shall be filed with the ~~((Western Washington))~~ joint boards in care of the office of growth management hearings boards.

(2) Form of petition. The form of the petition for adoption, amendment, or repeal of any rule shall generally adhere to the following:

(a) A caption in the following form:

BEFORE THE JOINT GROWTH MANAGEMENT  
 HEARINGS BOARDS  
 STATE OF WASHINGTON

No.

In the matter of  
 the Petition of  
 (Name of Petitioner)  
 for Rule Making

PETITION FOR RULE MAKING

(b) The body of the petition shall be set out in numbered paragraphs. The first paragraph shall state the name and address of the petitioning party and whether the petitioner seeks the adoption of a new rule or rules, or amendment or repeal of an existing rule or rules. The second paragraph, in case of a proposed new rule or amendment of an existing rule, shall set forth the desired rule in its entirety. Where the petition is for repeal of an existing rule, such shall be stated and the rule proposed to be repealed shall either be set forth in full or shall be referred to by board rule number. The third paragraph shall set forth concisely the reasons for the proposal of the petitioner and shall contain a statement as to the interests of the petitioner and the subject matter of the rule. Additional numbered paragraphs may be used to give full explanation of petitioner's reason for the action sought.

(c) The petition shall be dated and signed by the party named in the first paragraph or by the petitioner's attorney or other authorized representative. The original and nine copies shall be filed with the appropriate board at its office.

AMENDATORY SECTION (Amending WSR 92-21-034, filed 10/15/92, effective 10/15/92)

**WAC 242-02-080 Form and size of documents.** Documents, other than exhibits, shall be ~~((typewritten or printed, properly captioned, signed by the appropriate person submitting the same, shall include his/her address and telephone number, and shall be on 8 1/2 x 11 inch paper. Each board uses IBM compatible software. A board may request submission of a disk from a party, if appropriate))~~ provided in the manner indicated in a board's prehearing order.

AMENDATORY SECTION (Amending WSR 94-07-033, filed 3/9/94, effective 4/9/94)

**WAC 242-02-140 Signing of pleadings, motions, and legal memoranda.** Every pleading, motion and legal memorandum of a party shall be dated and signed by the party, or the party's attorney or other authorized representative and include an address ~~((and)),~~ telephone and fax numbers, and electronic mail address.

AMENDATORY SECTION (Amending WSR 06-12-019, filed 5/26/06, effective 6/26/06)

**WAC 242-02-210 Petition for review—Forms—Contents.** A petition for review shall substantially contain:

(1) A caption in the following form:

BEFORE THE . . . GROWTH MANAGEMENT  
HEARINGS BOARD  
STATE OF WASHINGTON

Petitioner,

Case No.

v.

PETITION FOR REVIEW

Respondent.

(2) Numbered paragraphs stating:

(a) Petitioner's name, mailing address (~~and~~), telephone number, and electronic mail address, and those of the attorney or other authorized representative, if any;

(b) Date of the challenged order, determination, publication, or other action or, in the case of an alleged failure to act, the date by which the action was required to be taken;

(c) A detailed statement of the issues presented for resolution by the board that specifies the provision of the act or other statute allegedly being violated and, if applicable, the provision of the document that is being appealed;

(d) A statement specifying the type and the basis of the petitioner's standing before the board pursuant to RCW 36.70A.280(2);

(e) The estimated length of the hearing;

(f) The relief sought, including the specific nature and extent;

(g) A statement that the petitioner has read the petition for review and believes the contents to be true, followed by the petitioner's signature or signature of the attorney(s) or other authorized representative(s), if any.

(3) One copy of the applicable provisions of the document being appealed, if any, shall be attached to the petition for review. Petitioner shall provide the board with a copy of the entire document being appealed within thirty days of filing a petition for review, unless otherwise directed by the board.

AMENDATORY SECTION (Amending WSR 08-10-029, filed 4/28/08, effective 5/29/08)

**WAC 242-02-230 Petition for review—Service and filing.** (1) At least one copy of the petition for review shall be filed with the board by electronic mail, as provided in WAC 242-02-240, unless a petitioner does not have the technological capacity to do so. The original and four copies of the petition for review shall be filed with a board personally, or by first class, certified, or registered mail. Filings may also be made with a board by (~~electronic mail or~~) telefacsimile transmission as provided in WAC 242-02-240. A copy of the petition for review shall be personally served upon all other named parties or deposited in the mail and postmarked on or before the date filed with the board. When a county is a party, the county auditor shall be served in noncharter counties and the agent designated by the legislative authority in charter counties. The mayor, city manager, or city clerk shall be served when a city is a party. When the state of Washington is a party, the office of the attorney general shall be served at its main office in Olympia unless service upon the state is

otherwise provided by law. Proof of service may be filed with the board pursuant to WAC 242-02-340.

(2) A board may dismiss a case for failure to substantially comply with subsection (1) of this section.

AMENDATORY SECTION (Amending WSR 08-10-029, filed 4/28/08, effective 5/29/08)

**WAC 242-02-240 Date of filing—Facsimile and electronic mail.** (1) The date of filing shall be the date of actual receipt by a board at (~~its~~) the office of the growth management hearings boards. The date stamp placed on the petition shall be presumptive evidence of the date of receipt.

(2) Filing of any documents with a board by electronic mail or telefacsimile transmission is at the risk of the sender and shall not be deemed complete unless the following procedures are strictly observed:

(a) An electronic mail or telefacsimile document will only be stamped "received" by the board between the hours of 8:00 a.m. and 5:00 p.m. excluding Saturdays, Sundays, and legal holidays. Any transmission not completed before 5:00 p.m. will be stamped received on the following business day. The date and time indicated by the board's telefacsimile machine or receiving computer shall be presumptive evidence of the date and time of receipt of transmission.

(b) The original document and four copies (~~must~~) shall be mailed and postmarked or otherwise transmitted to the board on or before the date of sending the telefacsimile transmission or electronic mail.

(c) Documents over fifteen pages in length may not be filed by telefacsimile without prior approval of the presiding officer.

(3) A telefacsimile or electronic mail copy shall constitute an original solely for the purpose of establishing the date a document was filed.

AMENDATORY SECTION (Amending WSR 08-10-029, filed 4/28/08, effective 5/29/08)

**WAC 242-02-250 Notice of appearance and answer.**

(1) The respondent shall file a notice of appearance with the board and serve a copy on the petitioner and all other parties promptly after having been served with a petition for review. The notice of appearance shall be dated, signed and contain the respondent's address, telephone and fax numbers, and (~~e-mail~~) electronic mail address.

(2) The respondent, at its option, may file an answer to the petition for review. The respondent shall file the original and four copies with the board and serve a copy on the petitioner. Answers shall be filed no later than twenty days from the date of service of the petition for review. Answers shall be verified in the same manner as the petition for review.

AMENDATORY SECTION (Amending WSR 98-01-144, filed 12/19/97, effective 1/20/98)

**WAC 242-02-292 Direct review by superior court—Agreement of the parties.** (1) A direct review agreement of the parties shall contain:

(a) A caption in the following form:

BEFORE THE . . . GROWTH MANAGEMENT  
HEARINGS BOARD  
STATE OF WASHINGTON

Petitioner, Case No.  
v. Agreement for Direct Review  
Respondent by . . . County Superior Court

(b) Numbered paragraphs stating:

(i) Petitioner's name, mailing address (~~and~~), telephone number, and electronic mail address, and those of the attorney or other designated representative, if any;

(ii) Respondent's name, mailing address (~~and~~), telephone number, and electronic mail address, and those of the attorney or other designated representative, if any;

(iii) Intervenor's name, mailing address (~~and~~), telephone number, and electronic mail address, and those of the attorney or other designated representative, if any;

(iv) A statement indicating agreement to seek direct review by superior court of the petition for review filed with the board, citing case name and number as assigned by the board. The statement shall include agreement to proper venue, and may include other terms;

(v) Date the petition for review was filed, or if multiple petitions were filed and consolidated, the date the board served notice of consolidation;

(vi) A statement that all parties have read the agreement for direct review by superior court, and agree to its terms, followed by the signatures of all the parties or the signatures of the attorneys or other designated representatives, if any.

(2) One copy of the filed petition for review, with the case name, number and date stamp shall be filed with the agreement for direct review by superior court.

AMENDATORY SECTION (Amending WSR 08-10-029, filed 4/28/08, effective 5/29/08)

**WAC 242-02-320 Method of service.** Service of papers, specified in WAC 242-02-310(1), shall be made by electronic mail unless the party does not have the technological capacity to do so. Service may also be made personally (~~or~~), by first class, registered or certified mail, or by telefacsimile transmission. (~~The board may be served~~) If service is by electronic mail (~~filings, provided that~~) or telefacsimile, an original and four copies (~~are~~) shall be properly addressed to a board, deposited in the mail, and postmarked no later than the same day. Exhibits shall not be served electronically but shall be deemed timely filed if included in the mailed copies.

AMENDATORY SECTION (Amending WSR 94-07-033, filed 3/9/94, effective 4/9/94)

**WAC 242-02-330 Service of papers—When complete.** (1) Papers required to be filed with a board shall be deemed filed upon actual receipt during office hours at the board's office.

(2) All facsimile and electronic mail transmissions are sent at the risk of the sender and only pursuant to the procedures specified in WAC 242-02-240.

(3) This section shall not extend any applicable time for appeal to a board nor extend the time for providing notice of appeal to any named party.

AMENDATORY SECTION (Amending WSR 04-21-046, filed 10/15/04, effective 11/15/04)

**WAC 242-02-340 Proof of service—(~~Certificate~~) Declaration.** Where proof of service is required by this chapter, by statute, or upon a board's request, filing the original document with the board and serving copies upon all attorneys or other authorized representatives of record and upon parties not represented together with one of the following documents shall constitute proof of service:

(1) An (~~acknowledgement~~) acknowledgment of service;

(2) A certificate that the person signing the certificate did on the date of the certificate serve the papers upon each party or the party's attorney or other authorized representative of record in the proceeding by delivering a copy thereof in person to the named individuals;

(3) A certificate that the person signing the certificate did on the date of the certificate serve the papers upon all parties of record in the case by:

(a) Mailing a copy, properly addressed with postage prepaid, to each party or that party's attorney or other authorized representative; or

(b) Transmitting a copy by electronic mail or telefacsimile (~~device~~), and on the same day mailing a copy to each party in the case or that party's attorney, or other authorized representative; or

(c) Depositing a copy, properly addressed with charges prepaid, with a commercial parcel delivery company or courier service.

AMENDATORY SECTION (Amending WSR 08-10-029, filed 4/28/08, effective 5/29/08)

**WAC 242-02-530 Motions—Requirements.** (1) A motion is an application for an order or ruling. Every motion shall be in writing, unless made during a hearing; shall state with particularity the grounds; and shall set forth the relief or order sought. An original and four copies of the motion shall be filed with a board and a copy served on each opposing party or that party's attorney or other authorized representative.

(2) All motions shall be properly captioned and signed by the moving party or that party's attorney or other authorized representative.

(3) The motion shall specify the amount of time required for argument, whether appearance by telecommunication is requested, and the names (~~and~~), telephone numbers, and electronic mail addresses of all parties served with the motion.

(4) Dispositive motions on a limited record, similar to a motion for summary judgment in superior court or a motion on the merits in the appellate courts, are permitted. Time frames for making and responding to such a motion shall be established by the presiding officer.

(5) Motions to disqualify a hearing examiner acting as the presiding officer, or a board member, for bias, prejudice,

interest or other cause, with supporting affidavit(s), may be filed with a board.

(6) Any party may bring a motion for the board to decide a challenge to compliance with the notice and public participation requirements of the act raised in the petition for review, provided that the evidence relevant to the challenge is limited. If such a motion is timely brought, the presiding officer or the board shall determine whether to decide the notice and public participation issue(s) on motion or whether to continue those issues to the hearing on the merits.

**AMENDATORY SECTION** (Amending WSR 92-21-034, filed 10/15/92, effective 10/15/92)

**WAC 242-02-534 Response to motions.** (1) A party served with a motion shall have ten days from the date of ((receipt)) service of the motion to respond to it, unless otherwise directed by the presiding officer. A response to the motion shall be filed with a board and a copy served on the opposing party/parties.

(2) The response shall specify the amount of time required for argument, whether appearance by telecommunication is requested, and the names ((and)), telephone numbers, and electronic mail addresses of all parties served with the response.

**WSR 09-24-001**

**PERMANENT RULES  
DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**

(Economic Services Administration)

[Filed November 18, 2009, 12:59 p.m., effective December 19, 2009]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The department is amending all necessary sections in Title 388 WAC to implement annual adjustments to standards for the Washington Basic Food program and WASHCAP. The changes include updates to the following standards for federal fiscal year 2009: Income standard, maximum shelter deduction, standard deduction, and utility allowances. There will be no change to the current WASHCAP shelter cost threshold or to the high or low shelter cost allowances for WASHCAP. However, the WASHCAP benefit calculation will be affected by the changes in the one person standard utility allowance (SUA) and the one person standard deduction.

These standards are required by federal regulations and approved department waivers. These standards must be adjusted annually in order to determine a client's eligibility and benefit level for WASHCAP or the Washington Basic Food program. This change reflects a \$1 LIHEAP payment made annually by state of Washington department of commerce to all active Basic Food households to enable them to qualify for the standard utility allowance.

Citation of Existing Rules Affected by this Order: Amending WAC 388-450-0190, 388-450-0195, 388-478-0060, and 388-492-0070.

Statutory Authority for Adoption: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090.

Other Authority: 7 C.F.R. 273.9.

Adopted under notice filed as WSR 09-19-148 on September 23, 2009. Note: The department adopted WAC 388-450-0185 as WSR 09-23-004 to coincide with the effective date of a related rule.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 4, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 4, Repealed 0.

Date Adopted: November 17, 2009.

Stephanie E. Vaughn  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 08-24-050, filed 11/25/08, effective 12/26/08)

**WAC 388-450-0190 How does the department figure my shelter cost income deduction for Basic Food?** The department calculates your shelter cost income deduction as follows:

(1) First, we add up the amounts your assistance unit (AU) must pay each month for shelter. We do not count any overdue amounts, late fees, penalties or mortgage payments you make ahead of time as an allowable cost. We count the following expenses as an allowable shelter cost in the month the expense is due:

- (a) Monthly rent, lease, and mortgage payments;
- (b) Property taxes;
- (c) Homeowner's association or condo fees;
- (d) Homeowner's insurance for the building only;
- (e) Utility allowance your AU is eligible for under WAC 388-450-0195;
- (f) Out-of-pocket repairs for the home if it was substantially damaged or destroyed due to a natural disaster such as a fire or flood;
- (g) Expense of a temporarily unoccupied home because of employment, training away from the home, illness, or abandonment caused by a natural disaster or casualty loss if your:
  - (i) AU intends to return to the home;
  - (ii) AU has current occupants who are not claiming the shelter costs for Basic Food purposes; and
  - (iii) AU's home is not being leased or rented during your AU's absence.

(2) Second, we subtract all deductions your AU is eligible for under WAC 388-450-0185 (1) through (5) from your AU's gross income. The result is your AU's net income.

(3) Finally, we subtract one-half of your AU's net income from your AU's total shelter costs. The result is your excess shelter costs. Your AU's shelter cost deduction is the excess shelter costs:

(a) Up to a maximum of four hundred (~~forty-six~~) fifty-nine dollars if no one in your AU is elderly or disabled; or

(b) The entire amount if an eligible person in your AU is elderly or disabled, even if the amount is over four hundred (~~forty-six~~) fifty-nine dollars.

AMENDATORY SECTION (Amending WSR 09-14-018, filed 6/22/09, effective 7/23/09)

**WAC 388-478-0060 What are the income limits and maximum benefit amounts for Basic Food?** If your assistance unit (AU) meets all other eligibility requirements for Basic Food, your AU must have income at or below the limits in column B and C to get Basic Food, unless you meet one of the exceptions listed below. The maximum monthly food assistance benefit your AU could receive is listed in column D.

EFFECTIVE (~~(4-1-2009)~~) 10-1-2009

Column A Number of Eligible AU Members	Column B Maximum Gross Monthly Income	Column C Maximum Net Monthly Income	Column D Maximum Allotment	Column E 165% of Poverty Level
1	<del>\$(1,127)</del> <u>1,174</u>	<del>\$(867)</del> <u>903</u>	\$200	<del>\$(1,430)</del> <u>1,490</u>
2	<del>((1,517))</del> <u>1,579</u>	<del>((1,167))</del> <u>1,215</u>	367	<del>((1,925))</del> <u>2,004</u>
3	<del>((1,907))</del> <u>1,984</u>	<del>((1,467))</del> <u>1,526</u>	526	<del>((2,420))</del> <u>2,518</u>
4	<del>((2,297))</del> <u>2,389</u>	<del>((1,767))</del> <u>1,838</u>	668	<del>((2,915))</del> <u>3,032</u>
5	<del>((2,687))</del> <u>2,794</u>	<del>((2,067))</del> <u>2,150</u>	793	<del>((3,410))</del> <u>3,547</u>
6	<del>((3,077))</del> <u>3,200</u>	<del>((2,367))</del> <u>2,461</u>	952	<del>((3,905))</del> <u>4,061</u>
7	<del>((3,467))</del> <u>3,605</u>	<del>((2,667))</del> <u>2,773</u>	1,052	<del>((4,400))</del> <u>4,575</u>
8	<del>((3,857))</del> <u>4,010</u>	<del>((2,967))</del> <u>3,085</u>	1,202	<del>((4,895))</del> <u>5,089</u>
9	<del>((4,247))</del> <u>4,416</u>	<del>((3,267))</del> <u>3,397</u>	1,352	<del>((5,390))</del> <u>5,604</u>
10	<del>((4,637))</del> <u>4,822</u>	<del>((3,567))</del> <u>3,709</u>	1,502	<del>((5,885))</del> <u>6,119</u>
Each Additional Member	<del>+((390))</del> <u>406</u>	<del>+((300))</del> <u>312</u>	+150	<del>+((495))</del> <u>515</u>

Exceptions:

(1) If your AU is categorically eligible as under WAC 388-414-0001, your AU does not have to meet the gross or net income standards in columns B and C. We do budget your AU's income to decide the amount of Basic Food your AU will receive.

(2) If your AU includes a member who is sixty years of age or older or has a disability, your income must be at or below the limit in column C only.

(3) If you are sixty years of age or older and cannot buy and cook your own meals because of a permanent disability, we will use column E to decide if you can be a separate AU.

(4) If your AU has zero income, your benefits are the maximum allotment in column D, based on the number of eligible members in your AU.

AMENDATORY SECTION (Amending WSR 09-12-068, filed 5/29/09, effective 7/1/09)

**WAC 388-492-0070 How are my WASHCAP food benefits calculated?** We calculate your food benefits as follows:

(1) We begin with your gross income.

(2) We subtract one hundred (~~forty-four~~) forty-one dollars from your gross income to get your countable income.

(3) We figure your shelter cost based on information we receive from Social Security Administration (SSA), unless you report a change as described under WAC 388-492-0080. If you pay:

(a) Three hundred dollars or more a month for shelter, we use three hundred seventy-nine dollars as your shelter cost; or

(b) Less than three hundred dollars for shelter, we use one hundred eighty-two dollars as your shelter cost; and

(c) We add the current standard utility allowance under WAC 388-450-0195 to determine your total shelter cost.

(4) We figure your shelter deduction by subtracting one half of your countable income from your shelter cost.

(5) We figure your net income by subtracting your shelter deduction from your countable income and rounding the resulting figure up from fifty cents and down from forty-nine cents to the nearest whole dollar.

(6) We figure your WASHCAP food benefits (allotment) by:

(a) Multiplying your net income by thirty percent and rounding up to the next whole dollar; and

(b) Subtracting the result from the maximum allotment under WAC 388-478-0060.

(c) If you are eligible for WASHCAP, you will get at least the minimum monthly benefit for Basic Food under WAC 388-412-0015.

**AMENDATORY SECTION** (Amending WSR 08-21-106, filed 10/16/08, effective 11/16/08)

**WAC 388-450-0195 Utility allowances for Basic Food programs.** (1) For Basic Food, "utilities" include the following:

- (a) Heating or cooling fuel;
- (b) Electricity or gas;
- (c) Water or sewer;
- (d) Well or septic tank installation/maintenance;
- (e) Garbage/trash collection; and
- (f) Telephone service.

(2) The department uses the amounts below if you have utility costs separate from your rent or mortgage payment. We add your utility allowance to your rent or mortgage payment to determine your total shelter costs. We use total shelter costs to determine your Basic Food benefits.

(a) If you have heating or cooling costs(±) or receive a low income home energy assistance program (LIHEAP) benefit during the year you get a standard utility allowance (SUA) that depends on your assistance unit's size.

Assistance Unit (AU) Size	Utility Allowance
1	\$352
2	\$362
3	\$373
4	\$384
5	\$394
6 or more	\$405

(b) If your AU does not qualify for the SUA and you have any two utility costs listed above, you get a limited utility allowance (LUA) of two hundred seventy-six dollars.

(c) If your AU has only telephone costs and no other utility costs, you get a telephone utility allowance (TUA) of forty-two dollars.

**WSR 09-24-008**

**PERMANENT RULES**

**EMPLOYMENT SECURITY DEPARTMENT**

[Filed November 20, 2009, 9:41 a.m., effective December 21, 2009]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The rule implements SB 5804 (chapter 247, Laws of 2009) providing that individuals who are simultaneously working both a full-time job and a part-time job will not be disqualified from receiving unemployment benefits solely because they quit the part-time job.

Statutory Authority for Adoption: RCW 50.12.010, 50.12.040, 50.20.010.

Adopted under notice filed as WSR 09-20-097 on October 7, 2009.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 0, Repealed 0.

Date Adopted: November 16, 2009.

Paul Trause  
Deputy Commissioner

**NEW SECTION**

**WAC 192-150-180 Quitting part-time work—RCW 50.20.050(3).** (1) **Effective date.** RCW 50.20.050(3) and this section apply to job separations that occur on or after July 26, 2009.

(2) **Definitions.** For purposes of this section:

(a) "Part-time work" means fewer than 35 hours of work per week.

(b) "Full-time work" means work of 35 or more hours per week.

(3) If you are simultaneously employed in a part-time job and a full-time job, you will not be denied benefits for quitting the part-time job under the following circumstances:

(a) You quit the part-time job before losing your full-time job;

(b) You did not know in advance that your full-time job would be ending; and

(c) You are eligible for benefits based on the separation from your full-time job.

(4) If you are denied benefits under RCW 50.20.050(3), the period of denial is the same as that under RCW 50.20.050(2)(a). This means you will be denied for a period of seven weeks and until you earn at least seven times your weekly benefit amount in covered employment.

(5) **Examples.** The following are examples only and do not mean that the department would rule the same in similar situations.

(a) *You quit a part-time job two weeks before being laid off from your full-time job.* Benefits are allowed because you meet the criteria of subsection (3).

(b) *You quit a part-time job before the hours at your full-time job were reduced.* Benefits are allowed because you meet the criteria of subsection (3).

(c) *You quit a part-time job two weeks before the end of a temporary full-time job.* You had prior knowledge that the full-time job was ending. Benefits would be denied unless you had good cause for quitting the part-time job under RCW 50.20.050(2).

(d) *You quit a part-time job two weeks before being discharged from the full-time job.*

(i) If the separation from the full-time job was for misconduct, benefits would be denied for quitting the part-time job because you are not eligible for benefits based on the separation from the full-time job.

(ii) If the separation from the full-time job was not misconduct, benefits would be allowed because you meet the criteria of subsection (3).

(e) *You quit the part-time job and the full-time job on the same day.* The department will determine if you had good cause to quit both jobs under RCW 50.20.050(2).

(f) *You quit a part-time job but are still employed full-time at your other job.* The department will determine if you had good cause to quit under RCW 50.20.050(2).

Allows waiver of the delinquent tax rate following resolution of an appeal by entering into a payment plan as well as by paying in full.

A final cost-benefit analysis is available by contacting Juanita Myers, Employment Security Department, P.O. Box 9046, Olympia, WA 98507-9046, phone (360) 902-9665, fax (360) 902-9799, e-mail [jmyers@esd.wa.gov](mailto:jmyers@esd.wa.gov).

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: November 16, 2009.

Paul Trause

Deputy Commissioner

**AMENDATORY SECTION** (Amending WSR 07-23-127, filed 11/21/07, effective 1/1/08)

**WAC 192-320-035 How are unemployment insurance tax rates determined for employers who are delinquent on taxes or reports?** (1) An employer that has not submitted by September 30 all reports, taxes, interest, and penalties required under Title 50 RCW for the period preceding July 1 of any year is not a "qualified employer."

(2) For purposes of this section, the department will disregard unpaid taxes, interest, and penalties if they constitute less than either one hundred dollars or one-half of one percent of the employer's total tax reported for the twelve-month period immediately preceding July 1. These minimum amounts only apply to taxes, interest, and penalties, not to failure to submit required reports.

(3)(a) This section does not apply (~~to services under RCW 50.04.160 performed in domestic service in a private home, local college club, or local chapter of a college fraternity or sorority~~) if the otherwise qualified (~~domestic~~) employer shows to the satisfaction of the commissioner that he or she acted in good faith and that application of the rate for delinquent taxes would be inequitable. This exception is to be narrowly construed to apply at the sole discretion of the commissioner, recognizing that the delinquent tax rate only applies after the employer has already received a grace period of not less than two months beyond the normal due date for reports and taxes due. The commissioner's decision shall be subject to review only under the arbitrary and capricious standard and shall be reversed in administrative proceedings only for manifest injustice based on clear and convincing evidence.

## WSR 09-24-009

### PERMANENT RULES

#### EMPLOYMENT SECURITY DEPARTMENT

[Filed November 20, 2009, 9:53 a.m., effective December 21, 2009]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The proposed amendment implements HB 1338 (chapter 83, Laws of 2009). The new law broadens the ability of the commissioner of the employment security department to waive application of the higher tax rate for delinquent employers if the employer acted in good faith and application of the higher tax rate would be inequitable. The rule provides standards for the commissioner to apply in determining whether to waive the higher tax rate for delinquent employers.

Citation of Existing Rules Affected by this Order: Amending WAC 192-320-035.

Statutory Authority for Adoption: RCW 50.12.010, 50.12.040, 50.29.010.

Adopted under notice filed as WSR 09-20-096 on October 7, 2009.

Changes Other than Editing from Proposed to Adopted Version: Clarifies that standard of review specified in the WAC applies only to administrative proceedings, not to judicial review.

Clarifies and allows resolution of potential conflicts between subsections (3)(b) and (c) by stating that disqualifications from waiver in subsection (3)(b) apply "in the usual course of business."

(b) Except for services under RCW 50.04.160 performed in domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, the commissioner will not find in the usual course of business that application of the rate for delinquent taxes would be inequitable:

(i) If the employer has been late with filing or with payment in more than one of the last eight consecutive quarters immediately preceding the applicable period;

(ii) If the delinquency was due to absences of key personnel and the absences were because of business trips, vacations, personnel turnover, or terminations;

(iii) If the delinquency was due to adjusting by more than two quarters the liable date when the employer first had employees; or

(iv) If the employer is a successor, the rate for delinquent taxes is based on the predecessor, and the successor could or should have determined the predecessor's tax status at the time of the transfer.

(c) Examples of when the commissioner may find that application of the rate for delinquent taxes would be inequitable include if the delinquency results from:

(i) An employer reducing its tax payment by the amount specified as a credit on the most recent account statement from the department, when the credit amount is later determined to be inaccurate;

(ii) Taxes due which are determined as the result of a voluntary audit;

(iii) Resolution of a pending appeal and any amounts due are paid within thirty days of the final resolution of the amount due or the department approves a deferred payment contract within thirty days of the final resolution of the amount due;

(iv) The serious illness or death of key personnel or their family that extends throughout the period in which the tax could have been paid prior to September 30 and no reasonable alternative personnel were available and any amounts due are paid no later than December 31 of such year; or

(v) An employee or other contracted person committing fraud, embezzlement, theft, or conversion, the employer could not immediately detect or prevent the wrongful act, the employer had reasonable safeguards or internal controls in place, the employer filed a police report, and any amounts due are paid within thirty days of when the employer could reasonably have discovered the illegal act.

(d) When determining whether an employer acted in good faith and that application of the rate for delinquent taxes would be inequitable, the following factors are considered neutral and neither support nor preclude waiver of the rate for delinquent taxes:

(i) The harshness of the burden on the employer caused by application of the rate for delinquent taxes;

(ii) Lack of knowledge by the employer, bookkeepers, accountants, or other financial advisors about application of the law or the potential harshness of the rate;

(iii) Delay by the employer or its representative in opening mail or receiving other notice from the department; or

(iv) Error by a payroll, bookkeeping, or accounting service on behalf of an employer.

(4) The department shall provide notice to the employer or employer's agent that ~~(he or she)~~ the employer may be

subject to the higher rate for delinquent taxes if the employer does not comply with this section. Notice may be in the form of an insert or statement in July, August, or September billing statements or in a letter or notice of assessment. Evidence of the routine practice of the department in mailing notice in billing statements or in a notice of assessment shall be sufficient to establish that the department provided this notice. No notice need be provided to an employer that is not currently registered and active.

(5) An employer that is not a "qualified employer" because of failure to pay contributions when due shall be assigned an array calculation factor rate two-tenths higher than that in rate class 40, unless the department approves a deferred payment contract with the employer by September 30 of the previous rate year. If an employer with an approved deferred payment contract fails to make any one of the payments or fails to submit any tax report and payment in a timely manner, the employer's tax rate shall immediately revert to an array calculation factor rate two-tenths higher than in rate class 40.

(6) An employer that is not a "qualified employer" because of failure to pay contributions when due shall be assigned a social cost factor rate in rate class 40.

(7) Assignment of the rate for delinquent taxes is not considered a penalty which is subject to waiver under WAC 192-310-030.

(8) The amendments to this section effective July 26, 2009, apply only to tax rates assigned after that date.

## WSR 09-24-011

### PERMANENT RULES

#### EMPLOYMENT SECURITY DEPARTMENT

[Filed November 20, 2009, 9:58 a.m., effective December 21, 2009]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The rule provides clarity concerning the priority of payments, how payments will be handled when a claimant is eligible for an unemployment claim but is paid extended or emergency benefits in error, and how the amount of extended benefits will be calculated when an individual's weekly benefit amount is temporarily increased.

Statutory Authority for Adoption: RCW 50.12.010, 50.12.040, 50.20.010.

Adopted under notice filed as WSR 09-20-098 on October 7, 2009.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Mak-

ing: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 0, Repealed 0.

Date Adopted: November 16, 2009.

Paul Trause  
Deputy Commissioner

#### NEW SECTION

##### **WAC 192-240-060 What is the priority of payments?**

Any emergency unemployment compensation or any similar federal compensation may be paid before the state extended benefits authorized under Chapter 50.22 RCW at the discretion of the commissioner.

#### NEW SECTION

##### **WAC 192-240-070 What happens if I am paid emergency or extended benefits when I am eligible for a new unemployment claim?**

If you are paid emergency unemployment compensation, state extended benefits, or any similar state or federal extension, and it is later discovered that you were eligible for a regular unemployment claim during all or part of the period in which you received such benefits, the regular unemployment claim takes priority. The balance on your new unemployment claim will be adjusted for any week(s) at issue, meaning those weeks in which you should have received regular unemployment benefits, subject to the following:

(1) Except as provided in subsection 4 of this section, you may not be paid twice for the same week

(2) If your new weekly benefit amount is equal to the amount you were paid for the weeks at issue, the amount you were paid in emergency unemployment compensation or extended benefits will be deducted from the maximum benefits payable on your new claim.

Example: Your previous weekly benefit amount was five hundred dollars. You received emergency unemployment compensation for eight weeks at this amount when it was discovered you were eligible for a new claim in the amount of five hundred dollars. The five hundred dollars paid for eight weeks will be deducted from the maximum benefits payable on your new claim.

(3) If your new weekly benefit amount is lower than the amount you were paid for the weeks at issue, the amount you were paid in emergency unemployment compensation or extended benefits that is equivalent to the weekly benefit amount on your new claim will be deducted from the maximum benefits payable on your new claim. The difference between the amounts paid in emergency unemployment compensation or extended benefits for the week(s) at issue and the weekly benefit amount on your new claim will be waived as provided in RCW 50.20.190.

Example: Your previous weekly benefit amount was five hundred dollars. You received emergency unemployment compensation for eight weeks at this amount when it was discovered you were eligible for a new claim in the amount of three hundred-fifty dollars. The three hundred-fifty dollars for eight weeks will be deducted from the maximum benefits payable on your new claim. The one hundred-

fifty dollar difference between your previous weekly benefit amount and your new weekly benefit amount will be waived.

(4) If your new weekly benefit amount is higher than the amount you were paid for the week(s) at issue, the amount you were paid in emergency unemployment compensation or extended benefits will be supplemented so that you receive your new weekly benefit amount for the weeks at issue and the total deducted from the maximum benefits payable on your new claim.

For example: Your previous weekly benefit amount was three hundred-fifty dollars. You received emergency unemployment compensation for eight weeks at this amount when it was discovered you were eligible for a new claim in the amount of five hundred dollars. You will be paid an additional one hundred-fifty dollars for each of the eight weeks at issue and the total deducted from the maximum benefits payable on your new claim.

#### NEW SECTION

##### **WAC 192-240-080 How much will I receive in extended benefits if my regular weekly benefit amount is increased?**

(1)(a) If your weekly benefit amount for regular unemployment benefits is increased during your benefit year, the maximum amount of extended benefits payable will be the lesser of fifty percent of the total regular unemployment compensation paid to you for the benefit year or thirteen times the average weekly benefit amount paid during your benefit year.

Example: You receive regular unemployment benefits for twenty weeks at \$200 and \$245 for the remaining six weeks. The maximum benefits payable on your claim is \$5,470. Your weekly benefit amount for extended benefits will be \$245. The maximum extended benefits payable will be \$2,735 which is the lesser of fifty percent of \$5,470 or thirteen times \$222.5 (\$200 + \$245 divided by 2, the average of both weekly benefit amounts, or \$2,892).

(b) When the state is in a high unemployment period as defined in RCW 50.22.010(3), the maximum amount of extended benefits payable will be the lesser of eighty percent of the total regular unemployment compensation paid to you for the benefit year or twenty times the average weekly benefit amount paid during your benefit year.

(2) For purposes of this section, "average" means the average of the two weekly benefit amounts paid during your benefit year.

#### **WSR 09-24-012**

#### **PERMANENT RULES**

#### **GAMBLING COMMISSION**

[Order 664—Filed November 20, 2009, 12:59 p.m., effective December 21, 2009]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Clarify that when a person "represents" a manufacturer to sell, promote, or provide the manufacturer's gambling equipment, or supplies, or supervises someone that does, they must have a manufacturer representative license. Also allow restore a licensed manufacturer representative

ability to represent more than one manufacturer at a time. Currently, this rule says a representative must represent only one manufacturer at a time. Also, clarify that manufacturers, distributors, and gambling service suppliers are responsible for ensuring their representatives have a gambling license.

Citation of Existing Rules Affected by this Order: Amending WAC 230-03-300, 230-03-330, and 230-16-001.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 09-19-060 on September 11, 2009.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 3, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 3, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 0.

Date Adopted: November 20, 2009.

Michelle M. Pardee  
Acting Rules Coordinator

AMENDATORY SECTION (Amending Order 457, filed 3/22/06, effective 1/1/08)

**WAC 230-03-300 Applying for a manufacturer's representative license.** You must apply for a manufacturer's representative license if you (~~are employed by a licensed manufacturer to~~) sell, promote, or provide (~~that~~) a manufacturer's gambling equipment, or supplies, or you supervise those who do.

AMENDATORY SECTION (Amending Order 457, filed 3/22/06, effective 1/1/08)

**WAC 230-03-330 Representing (~~(only)~~ one (~~(employer at a time)~~) or more licensed businesses.** (1) If you are a licensed distributor representative, gambling service supplier representative, or a linked bingo prize provider representative or applying for (~~(a)~~) one of these representative licenses, you must represent only one licensed (~~(manufacturer)~~) distributor, gambling service supplier, or linked bingo prize provider at a time.

(2) If you are a licensed manufacturer representative, you may represent more than one licensed manufacturer.

(3) If the owner you (~~(work for)~~) represent owns more than one licensed business, you may represent the owner in all those licensed businesses, including licensed manufacturers, without applying for another representative license.

AMENDATORY SECTION (Amending Order 615, filed 9/17/07, effective 1/1/08)

**WAC 230-16-001 Manufacturers, distributors, and gambling service suppliers must (~~(comply with all requirements)~~) ensure representatives are licensed.** (~~(Manufacturers, distributors, and gambling service suppliers and their licensed representatives must ensure that their business operations, services, and the gambling equipment they manufacture, distribute, or sell comply with chapter 9.46 RCW and Title 230 WAC.)~~) (1) A licensed manufacturer, distributor, or gambling service supplier must not allow an unlicensed person to sell, promote, or provide its gambling equipment, or supplies, or to supervise those who do, and must take all measures necessary to prevent an unlicensed person from doing so.

(2) A licensed manufacturer must notify us in writing before a manufacturer representative begins representing them.

## WSR 09-24-026

### PERMANENT RULES

#### BOARD FOR VOLUNTEER

#### FIREFIIGHTERS AND RESERVE OFFICERS

[Filed November 23, 2009, 9:04 a.m., effective December 24, 2009]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Amending chapter 491-02 WAC to adopt new actuarial tables for use in calculating joint survivor pensions, survivor pensions, and lump sum settlements to reflect the latest actuarial study and the changes in mortality rates.

Citation of Existing Rules Affected by this Order: Amending chapter 491-02 WAC.

Statutory Authority for Adoption: RCW 41.24.290(2).

Adopted under notice filed as WSR 09-20-071 on October 5, 2009.

A final cost-benefit analysis is available by contacting Brigitte K. Smith, P.O. Box 114, Olympia, WA 98507, phone (360) 753-7318, fax (360) 586-1987, e-mail brigettes@bvff.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: November 20, 2009.

Brigitte K. Smith  
Executive Secretary

AMENDATORY SECTION (Amending WSR 03-22-024, filed 10/27/03, effective 1/1/04)

**WAC 491-02-095 Actuarial tables, schedules, and factors.** This chapter contains the tables, schedules, and factors adopted by the board for volunteer firefighters and reserve officers pursuant to the authority granted by RCW 41.24.185 for calculating optional retirement allowances of members of retirement systems administered by the board. These tables, schedules, and factors were adopted by the board upon the recommendation of and in light of the findings of the state actuary in his regular actuarial investigation into the mortality, service, compensation, and other experience of the members and beneficiaries of such retirement systems. The tables, schedules, and factors contained in this chapter shall govern the retirement allowances only of members retiring during the period from January 1, ~~((2004))~~ 2010, until such time as these tables, schedules, and factors are amended by the board following the next actuarial investigation conducted by the state actuary. The retirement allowances of members retiring before January 1, ~~((2004))~~ 2010, shall continue to be governed by the tables, schedules, and factors in effect at the time of each member's retirement. Any new tables, schedules, and factors adopted by the board in the future shall govern retirement allowances only of members retiring after the adoption of such new tables, schedules, and factors.

**Board for Volunteer Firefighters and Reserve Officers  
Table #1  
Joint/Survivor Pension  
Option 2 (Joint and 100% Survivor Pension with Pop-up)  
(WAC 415-02-380)**

Member Younger		Member Older	
Age Difference	Option 2 100%	Age Difference	Option 2 100%
-20	<del>((0.958))</del> <u>0.937</u>	0	<del>((0.870))</del> <u>0.835</u>
-19	<del>((0.955))</del> <u>0.933</u>	1	<del>((0.862))</del> <u>0.829</u>
-18	<del>((0.952))</del> <u>0.929</u>	2	<del>((0.857))</del> <u>0.823</u>
-17	<del>((0.949))</del> <u>0.925</u>	3	<del>((0.844))</del> <u>0.818</u>
-16	<del>((0.947))</del> <u>0.921</u>	4	<del>((0.840))</del> <u>0.812</u>
-15	<del>((0.944))</del> <u>0.916</u>	5	<del>((0.836))</del> <u>0.807</u>
-14	<del>((0.940))</del> <u>0.912</u>	6	<del>((0.831))</del> <u>0.801</u>
-13	<del>((0.937))</del> <u>0.907</u>	7	<del>((0.818))</del> <u>0.796</u>
-12	<del>((0.934))</del> <u>0.902</u>	8	<del>((0.814))</del> <u>0.791</u>
-11	<del>((0.930))</del> <u>0.897</u>	9	<del>((0.809))</del> <u>0.786</u>

Member Younger		Member Older	
Age Difference	Option 2 100%	Age Difference	Option 2 100%
-10	<del>((0.927))</del> <u>0.892</u>	10	<del>((0.805))</del> <u>0.781</u>
-9	<del>((0.923))</del> <u>0.886</u>	11	<del>((0.802))</del> <u>0.776</u>
-8	<del>((0.920))</del> <u>0.881</u>	12	<del>((0.787))</del> <u>0.771</u>
-7	<del>((0.916))</del> <u>0.875</u>	13	<del>((0.784))</del> <u>0.767</u>
-6	<del>((0.912))</del> <u>0.870</u>	14	<del>((0.780))</del> <u>0.762</u>
-5	<del>((0.908))</del> <u>0.864</u>	15	<del>((0.777))</del> <u>0.758</u>
-4	<del>((0.901))</del> <u>0.858</u>	16	<del>((0.773))</del> <u>0.754</u>
-3	<del>((0.896))</del> <u>0.852</u>	17	<del>((0.770))</del> <u>0.750</u>
-2	<del>((0.889))</del> <u>0.847</u>	18	<del>((0.767))</del> <u>0.746</u>
-1	<del>((0.879))</del> <u>0.841</u>	19	<del>((0.764))</del> <u>0.743</u>
		20	<del>((0.762))</del> <u>0.739</u>
		21	<del>((0.759))</del> <u>0.736</u>
		22	<del>((0.756))</del> <u>0.733</u>
		23	<del>((0.754))</del> <u>0.730</u>
		24	<del>((0.752))</del> <u>0.727</u>
		25	<del>((0.750))</del> <u>0.725</u>
		26	<del>((0.748))</del> <u>0.722</u>
		27	<del>((0.746))</del> <u>0.720</u>
		28	<del>((0.744))</del> <u>0.717</u>
		29	<del>((0.743))</del> <u>0.715</u>
		30	<del>((0.741))</del> <u>0.713</u>
		31	<del>((0.740))</del> <u>0.711</u>
		32	<del>((0.738))</del> <u>0.709</u>
		33	<del>((0.737))</del> <u>0.708</u>

Member Younger		Member Older	
Age Difference	Option 2 100%	Age Difference	Option 2 100%
		34	((0.736)) <u>0.706</u>
		35	((0.735)) <u>0.705</u>
		36	((0.734)) <u>0.703</u>
		37	((0.733)) <u>0.702</u>
		38	((0.732)) <u>0.700</u>
		39	((0.731)) <u>0.699</u>
		40	((0.730)) <u>0.698</u>

**Table #2  
Survivor Pension  
Early Retirement Factors  
(WAC 415-02-320)**

Years Early	Month 0	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6	Month 7	Month 8	Month 9	Month 10	Month 11
((0	1.0000	0.9933	0.9866	0.9799	0.9732	0.9665	0.9598	0.9531	0.9464	0.9397	0.9330	0.9263
1	0.9200	0.9133	0.9066	0.8999	0.8932	0.8865	0.8798	0.8731	0.8664	0.8597	0.8530	0.8463
2	0.8400	0.8333	0.8266	0.8199	0.8132	0.8065	0.7998	0.7931	0.7864	0.7797	0.7730	0.7663
3	0.7600	0.7558	0.7516	0.7474	0.7432	0.7390	0.7348	0.7306	0.7264	0.7222	0.7180	0.7138
4	0.7100	0.7058	0.7016	0.6974	0.6932	0.6890	0.6848	0.6806	0.6764	0.6722	0.6680	0.6638
5	0.6600	0.6558	0.6516	0.6474	0.6432	0.6390	0.6348	0.6306	0.6264	0.6222	0.6180	0.6138
6	0.6100	0.6058	0.6016	0.5974	0.5932	0.5890	0.5848	0.5806	0.5764	0.5722	0.5680	0.5638
7	0.5600	0.5558	0.5516	0.5474	0.5432	0.5390	0.5348	0.5306	0.5264	0.5222	0.5180	0.5138
8	0.5100	0.5067	0.5034	0.5001	0.4968	0.4935	0.4902	0.4869	0.4836	0.4803	0.4770	0.4737
9	0.4700	0.4667	0.4634	0.4601	0.4568	0.4535	0.4502	0.4469	0.4436	0.4403	0.4370	0.4337
10	0.4300	0.4267	0.4234	0.4201	0.4168	0.4135	0.4102	0.4069	0.4036	0.4003	0.3970	0.3937
11	0.3900	0.3867	0.3834	0.3801	0.3768	0.3735	0.3702	0.3669	0.3636	0.3603	0.3570	0.3537
12	0.3500	0.3467	0.3434	0.3401	0.3368	0.3335	0.3302	0.3269	0.3236	0.3203	0.3170	0.3137
13	0.3100	0.3083	0.3066	0.3049	0.3032	0.3015	0.2998	0.2981	0.2964	0.2947	0.2930	0.2913
14	0.2900	0.2883	0.2866	0.2849	0.2832	0.2815	0.2798	0.2781	0.2764	0.2747	0.2730	0.2713
15	0.2700	0.2683	0.2666	0.2649	0.2632	0.2615	0.2598	0.2581	0.2564	0.2547	0.2530	0.2513
16	0.2500	0.2483	0.2466	0.2449	0.2432	0.2415	0.2398	0.2381	0.2364	0.2347	0.2330	0.2313
17	0.2300	0.2283	0.2266	0.2249	0.2232	0.2215	0.2198	0.2181	0.2164	0.2147	0.2130	0.2113
18	0.2100	0.2092	0.2084	0.2076	0.2068	0.2060	0.2052	0.2044	0.2036	0.2028	0.2020	0.2012
19	0.2000	0.1992	0.1984	0.1976	0.1968	0.1960	0.1952	0.1944	0.1936	0.1928	0.1920	0.1912
20	0.1900	0.1892	0.1884	0.1876	0.1868	0.1860	0.1852	0.1844	0.1836	0.1828	0.1820	0.1812
21	0.1800	0.1792	0.1784	0.1776	0.1768	0.1760	0.1752	0.1744	0.1736	0.1728	0.1720	0.1712
22	0.1700	0.1692	0.1684	0.1676	0.1668	0.1660	0.1652	0.1644	0.1636	0.1628	0.1620	0.1612
23	0.1600	0.1592	0.1584	0.1576	0.1568	0.1560	0.1552	0.1544	0.1536	0.1528	0.1520	0.1512
24	0.1500	0.1492	0.1484	0.1476	0.1468	0.1460	0.1452	0.1444	0.1436	0.1428	0.1420	0.1412
25	0.1400	0.1392	0.1384	0.1376	0.1368	0.1360	0.1352	0.1344	0.1336	0.1328	0.1320	0.1312
26	0.1300	0.1292	0.1284	0.1276	0.1268	0.1260	0.1252	0.1244	0.1236	0.1228	0.1220	0.1212
27	0.1200	0.1192	0.1184	0.1176	0.1168	0.1160	0.1152	0.1144	0.1136	0.1128	0.1120	0.1112
28	0.1100	0.1092	0.1084	0.1076	0.1068	0.1060	0.1052	0.1044	0.1036	0.1028	0.1020	0.1012

Years Early	Month 0	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6	Month 7	Month 8	Month 9	Month 10	Month 11
29+	0.1000	0.1000	0.1000	0.1000	0.1000	0.1000	0.1000	0.1000	0.1000	0.1000	0.1000	0.1000
0	1.0000	0.9922	0.9844	0.9766	0.9688	0.9610	0.9532	0.9454	0.9376	0.9298	0.9220	0.9142
1	0.9060	0.8991	0.8922	0.8853	0.8784	0.8715	0.8646	0.8577	0.8508	0.8439	0.8370	0.8301
2	0.8230	0.8168	0.8106	0.8044	0.7982	0.7920	0.7858	0.7796	0.7734	0.7672	0.7610	0.7548
3	0.7490	0.7435	0.7380	0.7325	0.7270	0.7215	0.7160	0.7105	0.7050	0.6995	0.6940	0.6885
4	0.6830	0.6781	0.6732	0.6683	0.6634	0.6585	0.6536	0.6487	0.6438	0.6389	0.6340	0.6291
5	0.6240	0.6195	0.6150	0.6105	0.6060	0.6015	0.5970	0.5925	0.5880	0.5835	0.5790	0.5745
6	0.5700	0.5660	0.5620	0.5580	0.5540	0.5500	0.5460	0.5420	0.5380	0.5340	0.5300	0.5260
7	0.5220	0.5184	0.5148	0.5112	0.5076	0.5040	0.5004	0.4968	0.4932	0.4896	0.4860	0.4824
8	0.4790	0.4758	0.4726	0.4694	0.4662	0.4630	0.4598	0.4566	0.4534	0.4502	0.4470	0.4438
9	0.4400	0.4371	0.4342	0.4313	0.4284	0.4255	0.4226	0.4197	0.4168	0.4139	0.4110	0.4081
10	0.4050	0.4023	0.3996	0.3969	0.3942	0.3915	0.3888	0.3861	0.3834	0.3807	0.3780	0.3753
11	0.3730	0.3705	0.3680	0.3655	0.3630	0.3605	0.3580	0.3555	0.3530	0.3505	0.3480	0.3455
12	0.3430	0.3408	0.3386	0.3364	0.3342	0.3320	0.3298	0.3276	0.3254	0.3232	0.3210	0.3188
13	0.3170	0.3149	0.3128	0.3107	0.3086	0.3065	0.3044	0.3023	0.3002	0.2981	0.2960	0.2939
14	0.2920	0.2902	0.2884	0.2866	0.2848	0.2830	0.2812	0.2794	0.2276	0.2758	0.2740	0.2722
15	0.2700	0.2683	0.2666	0.2649	0.2632	0.2615	0.2598	0.2581	0.2564	0.2547	0.2530	0.2513
16	0.2500	0.2484	0.2468	0.2452	0.2436	0.2420	0.2404	0.2388	0.2372	0.2356	0.2340	0.2324
17	0.2310	0.2296	0.2282	0.2268	0.2254	0.2240	0.2226	0.2212	0.2198	0.2184	0.2170	0.2156
18	0.2140	0.2127	0.2114	0.2101	0.2088	0.2075	0.2062	0.2049	0.2036	0.2023	0.2010	0.1997
19	0.1980	0.1968	0.1956	0.1944	0.1932	0.1920	0.1908	0.1896	0.1884	0.1872	0.1860	0.1848
20	0.1840	0.1828	0.1816	0.1804	0.1792	0.1780	0.1768	0.1756	0.1744	0.1732	0.1720	0.1708
21	0.1700	0.1690	0.1680	0.1670	0.1660	0.1650	0.1640	0.1630	0.1620	0.1610	0.1600	0.1590
22	0.1580	0.1571	0.1562	0.1553	0.1544	0.1535	0.1526	0.1517	0.1508	0.1499	0.1490	0.1481
23	0.1470	0.1461	0.1452	0.1443	0.1434	0.1425	0.1416	0.1407	0.1398	0.1389	0.1380	0.1371
24	0.1360	0.1352	0.1344	0.1336	0.1328	0.1320	0.1312	0.1304	0.1296	0.1288	0.1280	0.1272
25	0.1260	0.1253	0.1246	0.1239	0.1232	0.1225	0.1218	0.1211	0.1204	0.1197	0.1190	0.1183
26	0.1180	0.1173	0.1166	0.1159	0.1152	0.1145	0.1138	0.1131	0.1124	0.1117	0.1110	0.1103
27	0.1090	0.1084	0.1078	0.1072	0.1066	0.1060	0.1054	0.1048	0.1042	0.1036	0.1030	0.1024
28	0.1020	0.1018	0.1016	0.1014	0.1012	0.1010	0.1008	0.1006	0.1004	0.1002	0.1000	0.1000
29+	0.1000	0.1000	0.1000	0.1000	0.1000	0.1000	0.1000	0.1000	0.1000	0.1000	0.1000	0.1000

**Table #3  
Lump-Sum Settlements**

Age	Factor	Age	Factor
20	((12.7335330)) 14.3791	60	((10.0726845)) 11.0834
21	((12.7191510)) 14.3576	61	((9.9030688)) 10.8849
22	((12.7036393)) 14.3347	62	((9.7274751)) 10.6795
23	((12.6870065)) 14.3104	63	((9.5462842)) 10.4675
24	((12.6688761)) 14.2845	64	((9.3601408)) 10.2498
25	((12.6496453)) 14.2570	65	((9.1682895)) 10.0267
26	((12.6287501)) 14.2277	66	((8.9710880)) 9.7975
27	((12.6062073)) 14.1965	67	((8.7693452)) 9.5633
28	((12.5820349)) 14.1633	68	((8.5617611)) 9.3247
29	((12.5558736)) 14.1277	69	((8.3481095)) 9.0792
30	((12.5281256)) 14.0898	70	((8.1282574)) 8.8273
31	((12.4982502)) 14.0495	71	((7.9049634)) 8.5679
32	((12.4666517)) 14.0068	72	((7.7673880)) 8.3037
33	((12.4331717)) 13.9619	73	((7.4434669)) 8.0334
34	((12.3976573)) 13.9146	74	((7.2070202)) 7.7574
35	((12.3601450)) 13.8648	75	((6.9674370)) 7.4768
36	((12.3203083)) 13.8125	76	((6.7250943)) 7.1936
37	((12.2778326)) 13.7574	77	((6.4800919)) 6.9075

Age	Factor	Age	Factor
38	((12.2327750)) <u>13.6993</u>	78	((6.2326266)) <u>6.6205</u>
39	((12.1844828)) <u>13.6378</u>	79	((5.9832374)) <u>6.3331</u>
40	((12.1332130)) <u>13.5726</u>	80	((5.7325776)) <u>6.0460</u>
41	((12.0783450)) <u>13.5034</u>	81	((5.4813743)) <u>5.7603</u>
42	((12.0199820)) <u>13.4300</u>	82	((5.2319096)) <u>5.4770</u>
43	((11.9577175)) <u>13.3520</u>	83	((4.9851840)) <u>5.2000</u>
44	((11.8915114)) <u>13.2693</u>	84	((4.7422313)) <u>4.9276</u>
45	((11.8211694)) <u>13.1816</u>	85	((4.5041150)) <u>4.6629</u>
46	((11.7461884)) <u>13.0887</u>	86	((4.2722117)) <u>4.4045</u>
47	((11.6665967)) <u>12.9903</u>	87	((4.0482355)) <u>4.1524</u>
48	((11.5816343)) <u>12.8860</u>	88	((3.8341147)) <u>3.9110</u>
49	((11.4912414)) <u>12.7754</u>	89	((3.6319683)) <u>3.6829</u>
50	((11.3949206)) <u>12.6582</u>	90	((3.4438535)) <u>3.4668</u>
51	((11.2923916)) <u>12.5339</u>	91	((3.2716047)) <u>3.2679</u>
52	((11.1841811)) <u>12.4021</u>	92	((3.1136352)) <u>3.0850</u>
53	((11.0693428)) <u>12.2638</u>	93	((2.9700277)) <u>2.9184</u>
54	((10.9474827)) <u>12.1178</u>	94	((2.8403701)) <u>2.7652</u>
55	((10.8184363)) <u>11.9639</u>	95	((2.7238456)) <u>2.6233</u>
56	((10.6826650)) <u>11.8019</u>	96	((2.6193178)) <u>2.4971</u>
57	((10.5407844)) <u>11.6327</u>	97	((2.5253520)) <u>2.3819</u>
58	((10.3917265)) <u>11.4573</u>	98	((2.4401933)) <u>2.2755</u>
59	((10.2356241)) <u>11.2742</u>	99	((2.3616744)) <u>2.1823</u>

**WSR 09-24-037**  
**PERMANENT RULES**  
**DEPARTMENT OF LICENSING**

[Filed November 23, 2009, 3:06 p.m., effective January 1, 2010]

Effective Date of Rule: January 1, 2010.

Purpose: To increase fees for application, original certification, certification renewal, duplicate certificate, certification history record, application/reciprocity, original certification via reciprocity, trainee registration and trainee registration renewal.

Under provision of RCW 43.24.086, the cost of each professional licensing program shall be borne by the members of that profession. The director of the department of licensing is charged with setting fees at a level sufficient to defray the costs of administering the program.

Projected revenue for the 2011-13 biennium from licensing fees is not sufficient to cover projected operating costs for the real estate appraiser program. The program has experienced a decrease in the real estate licensee base because of market conditions and new restrictive requirements.

Current resources are needed, at a minimum, to maintain program effectiveness. Program workload has seen a dramatic increase in the number of complaints received. Consumer complaints are technical in nature, related enforcement involves increased staff training, investigation and legal support costs.

Citation of Existing Rules Affected by this Order: Amending WAC 308-125-120 Fees and charges.

Statutory Authority for Adoption: RCW 18.140.050, 42.24.086.

Adopted under notice filed as WSR 09-15-197 on July 22, 2009.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 1, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: November 23, 2009.

Walt Fahrner  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 06-06-069, filed 2/28/06, effective 4/1/06)

**WAC 308-125-120 Fees and charges.** The following fees shall be paid under the provisions of chapter 18.140 RCW:

Title of Fee	Fee
(1) Application for examination	\$((246.00)) <u>370.00</u>
(2) Examination	((106.00)) <u>120.00**</u>
(3) Reexamination	((106.00)) <u>120.00**</u>
(4) Original certification	((206.00)) <u>250.00*</u>
(5) Certification renewal	((407.00)) <u>530.00*</u>
(6) Late renewal penalty	38.00
(7) Duplicate certificate	((28.00)) <u>30.00</u>
(8) Certification history record	((27.00)) <u>30.00</u>
(9) Application for reciprocity	((246.00)) <u>370.00</u>
(10) Original certification via reciprocity	((206.00)) <u>250.00*</u>
(11) Temporary practice	150.00
(12) Trainee registration	((100.00)) <u>200.00</u>
(13) Trainee registration renewal	((100.00)) <u>200.00</u>

\* Proposed fees for these categories marked with an asterisk include an estimated \$((25.00)) 50.00 to be submitted by the state to Federal Government. Title XI, SEC. 1109 requires each state to submit a roster listing of state certified appraisers to the Appraiser Subcommittee "no less than annually." The state is also required to collect from such individuals who perform appraisals in federally related transactions, an annual registry fee of "not more than \$((50)) 25," such fees to be transmitted by the state to the federal government on an annual basis.

\*\* Charges for categories marked with a double asterisk are determined by contract with an outside testing service.

**WSR 09-24-038**  
**PERMANENT RULES**  
**DEPARTMENT OF LICENSING**

[Filed November 24, 2009, 7:36 a.m., effective December 25, 2009]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Rule making is required to allow address changes from approved sources other than the registered owner of the vehicle.

Citation of Existing Rules Affected by this Order: Amending WAC 308-56A-040 Name and address—Change of address.

Statutory Authority for Adoption: RCW 46.01.110.

Adopted under notice filed as WSR 09-19-110 on September 22, 2009.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or

Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: November 24, 2009.

Walt Fahrner  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 05-23-135, filed 11/22/05, effective 1/3/06)

**WAC 308-56A-040 Name and address—Change of address.** (1) **If the registered owner's address changes, does the owner need to notify the department?**

Yes.

(2) **What information ~~((does the))~~ do registered owners need to provide to the department if their address changes?**

The owner must provide to the department ~~((with))~~:

(a) The registered owner's name (natural person or business) as it appears on the vehicle record(s);

(b) The license plate number or vehicle identification number (VIN) of each vehicle; and

(c) The ~~((new))~~ street address for the primary residence and ~~((at the choice of the registered owner,))~~ a separate mailing address if different from the primary residence address as defined in WAC 308-56A-030(2) ~~((with at least))~~. The address must include a five digit zip code ((and preferably a)) or the nine digit zip code if known.

(3) **Who may file an address change or correction?**

(a) The registered owner of the vehicle; or

(b) A public official, governmental agency, or taxing authority when proof of disputed residence is established; or

(c) A contractor who verifies or supplies correct addresses obtained from a public official or governmental agency.

This section does not relieve the registered owner of the responsibility to notify the department of an address change.

(4) **Are there exceptions to the requirement to provide a primary residence street address on the department's change of address form?**

Yes. ~~((To be exempt from the requirement to provide the primary resident street address, the))~~ Registered owners must meet one of the exceptions in WAC 308-56A-030(4) and complete and sign a form developed by the department indicating which exception they meet.

~~((4))~~ (5) **Does the address need to conform to United States Postal Service (USPS) standards?**

Yes. USPS address standards must be used on all vehicle records, registrations, and certificates of ownership.

~~((5))~~ **(6) When is the registered owner required to certify the truth of the address information provided (~~when using the department's change of address form~~)?**

~~(No.)~~ The registered owner ~~((will only be))~~ **is** required to complete and sign a declaration under penalty of perjury ~~((on a form developed by the department))~~ if the department ~~((has been presented with documentation or other information to indicate))~~ **receives notice** that there may be an error in the address information provided ~~((and))~~ **for** the vehicle record ~~((has been))~~. These records will be flagged to require the declaration be submitted before any transactions can be processed on that record.

~~((6))~~ **(7) What is the penalty if the applicant or registered owner provides false address information when changing an address?**

A person providing false ~~((residency))~~ **address** information is guilty of a gross misdemeanor punishable by a fine of five hundred twenty-nine dollars.

~~((7))~~ **(8) Is my residence address subject to public disclosure?**

~~((Where both a mailing address and a residence address are recorded on the vehicle record and are different, only a mailing address will be disclosed. Both addresses will be disclosed in response to requests from courts, law enforcement agencies, or government entities with enforcement, investigative, or taxing authority and only for use in the normal course of conducting their business.))~~ The department of licensing complies with statutory standards for disclosure set out in chapter 46.12 RCW and the Driver's Privacy Protection Act set out in 18 U.S.C. Secs. 2721-2725.

### WSR 09-24-039

#### PERMANENT RULES

#### DEPARTMENT OF LICENSING

[Filed November 24, 2009, 7:39 a.m., effective December 25, 2009]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Rule making is required to comply with laws concerning transportation benefit districts.

Statutory Authority for Adoption: RCW 46.01.110.

Adopted under notice filed as WSR 09-19-005 on September 3, 2009.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 2, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 2, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 2, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: November 24, 2009.

Walt Fahrner  
Rules Coordinator

### Chapter 308-59 WAC

#### TRANSPORTATION BENEFIT DISTRICT ADMINISTRATION

##### NEW SECTION

**WAC 308-59-510 Vehicle fee—Transportation benefit district—Exemptions.** The following vehicles are exempt from transportation benefit district vehicle fees imposed under chapter 82.80 RCW:

- (1) Vehicles with tax code 95 (vehicles taxed as personal property, such as mobile homes);
- (2) Vehicles with the following use classes:
  - (a) C/G (converter gear);
  - (b) CMB (combination nonpowered);
  - (c) CMP (campers);
  - (d) COM (commercial nonpowered);
  - (e) EX (exempt);
  - (f) FAR (farm);
  - (g) FCB (farm combination);
  - (h) FED (federally owned);
  - (i) FEX (farm exempt);
  - (j) H/C (horseless carriage);
  - (k) H/D (house moving dolly);
  - (l) LOG (if nonpowered and used exclusively for hauling logs under RCW 46.16.085);
  - (m) MOB (mobile home);
  - (n) PED (moped);
  - (o) ORV (off road vehicle);
  - (p) RES (restored and collector vehicles);
  - (q) SCH (private school);
  - (r) SNO (snowmobile);
  - (s) SNX (exempt snowmobile);
  - (t) TLR (personal use single axle and less than two thousand pounds scale weight); or
  - (u) TOW (tow trucks);
- (3) Vehicles registered under WAC 308-96A-050, (non-resident members of the armed forces);
- (4) Vehicles registered under WAC 308-96A-400, (Indian tribes and tribal members);
- (5) Vehicles registered under WAC 308-96A-046, (disabled American veterans or former prisoner of war);
- (6) Vehicles registered under WAC 308-96A-180, (rental cars);
- (7) Passenger motor vehicles registered under WAC 308-96A-175 and 308-96A-176, (ride-sharing and transportation needs ride-sharing vehicles);
- (8) Vehicles registered under WAC 308-96A-062, (Transfer or destruction of honorary consul special license plates); and
- (9) Vehicles registered under RCW 46.16.305, (Medal of Honor recipients).

NEW SECTION

**WAC 308-59-505 Assessing transportation benefit district fees.** All owners of qualified vehicles may be charged a transportation benefit district vehicle fee in accordance with RCW 82.80.140 with reference to vehicles registered under RCW 46.16.0621 and 46.16.070.

**WSR 09-24-047**  
**PERMANENT RULES**  
**PROFESSIONAL EDUCATOR**  
**STANDARDS BOARD**

[Filed November 24, 2009, 10:48 a.m., effective December 25, 2009]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Field placement agreements between institutions of higher education and school districts are described. New sections WAC 181-78A-125 and 181-78A-132 set regulations for both in-state institutions and out-of-state institutions for placing educators in schools as part of their formal education. Assurances are created for background checks and other student safety requirements.

Statutory Authority for Adoption: RCW 28A.410.210.

Adopted under notice filed as WSR 09-20-111 on October 6 [7], 2009.

Changes Other than Editing from Proposed to Adopted Version: Clarification of waiver requirements in earlier version; does not remove background check assurances.

A final cost-benefit analysis is available by contacting David Brenna, 600 Washington Street South, Room 400, Olympia, WA 98504-7236, phone (360) 725-6238, fax (360) 586-4548, e-mail david.brenna@k12.wa.us.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 2, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 2, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: November 13, 2009.

David Brenna  
 Legislative and  
 Policy Coordinator

NEW SECTION

**WAC 181-78A-125 Field placement agreements.** Beginning September 1, 2010, all educator preparation programs approved or authorized by the professional educator standards board or programs approved in other states operat-

ing field experiences in Washington state shall establish and maintain field placement agreements with all Washington school districts in which candidates are placed for field experiences leading to certification or endorsement.

Each field placement agreement shall include, but not be limited to:

(1) Assurances that:

(a) Fingerprint and character clearance under RCW 28A.410.010 must be current at all times during the field experience; and

(b) Candidates will not be placed in settings in which personal relationships or previous experiences could interfere with objective evaluation of candidates.

(2) Qualifications of the proposed site supervisor for each site and qualifications of each school's cooperating educator/administrator;

(3) Clear description by institution of duties and responsibilities of site supervisor and cooperating educator/administrator;

(4) Anticipated length and nature of field experience;

(5) Signatures from district representative.

NEW SECTION

**WAC 181-78A-132 Programs approved in other states operating field experiences in Washington state.** State approved preparation programs at a regionally accredited college or university in the professional field for which certification is issued that wish to enroll candidates for certification or endorsement in a supervised field experience under WAC 181-78A-125 within Washington state shall comply with the following:

(1) Application for authorization. Each institution must submit a proposal that addresses components adopted and published by the professional educator standards board, including:

(a) Verification of regional accreditation;

(b) Verification of state approval;

(c) Verification of higher education coordinating board approval (if offering degree program);

(d) Planned certification or endorsement program;

(e) Proposed start date;

(f) Projected enrollment;

(g) Data indicating need for program related to geographic location or nature of program offered;

(h) Explanation of means by which program will ensure candidates have formalized learning opportunities rooted in Washington state standards.

(2) Field placement agreements. Institutions shall comply with requirements of WAC 181-78A-125.

(3) Institutions shall comply with applicable annual reporting requirements requested by the professional educator standards board. Failure to report any change in status as submitted under subsection (1)(a) through (h) of this section may result in a loss of authorization to operate field placements in Washington state.

(4) The professional educator standards board shall publish on its web site a list of those out-of-state programs approved to offer field experiences within Washington state.

(5) The professional educator standards board shall publish on its web site relevant program approval status information on the out-of-state program from the state in which the program is approved.

(6) Out-of-state institutions with candidates needing to arrange a supervised field experience within Washington state on an infrequent basis for a limited number of candidates may work with a professional educator standards board approved program to arrange a placement or may seek a waiver for the requirements of this section, except for subsection (2) of this section, from the professional educator standards board. Washington state approved programs facilitating field experience for out-of-state institutions will report annually to the professional educator standards board the name of the institutions(s) and number of placements.

**WSR 09-24-049**  
**PERMANENT RULES**  
**YAKIMA VALLEY**  
**COMMUNITY COLLEGE**

[Filed November 24, 2009, 11:37 a.m., effective January 1, 2010]

Effective Date of Rule: January 1, 2010.

Purpose: The intent of this rule change is to update the current chapter 132P-276 WAC to reflect a change in the RCW designation in the underlying law; from chapter 42.17 to 42.56 RCW.

Citation of Existing Rules Affected by this Order: Amending WAC 132P-276-030, 132P-276-040, 132P-276-060, 132P-276-080, 132P-276-090, and 132P-276-110.

Statutory Authority for Adoption: RCW 28B.50.140.

Adopted under notice filed as WSR 09-18-080 on August 31, 2009.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 6, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 6, Repealed 0.

Date Adopted: November 19, 2009.

Suzanne West  
Public Records Officer

AMENDATORY SECTION (Amending WSR 00-01-076, filed 12/13/99, effective 1/13/00)

**WAC 132P-276-010 Purpose.** The purpose of this chapter shall be to ensure compliance by the college with the

provisions of the state law dealing with public records, chapter ((42-17)) 42.56 RCW.

AMENDATORY SECTION (Amending WSR 00-01-076, filed 12/13/99, effective 1/13/00)

**WAC 132P-276-030 Public records available.** All public records of the college, as defined in WAC 132P-276-020, are available for public inspection and copying pursuant to these rules, except as otherwise provided by chapter ((42-17)) 42.56 RCW and chapter 132P-276 WAC or other applicable law.

AMENDATORY SECTION (Amending WSR 00-01-076, filed 12/13/99, effective 1/13/00)

**WAC 132P-276-040 Public records officer.** Access to the college's public records shall be through the public records officer designated by the college. The person so designated shall be located in the administrative office of the college. The public records officer shall be responsible for implementing the college rules and regulations regarding release of public records, coordinating the staff of the college in this regard, and generally ensuring compliance by the staff with the public records disclosure requirements of chapter ((42-17)) 42.56 RCW.

AMENDATORY SECTION (Amending WSR 00-01-076, filed 12/13/99, effective 1/13/00)

**WAC 132P-276-060 Requests for public records.** In accordance with requirements of chapter ((42-17)) 42.56 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 copied or copies of such records may be obtained, by members of the public, upon compliance with the following procedures:

(1) A request shall be made in writing upon a form prescribed by the college which shall be available at its administrative office. The form shall be presented to the public records officer; or to any member of the college's staff, if the public records officer is not available, at the administrative office of the college during customary office hours. The request shall include the following information:

(a) The name of the person requesting the record;

(b) The time of day and calendar date of the request;

(c) The nature of the request;

(d) If the matter requested is referenced within an index maintained by the college, a reference to the requested record as described in such index;

(e) If the requested matter is not identifiable by reference to an index, an appropriate description of the record requested.

(2) The public records officer shall reply to written requests within five business days of receipt of the request by:

(a) Providing copies of the requested records;

(b) Acknowledging receipt of the request and providing a reasonable estimate of the time the college will require to respond; or

(c) Denying the public records request. Denials of requests for public records will be accompanied by a written statement specifying the reason for denial.

(3) Additional time to respond to a request may be based on the public records officer's need to ask that the requestor clarify the intent of the request, to locate and assemble the information, to notify third persons or agencies who are the subject of or affected by the request, or to determine whether any of the information requested is exempt. If the requestor fails to clarify the request, the college need not respond to it.

(4) 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 staff member to whom the request is made, to assist the member of the public in appropriately identifying the public record requested.

AMENDATORY SECTION (Amending WSR 00-01-076, filed 12/13/99, effective 1/13/00)

**WAC 132P-276-080 Exemptions.** (1) The college reserves the right to determine that a public record requested in accordance with the procedures outlined in WAC 132P-276-060 is exempt under the provisions of chapter ~~((42.17))~~ 42.56 RCW or other applicable law.

(2) In addition, pursuant to RCW ~~((42.17.260))~~ 42.56.210, the college 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 unreasonable invasion of personal privacy protected by state law or would impair a vital governmental interest. The public records officer will state the reason for such deletion in writing.

(3) The release or disclosure of student educational records is governed by the Federal Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g.

AMENDATORY SECTION (Amending WSR 00-01-076, filed 12/13/99, effective 1/13/00)

**WAC 132P-276-090 Review of denials of public records requests.** (1) Any person who objects to the denial of a request for a public record may petition for prompt review of such decision by tendering a written request for review. The written request shall specifically refer to the written statement by the public records officer or other staff member which constituted or accompanied the denial.

(2) Immediately after receiving a written request for review of a decision denying a public record, the public records officer or other staff member denying the request shall refer it to the president of the college. The president or designee shall consider the college's obligation to comply with the intent of chapter ~~((42.17))~~ 42.56 RCW, the exemptions provided in RCW ~~((42.17.310))~~ 42.56.210 or other pertinent statutes, and the statutory provisions which require the college to protect public records from damage or disorganization, prevent excessive interference with essential college functions, and prevent any unreasonable invasion of personal privacy by deleting identifying details. The president or designee shall complete the review within two business days after receiving the written request for review of the decision denying a public record.

(3) Administrative remedies shall not be considered exhausted until the college has returned the petition with a decision, provided the requested record, or until the close of the second business day following denial of inspection has been reached, whichever occurs first.

(4) Whenever the college concludes that a public record is exempt from disclosure and denies inspection and copying, the requestor may request a review of the matter by the office of the attorney general or may file a lawsuit in superior court in the county where the agency record is maintained. A written request for review by the attorney general's office, along with a copy of the request and the college's written denial, should be sent to:

Office of the Attorney General  
Public Records Review  
P.O. Box 40100  
Olympia, WA 98504-0100

The office of the attorney general will conduct a prompt and independent review of the request and the college's denial and provide a written opinion as to whether the record requested is exempt from disclosure. This review is not binding upon the college or the requestor.

AMENDATORY SECTION (Amending WSR 00-01-076, filed 12/13/99, effective 1/13/00)

**WAC 132P-276-110 Records index.** An index of all documents required to be indexed by RCW ~~((42.17.260))~~ 42.56.070 shall be maintained at the president's office. The index shall be accessible to the public by request to the public records officer at the above office during customary working hours.

**WSR 09-24-050**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**FINANCIAL INSTITUTIONS**

[Filed November 24, 2009, 11:44 a.m., effective December 31, 2009]

Effective Date of Rule: December 31, 2009.

Purpose: To provide standards for credit unions in the management of other real estate owned (OREO) property, and to encourage safe and sound practices and development of credit union policies for prudent handling of OREO, helping to mitigate possible loss and maintain financial stability.

Statutory Authority for Adoption: RCW 31.12.404, 31.12.426, 31.12.428, 31.12.436, 31.12.516.

Adopted under notice filed as WSR 09-19-131 on September 22, 2009.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 8, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 8, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: November 24, 2009.

Linda Jekel, Director  
Division of Credit Unions

## Chapter 208-476 WAC

### CREDIT UNION—OTHER REAL ESTATE OWNED

#### NEW SECTION

**WAC 208-476-010 Reason for rule.** Why do credit unions need a rule on the handling of "other real estate owned" (OREO), property legally owned by the credit union as the result of foreclosure, or acquired as the result of default on a loan collateralized by real property? Although most financial institutions that do real estate lending have experienced an occasional foreclosure, the volume and asset value of foreclosed property has significantly increased recently. Due to the economic downturn that began in the fourth quarter of 2007, credit unions are now experiencing a greater number of foreclosures and acquiring portfolios of OREO. Because this type of economic effect is cyclic, it is useful for credit unions to be prepared to handle OREO property in a safe and sound manner. Some credit unions may find their number of OREO properties is becoming more difficult to manage. Some credit unions may be dealing with OREO properties for the first time.

The department of financial institutions (DFI), division of credit unions, is responsible for regulating to protect the integrity of credit unions as cooperative institutions, and to ensure that they remain viable and competitive. RCW 31.12.015. It is important to provide regulatory standards for safe and sound management of OREO. RCW 31.12.005(24).

#### NEW SECTION

**WAC 208-476-020 Rule-making authority.** What is DFI's rule-making authority for these OREO rules? The division of credit unions is delegated rule-making authority by the director of DFI. The director's rule-making authority is based upon the Washington Credit Union Act (WCUA), RCW 31.12.516(2), which allows the director to adopt rules that are reasonable and necessary to carry out the purposes of the WCUA. The director has the power and broad administrative discretion to administer and interpret the provisions of the WCUA. RCW 31.12.516(4). In addition, the director has specific rule-making authority regarding secured or unsecured loans to members. RCW 31.12.426(1).

#### NEW SECTION

**WAC 208-476-030 Authority of director to require reports.** What legal authority does DFI have to require special reports from credit unions, accounting for OREO? The

director has the statutory authority to require a credit union to file any financial or statistical report the director may require. The director, therefore, has the authority to require special reports on OREO properties held by Washington state chartered credit unions. RCW 31.12.567.

#### NEW SECTION

**WAC 208-476-040 Authority for credit unions to hold real estate.** What is the legal authority for a credit union to acquire, hold and dispose of OREO? A Washington state chartered credit union is permitted to own foreclosed and other OREO property, based on its statutory power to make secured and unsecured loans to its members. RCW 31.12.-426(1). If the borrower defaults on a loan secured by real property, the credit union has the authority to obtain title to the property as a power incidental to its normal course of business.

#### NEW SECTION

**WAC 208-476-050 Definitions.** For purposes of these rules, the following definitions apply:

"Appraisal" means a written report by a certified or licensed appraiser containing sufficient information to support the credit union's evaluation of OREO, taking into consideration market value, analyzing appropriate deductions or discounts, and conforming to generally accepted appraisal standards, unless principles of safe and sound credit union practices require stricter standards.

"DCU" means the division of credit unions of the Washington state department of financial institutions.

"DFI" means the Washington state department of financial institutions.

"Director" means the director of the department of financial institutions, or the director's designee, typically the assistant director of the division of credit unions. RCW 43.320.-050.

"Fair value" and "fair market value" mean the cash price that might reasonably be anticipated in a current sale under all conditions requisite to a fair sale, in which the buyer and the seller are each acting prudently, knowledgeably and under no necessity to buy or sell. An appraisal at "fair value" primarily relies upon an estimate of the cash price that might be received upon exposure to the open market for a reasonable time, considering the property type and local market conditions. This is known as the "market data approach." However, an appraisal at "fair value" may, in appropriate circumstances, be based upon the "cost approach" with regard to real estate improvements, including current replacement cost.

"Foreclosure" means:

(a) The involuntary termination of all rights of a trustor/grantor or mortgagor in the property covered by a deed of trust or mortgage, by means of statutory power of sale or judicial foreclosure; or by

(b) A deed in lieu of foreclosure, the voluntary transfer (usually by quitclaim) of a trustor/grantor's or mortgagor's interest in real estate to the beneficiary of a deed of trust or mortgagee, in lieu of the beneficiary or mortgagee exercising the statutory power of sale or obtaining a judicial decree of foreclosure.

"GAAP" means "generally accepted accounting principles," as codified in the financial accounting standards board accounting standards codification (FASB ASC).

"Other real estate owned" (OREO) means real estate acquired by a credit union in whole or partial satisfaction of a debt owed to a credit union, by means of:

(a) Foreclosure or deed in lieu of foreclosure of the credit union's deed of trust or mortgage; or

(b) Acquisition by the credit union and subsequent foreclosure, or deed in lieu of foreclosure of a superior lien interest.

OREO is then held in inventory until sold.

"OREO" does not mean real property held for the credit union's own business use or expansion under RCW 31.12.-438.

#### NEW SECTION

**WAC 208-476-100 Limitations on holding of OREO. How long is a credit union allowed to hold OREO?** OREO must be disposed of as soon as prudent business judgment dictates, and in no case longer than five years, absent special circumstances and discretionary approval by the director. The longer real estate is held, the more speculative an investment it becomes.

**When does the holding period begin?** The holding period begins on the date that the credit union takes title to the OREO property.

**What if the OREO is not sold within the initial holding period?** An application to hold other real estate owned beyond the five year initial holding period must be filed no less than six months prior to the end of the initial five years, on a form provided by DFI. In addition to the form, the director may require justifying information, data and reports. The granting of an additional holding period of up to five years is at the regulatory discretion of the director.

#### NEW SECTION

**WAC 208-476-200 Accounting for OREO. What accounting and reporting procedures are credit unions required to follow when accounting for OREO?** Accounting and reporting for OREO must comply with GAAP. GAAP applies to accounting and reporting for OREO, regardless of materiality.

**Where can GAAP be accessed and researched?** The definitive text of U.S. GAAP, as codified, may be found at <http://asc.fasb.org> or as a link from [fasb.org](http://fasb.org).

**Can the DCU require charge offs or special reserves for OREO property?** Yes, the DCU has authority to require a credit union to charge off or set a special reserve for OREO property. RCW 31.12.545 (2)(c).

#### NEW SECTION

**WAC 208-476-300 Minimal standards for safe and sound OREO management. (1) What basic standards are used to determine the initial and ongoing regulatory acceptability of holding OREO?** Holding requirements include, at a minimum, compliance with the following:

(a) Accurate accounting for OREO. Refer to the accounting section of this rule at WAC 208-476-200;

(b) Obtaining independent written appraisals, or determinations of fair value, depending upon the nature of the loan, and updated periodically, to reflect changed market conditions;

(c) Diligent marketing efforts, including a written marketing plan, updated periodically to reflect changed market conditions;

(d) Compliance with any determination, order or directive issued by the director regarding the acquisition, holding, management or disposition of OREO.

**(2) Are there requirements for credit union management of OREO?** Yes. A credit union that is managing OREO property must have a board-approved policy that assures that the board is regularly informed of the nature and extent of the credit union's OREO holdings. In most cases, this requirement may necessitate the creation of a special assets committee, or some combination of executive staff, to oversee OREO management and report to the board, no less than quarterly.

**(3) Are credit unions required to have a written OREO policy?** Yes, if a credit union has OREO, the credit union must have a written OREO policy.

**(4) What should be included in a credit union OREO policy?** At a minimum, the following elements should be covered in a credit union's written OREO policy:

(a) The credit union's staffing requirements for qualified management of OREO;

(b) The credit union's plan to obtain legal advice from an attorney regarding the acquisition, holding and disposition of OREO;

(c) The credit union's intended holding period for OREO;

(d) The appraisal policy, or fair value methodology, for OREO;

(e) The credit union's authorization to expend funds to improve and protect OREO;

(f) The plan to market and dispose of OREO;

(g) Identification of the person responsible for OREO management;

(h) The OREO property management plan;

(i) OREO internal controls;

(j) Special assets committee (or other OREO reporter) responsibilities, including monitoring and reporting plan, and frequency of review by board and management;

(k) The accounting policy for the acquisition, holding and disposition phases of OREO;

(l) Independent audit policy for OREO;

(m) Responsibility for OREO file maintenance, document organization, storage, retrieval and retention.

DFI recognizes that not all of the elements of the policy will apply to every OREO property.

**(5) What should a credit union do if there are questions about the management of OREO?** A credit union may call the division of credit unions at 360-902-8701, if questions arise during the life cycle of OREO ownership. Information is also available on the DCU web site [www.dfi.wa.gov/cu/default.htm](http://www.dfi.wa.gov/cu/default.htm) and in the DCU "OREO Owner's Manual" guidance book.

**WSR 09-24-052**  
**PERMANENT RULES**  
**OFFICE OF**  
**INSURANCE COMMISSIONER**

[Insurance Commissioner Matter No. R 2009-08—Filed November 24,  
2009, 1:38 p.m., effective January 19, 2010]

Effective Date of Rule: January 19, 2009 [2010].

Purpose: Public Law 110-275, the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA), directed states to adopt the NAIC model law for medicare supplement policies. These new rules comply with the provisions of MIPPA and set forth standards for medicare supplement policies issued after June 1, 2010.

Citation of Existing Rules Affected by this Order: Repealing WAC 284-66-092 and 284-66-247; and amending WAC 284-66-030, 284-66-063, 284-66-066, 284-66-080, 284-66-232, 284-66-243 and 284-66-323; and new sections WAC 284-66-064 and 284-66-067.

Statutory Authority for Adoption: RCW 48.66.030 (3)(a), 48.66.041, 48.66.165.

Adopted under notice filed as WSR 09-19-100 on September 21, 2009.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 9, Repealed 2; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 9, Repealed 2.

Date Adopted: November 24, 2009.

Mike Kreidler  
Insurance Commissioner

AMENDATORY SECTION (Amending Matter No. R 2004-08, filed 8/4/05, effective 9/4/05)

**WAC 284-66-030 Definitions.** For purposes of this chapter:

(1) "Applicant" means:

(a) In the case of an individual medicare supplement insurance policy, the person who seeks to contract for insurance benefits; and

(b) In the case of a group medicare supplement insurance policy, the proposed certificateholder.

(2) "Certificate" means any certificate delivered or issued for delivery in this state under a group medicare supplement insurance policy regardless of the situs of the group master policy.

(3) "Certificate form" means the form on which the certificate is delivered or issued for delivery by the issuer.

(4) "Issuer" includes insurance companies, fraternal benefit societies, health care service contractors, health maintenance organizations, and any other entity delivering or issuing for delivery medicare supplement policies or certificates.

(5) "Direct response issuer" means an issuer who, as to a particular transaction, is transacting insurance directly with a potential insured without solicitation by, or the intervention of, a licensed insurance agent.

(6) "Disability insurance" is insurance against bodily injury, disablement or death by accident, against disablement resulting from sickness, and every insurance relating to disability insurance. For purposes of this chapter, disability insurance includes policies or contracts offered by any issuer.

(7) "Health care expense costs," for purposes of WAC 284-66-200(4), means expenses of a health maintenance organization or health care service contractor associated with the delivery of health care services that are analogous to incurred losses of insurers.

(8) "Policy" includes agreements or contracts issued by any issuer.

(9) "Policy form" means the form on which the policy is delivered or issued for delivery by the issuer.

(10) "Premium" means all sums charged, received, or deposited as consideration for a medicare supplement insurance policy or the continuance thereof. An assessment or a membership, contract, survey, inspection, service, or other similar fee or charge made by the issuer in consideration for the policy is deemed part of the premium. "Earned premium" means the "premium" applicable to an accounting period whether received before, during or after that period.

(11) "Prestandardized medicare supplement benefit plan," "prestandardized benefit plan" or "prestandardized plan" means a group or individual policy of medicare supplement insurance issued prior to January 1, 1990.

(12) "Replacement" means any transaction where new medicare supplement coverage is to be purchased, and it is known or should be known to the proposing agent or other representative of the issuer, or to the proposing issuer if there is no agent, that by reason of the transaction, existing medicare supplement coverage has been or is to be lapsed, surrendered or otherwise terminated.

~~((12))~~ (13) "Secretary" means the Secretary of the United States Department of Health and Human Services.

(14) "1990 standardized medicare supplement benefit plan" means a group or individual policy of medicare supplement insurance issued on or after January 1, 1990, and prior to June 1, 2010, and includes medicare supplement insurance policies and certificates renewed on or after that date which are not replaced by the issuer at the request of the insured.

(15) "2010 standardized medicare supplement benefit plan" or "2010 plan" means a group or individual policy of medicare supplement insurance with an effective date for coverage on or after June 1, 2010.

AMENDATORY SECTION (Amending Matter No. R 2006-13, filed 2/26/07, effective 3/29/07)

**WAC 284-66-063 Benefit standards for policies or certificates issued or delivered after June 30, 1992 and before June 1, 2010.** No policy or certificate may be adver-

tised, solicited, delivered, or issued for delivery in this state as a medicare supplement policy or certificate unless it complies with these benefit standards.

(1) General standards. The following standards apply to medicare supplement policies and certificates and are in addition to all other requirements of this regulation.

(a) A medicare supplement policy or certificate may not exclude or limit benefits for losses incurred more than three months from the effective date of coverage because it involved a preexisting condition. The policy or certificate may not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within three months before the effective date of coverage.

(b) A medicare supplement policy or certificate must provide that benefits designed to cover cost sharing amounts under medicare will be changed automatically to coincide with any changes in the applicable medicare deductible, copayment or coinsurance amounts. Premiums may be modified to correspond with such changes.

(c) A medicare supplement policy or certificate may not provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium.

~~((e))~~ (d) Each medicare supplement policy must be guaranteed renewable and:

(i) The issuer may not cancel or nonrenew the policy solely on the ground of health status of the individual; and

(ii) The issuer may not cancel or nonrenew the policy for any reason other than nonpayment of premium or material misrepresentation.

(iii) If the medicare supplement policy is terminated by the group policyholder and is not replaced as provided under ~~((e))~~ (d)(v) of this subsection, the issuer must offer certificateholders an individual medicare supplement policy that (at the option of the certificateholder) provides for continuation of the benefits contained in the group policy, or provides for benefits that otherwise meet the requirements of this subsection.

(iv) If an individual is a certificateholder in a group medicare supplement policy and the individual terminates membership in the group, the issuer must offer the certificateholder the conversion opportunity described in (c)(iii) of this subsection, or at the option of the group policyholder, offer the certificateholder continuation of coverage under the group policy.

(v) If a group medicare supplement policy is replaced by another group medicare supplement policy purchased by the same policyholder, the issuer of the replacement policy must offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new policy may not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.

~~((d))~~ (e) Termination of a medicare supplement policy or certificate must be without prejudice to any continuous loss that began while the policy was in force, but the extension of benefits beyond the period that the policy was in force may be conditioned upon the continuous total disability of

the insured, limited to the duration of the policy benefit period, if any, or payment of the maximum benefits. Receipt of medicare Part D benefits will not be considered in determining a continuous loss.

~~((e))~~ (f) If a medicare supplement policy or certificate eliminates an outpatient prescription drug benefit as a result of requirements imposed by the Medicare Prescription Drug Improvement and Modernization Act of 2003, the modified policy or certificate is deemed to satisfy the guaranteed renewal requirements of this section.

~~((f))~~ (g)(i) A medicare supplement policy or certificate must provide that benefits and premiums under the policy or certificate must be suspended at the request of the policyholder or certificateholder for the period (not to exceed twenty-four months) that the policyholder or certificateholder has applied for and is determined to be entitled to medical assistance under Title XIX of the Social Security Act, but only if the policyholder or certificateholder notifies the issuer of the policy or certificate within ninety days after the date the individual becomes entitled to the assistance.

(ii) If the suspension occurs and if the policyholder or certificateholder loses entitlement to medical assistance, the policy or certificate must be automatically reinstated effective as of the date of termination of the entitlement if the policyholder or certificateholder provides notice of loss of the entitlement within ninety days after the date of the loss and pays the premium attributable to the period, effective as of the date of termination of entitlement.

(iii) Each medicare supplement policy must provide that benefits and premiums under the policy will be suspended (for any period that may be provided by federal regulation) at the request of the policyholder if the policyholder is entitled to benefits under Section 226(b) of the Social Security Act and is covered under a group health plan (as defined in Section 1862 (b)(1)(A)(v) of the Social Security Act). If suspension occurs and if the policyholder or certificateholder loses coverage under the group health plan, the policy must be automatically reinstated (effective as of the date of loss of coverage within ninety days after the date of the loss).

~~((g))~~ (h) Reinstitution of the coverages~~(s);~~:

(i) May not provide for any waiting period with respect to treatment of preexisting conditions;

(ii) Must provide for resumption of coverage that is substantially equivalent to coverage in effect before the date of the suspension. If the suspended medicare supplement policy or certificate provided coverage for outpatient prescription drugs, reinstatement of the policy for medicare Part D enrollees must be without coverage for outpatient prescription drugs and must otherwise provide substantially equivalent coverage to the coverage in effect before the date of suspension; and

(iii) Must provide for classification of premiums on terms at least as favorable to the policyholder or certificateholder as the premium classification terms that would have applied to the policyholder or certificateholder had the coverage not been suspended.

(2) If an issuer makes a written offer to the medicare supplement policyholders or certificateholders of one or more of its plans, to exchange his or her standardized plan to a 2010 standardized plan during a specified period, the offer and

subsequent exchange must comply with the following requirements:

(a) An issuer need not provide justification to the commissioner if the insured replaces a 1990 standardized policy or certificate with a 2010 standardized policy or certificate.

(b) An issuer may not apply new preexisting condition limitations or a new incontestability period to the replaced policy for those benefits contained in the former exchanged policy or certificate of the insured, but may apply preexisting condition limitations of no more than three months to any benefits contained in the new 2010 standardized policy or certificate that were not contained in the former exchanged policy.

(c) The new policy or certificate must be offered to all policyholders or certificateholders within a given plan, except where the offer or issue would be in violation of state or federal law.

(3) Standards for basic ("core") benefits common to benefit plans A-J. Every issuer must make available a policy or certificate including only the following basic "core" package of benefits to each prospective insured. An issuer may make available to prospective insureds any of the other medicare supplement insurance benefit plans in addition to the basic "core" package, but not in place of the basic "core" package.

(a) Coverage of Part A medicare eligible expenses for hospitalization to the extent not covered by medicare from the sixty-first day through the ninetieth day in any medicare benefit period;

(b) Coverage of Part A medicare eligible expenses incurred for hospitalization to the extent not covered by medicare for each medicare lifetime inpatient reserve day used;

(c) Upon exhaustion of the medicare hospital inpatient coverage including the lifetime reserve days, coverage of one hundred percent of the medicare Part A eligible expenses for hospitalization paid at the applicable prospective payment system (PPS) rate or other appropriate medicare standard of payment, subject to a lifetime maximum benefit of an additional three hundred sixty-five days. The provider must accept the issuer's payment as payment in full and may not bill the insured for any balance;

(d) Coverage under medicare Parts A and B for the reasonable cost of the first three pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) unless replaced in accordance with federal regulations;

(e) Coverage for the coinsurance amount, or in the case of hospital; outpatient department services paid under a prospective payment system, the copayment amount, of medicare eligible expenses under Part B regardless of hospital confinement, subject to the medicare Part B deductible;

~~((3))~~ (4) Standards for additional benefits. The following additional benefits must be included in medicare supplement benefit plans "B" through "J" only as provided by WAC 284-66-066.

(a) Medicare Part A deductible: Coverage for all of the medicare Part A inpatient hospital deductible amount per benefit period.

(b) Skilled nursing facility care: Coverage for the actual billed charges up to the coinsurance amount from the twenty-

first day through the one hundredth day in a medicare benefit period for posthospital skilled nursing facility care eligible under medicare Part A;

(c) Medicare Part B deductible: Coverage for all of the medicare Part B deductible amount per calendar year regardless of hospital confinement.

(d) Eighty percent of the medicare Part B excess charges: Coverage for eighty percent of the difference between the actual medicare Part B charge as billed, not to exceed any charge limitation established by the medicare program or state law, and the medicare-approved Part B charge.

(e) One hundred percent of the medicare Part B excess charges: Coverage for all of the difference between the actual medicare Part B charge as billed, not to exceed any charge limitation established by the medicare program or state law, and the medicare-approved Part B charge.

(f) Basic outpatient prescription drug benefit: Coverage for fifty percent of outpatient prescription drug charges, after a two hundred fifty dollar calendar year deductible, to a maximum of one thousand two hundred fifty dollars in benefits received by the insured per calendar year, to the extent not covered by medicare. The outpatient prescription drug benefit may not be included for sale or issuance in a medicare supplement policy after December 31, 2005.

(g) Extended outpatient prescription drug benefit: Coverage for fifty percent of outpatient prescription drug charges, after a two hundred fifty dollar calendar year deductible to a maximum of three thousand dollars in benefits received by the insured per calendar year, to the extent not covered by medicare. The outpatient prescription drug benefit may not be included for sale or issuance in a medicare supplement policy after December 31, 2005.

(h) Medically necessary emergency care in a foreign country: Coverage to the extent not covered by medicare for eighty percent of the billed charges for medicare-eligible expenses for medically necessary emergency hospital, physician, and medical care received in a foreign country, that would have been covered by medicare if provided in the United States and that began during the first sixty consecutive days of each trip outside the United States, subject to a calendar year deductible of two hundred fifty dollars, and a lifetime maximum benefit of fifty thousand dollars. For purposes of this benefit, "emergency care" means care needed immediately because of an injury or an illness of sudden and unexpected onset.

(i) Preventive medical care benefit: Coverage for the following preventive health services not covered by medicare:

(i) An annual clinical preventive medical history and physical examination that may include tests and services from (ii) of this subsection and patient education to address preventive health care measures.

(ii) Preventive screening tests or preventive services, the selection and frequency that is determined to be medically appropriate by the attending physician.

Reimbursement must be for the actual charges up to one hundred percent of the medicare-approved amount for each service, as if medicare were to cover the service as identified in *American Medical Association Current Procedural Terminology (AMA CPT)* codes, to a maximum of one hundred

twenty dollars annually under this benefit. This benefit may not include payment for any procedure covered by medicare.

(j) At-home recovery benefit: Coverage for services to provide short term, at-home assistance with activities of daily living for those recovering from an illness, injury, or surgery.

(i) For purposes of this benefit, the following definitions apply:

(A) "Activities of daily living" include, but are not limited to bathing, dressing, personal hygiene, transferring, eating, ambulating, assistance with drugs that are normally self-administered, and changing bandages or other dressings.

(B) "Care provider" means a duly qualified or licensed home health aide/homemaker, personal care aide, or nurse provided through a licensed home health care agency or referred by a licensed referral agency or licensed nurses registry.

(C) "Home" means any place used by the insured as a place of residence, provided that the place would qualify as a residence for home health care services covered by medicare. A hospital or skilled nursing facility is not considered the insured's place of residence.

(D) "At-home recovery visit" means the period of a visit required to provide at home recovery care, without limit on the duration of the visit, except each consecutive four hours in a twenty-four hour period of services provided by a care provider is one visit.

(ii) Coverage requirements and limitations.

(A) At-home recovery services provided must be primarily services that assist in activities of daily living.

(B) The insured's attending physician must certify that the specific type and frequency of at-home recovery services are necessary because of a condition for which a home care plan of treatment was approved by medicare.

(C) Coverage is limited to:

(I) No more than the number and type of at-home recovery visits certified as necessary by the insured's attending physician. The total number of at-home recovery visits may not exceed the number of medicare approved home health care visits under a medicare approved home care plan of treatment.

(II) The actual charges for each visit up to a maximum reimbursement of forty dollars per visit.

(III) One thousand six hundred dollars per calendar year.

(IV) Seven visits in any one week.

(V) Care furnished on a visiting basis in the insured's home.

(VI) Services provided by a care provider as defined in this section.

(VII) At-home recovery visits while the insured is covered under the policy or certificate and not otherwise excluded.

(VIII) At-home recovery visits received during the period the insured is receiving medicare approved home care services or no more than eight weeks after the service date of the last medicare approved home health care visit.

(iii) Coverage is excluded for: Home care visits paid for by medicare or other government programs; and care provided by family members, unpaid volunteers, or providers who are not care providers.

~~((4))~~ (5) Standardized medicare supplement benefit plan "K" must consist of the following:

(a) Coverage of one hundred percent of the Part A hospital coinsurance amount for each day used from the sixty-first through the ninetieth day in any medicare benefit period;

(b) Coverage of one hundred percent of the Part A hospital coinsurance amount for each medicare lifetime inpatient reserve day used from the ninety-first through the one hundred fiftieth day in any medicare benefit period;

(c) Upon exhaustion of the medicare hospital inpatient coverage, including the lifetime reserve days, coverage of one hundred percent of the medicare Part A eligible expenses for hospitalization paid at the applicable prospective payment system (PPS) rate, or other appropriate medicare standard of payment, subject to a lifetime maximum benefit of an additional three hundred sixty-five days. The provider must accept the issuer's payment as payment in full and may not bill the insured for any balance;

(d) Medicare Part A deductible: Coverage for fifty percent of the medicare Part A inpatient hospital deductible amount per benefit period until the out-of-pocket limitation is met as described in (j) of this subsection;

(e) Skilled nursing facility care: Coverage for fifty percent of the coinsurance amount for each day used from the twenty-first day through the one hundredth day in a medicare benefit period for post-hospital skilled nursing facility care eligible under medicare Part A until the out-of-pocket limitation is met as described in (j) of this subsection;

(f) Hospice care: Coverage for fifty percent of cost sharing for all Part A medicare eligible expenses and respite care until the out-of-pocket limitation is met as described in (j) of this subsection;

(g) Coverage for fifty percent, under medicare Part A or B, of the reasonable cost of the first three pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulation) unless replaced in accordance with federal regulations until the out-of-pocket limitation is met as described in (j) of this subsection;

(h) Except for coverage provided in (i) of this subsection, coverage for fifty percent of the cost sharing otherwise applicable under medicare Part B after the policyholder pays the Part B deductible until the out-of-pocket limitation is met as described in (j) of this subsection;

(i) Coverage of one hundred percent of the cost sharing for medicare Part B preventive services after the policyholder pays the Part B deductible; and

(j) Coverage of one hundred percent of all cost sharing under medicare Parts A and B for the balance of the calendar year after the individual has reached the out-of-pocket limitation on annual expenditures under medicare Parts A and B of four thousand dollars in 2006, indexed each year by the appropriate inflation adjustment specified by the Secretary of the U.S. Department of Health and Human Services.

~~((5))~~ (6) Standardized medicare supplement benefit plan "L" must consist of the following:

(a) The benefits described in subsection (4)(a), (b), (c) and (i) of this section;

(b) The benefit described in subsection (4)(d), (e), (f) and (h) of this section but substituting seventy-five percent for fifty percent; and

(c) The benefit described in subsection (4)(j) of this section but substituting two thousand dollars for four thousand dollars.

#### NEW SECTION

#### **WAC 284-66-064 Benefit standards for policies or certificates issued or delivered on or after June 1, 2010.**

No policy or certificate may be advertised, solicited, delivered, or issued for delivery in this state as a medicare supplement policy or certificate unless it complies with these benefit standards. Benefit standards applicable to medicare supplement policies or certificates issued before June 1, 2010, remain subject to the requirements of WAC 284-66-060 and 284-66-063.

(1) General standards. The following standards apply to medicare supplement policies and certificates and are in addition to all other requirements of this regulation.

(a) A medicare supplement policy or certificate shall not exclude or limit benefits for losses incurred more than three months from the effective date of coverage because it involved a preexisting condition. The policy or certificate may not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within three months before the effective date of coverage.

(b) A medicare supplement policy or certificate must provide that benefits designed to cover cost sharing amounts under medicare will be changed automatically to coincide with any changes in the applicable medicare deductible, copayment or coinsurance amounts. Premiums may be modified to correspond with such changes.

(c) No medicare supplement policy or certificate may provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured other than the nonpayment of premium.

(d) Each medicare supplement policy shall be guaranteed renewable and:

(i) The issuer may not cancel or nonrenew the policy solely on the ground of health status of the individual; and

(ii) The issuer may not cancel or nonrenew the policy for any reason other than nonpayment of premium or material misrepresentation.

(iii) If the medicare supplement policy is terminated by the group policyholder and is not replaced as provided under (d)(v) of this subsection, the issuer shall offer certificateholders an individual medicare supplement policy which, at the option of the certificateholder:

(A) Provides for continuation of the benefits contained in the group policy; or

(B) Provides for benefits that otherwise meet the requirements of this subsection.

(iv) If an individual is a certificateholder in a group medicare supplement policy and the individual terminates membership in the group, the issuer must:

(A) Offer the certificateholder the conversion opportunity described in (d)(iii) of this subsection; or

(B) At the option of the group policyholder, offer the certificateholder continuation of coverage under the group policy.

(v) If a group medicare supplement policy is replaced by another group medicare supplement policy purchased by the same policyholder, the issue of the replacement policy must offer coverage to all persons covered under the old group policy on its date of termination.

(vi) Termination of a medicare supplement policy or certificate must be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be conditioned upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or payment of the maximum benefits. Receipt of medicare Part D benefits will not be considered in determining a continuous loss.

(vii)(A) A medicare supplement policy or certificate must provide that benefits and premiums under the policy or certificate are suspended at the request of the policyholder or certificateholder for the period not to exceed twenty-four months in which the policyholder or certificateholder has applied for and is determined to be entitled to medical assistance under Title XIX of the Social Security Act, but only if the policyholder or certificateholder notifies the issuer of the policy or certificate within ninety days after the date the individual becomes entitled to assistance.

(B) If suspension occurs and if the policyholder or certificateholder loses entitlement to medical assistance, the policy or certificate shall be automatically reinstated, effective as of the date of termination of entitlement within ninety days after the date of loss and pays the premium attributable to the period, effective as of the date of termination of entitlement.

(C) Each medicare supplement policy must provide that benefits and premiums under the policy must be suspended for any period that may be provided by federal regulation at the request of the policyholder if the policyholder is entitled to benefits under Section 226(b) of the Social Security Act and is covered under a group health plan as defined in Section 1862 (b)(1)(A)(v) of the Social Security Act. If suspension occurs and if the policyholder or certificateholder loses coverage under the group health plan, the policy must be automatically reinstated effective as of the date of loss of coverage if the policyholder provides notice of loss of coverage within ninety days after the date of the loss and pays the premium attributable to the period, effective as of the date of termination of enrollment in the group health plan.

(viii) Reinstitution of coverages as described in this section:

(A) Must not provide for any waiting period with respect to treatment of preexisting conditions;

(B) Must provide for resumption of coverage that is substantially equivalent to coverage in effect before the date of suspension; and

(C) Must provide for classification of premiums on terms at least as favorable to the policyholder or certificateholder as the premium classification terms that would have applied to the policyholder or certificateholder had the coverage not been suspended.

(2) Every issuer of medicare supplement insurance benefit plans A, B, C, D, F, F with high deductible, G, M, and N must make available a policy or certificate including only the following basic "core" package of benefits to each prospective insured. An issuer may make available to prospective insureds any of the other medicare supplement insurance plans in addition to the basic core package, but not in lieu of it.

(a) Coverage of Part A medicare eligible expenses for hospitalization to the extent not covered by medicare from the 61st day through the 90th day in any medicare benefit period.

(b) Coverage of Part A medicare eligible expenses incurred for hospitalization to the extent not covered by medicare for each medicare lifetime inpatient reserve day used;

(c) Upon exhaustion of the medicare hospital inpatient coverage, including the lifetime reserve days, coverage of one hundred percent of the medicare Part A eligible expenses for hospitalization paid at the applicable prospective payment system rate or other appropriate medicare standard of payment, subject to a lifetime maximum benefit of an additional three hundred sixty-five days. The provider must accept the issuer's payment as payment in full and may not bill the insured for any balance;

(d) Coverage under medicare Parts A and B for the reasonable cost of the first three pints of blood or equivalent quantities of packed red blood cells, as defined under federal regulations, unless replaced in accordance with federal regulations;

(e) Coverage for the coinsurance amount, or in the case of hospital outpatient department services paid under a prospective payment system, the copayment amount, of medicare eligible expenses under Part B regardless of hospital confinement, subject to the medicare Part B deductible.

(f) Coverage of cost sharing for all Part A Medicare eligible hospice care and respite care expenses.

(3) The following additional benefits must be included in medicare supplement benefit Plans B, C, D, F, F with high deductible, G, M, and N as provided by WAC 284-66-066:

(a) Coverage for one hundred percent of the medicare Part A inpatient hospital deductible amount per benefit period.

(b) Coverage for fifty percent of the medicare Part A inpatient hospital deductible amount per benefit period.

(c) Coverage for the actual billed charges up to the coinsurance amount from the 21st day through the 100th day in a medicare benefit period for posthospital skilled nursing facility care eligible under medicare Part A.

(d) Coverage for one hundred percent of the medicare part B deductible amount per calendar year regardless of hospital confinement.

(e) Coverage for all of the difference between the actual medicare Part B charges as billed, not to exceed any charge limitation established by the medicare program or state law, and the medicare-approved Part B charge.

(f) Coverage to the extent not covered by medicare for eighty percent of the billed charges for medicare-eligible expenses for medically necessary emergency hospital, physician and medical care received in a foreign country, which

care would have been covered by medicare if provided in the United States and which care began during the first sixty consecutive days of each trip outside the United States, subject to a calendar year deductible of two hundred fifty dollars and a lifetime maximum benefit of fifty thousand dollars. For purposes of this benefit, "emergency care" means care needed immediately because of an injury or an illness of sudden and unexpected onset.

**AMENDATORY SECTION** (Amending Matter No. R 2006-13, filed 2/26/07, effective 3/29/07)

**WAC 284-66-066 Standard medicare supplement benefit plans.** Standard medicare supplement benefit plans issued for delivery prior to June 1, 2010, must comply with this section.

(1) An issuer must make available to each prospective policyholder and certificateholder a policy form or certificate form containing only the basic "core" benefits, as defined in WAC 284-66-063(2) of this regulation.

(2) No groups, packages, or combinations of medicare supplement benefits other than those listed in this section may be offered for sale in this state, except as permitted in WAC 284-66-066(7) and in WAC 284-66-073.

(3) Benefit plans must be uniform in structure, language, designation, and format to the standard benefit plans "A" through "L" listed in this subsection and conform to the definitions in WAC 284-66-030 and 284-66-040. Each benefit must be structured according to the format provided in WAC 284-66-063 (2), (3), (4) or (5) and list the benefits in the order shown in this subsection. For purposes of this section, "structure, language, and format" means style, arrangement, and overall content of benefit.

(4) An issuer may use, in addition to the benefit plan designations required in subsection (3) of this section, other designations to the extent permitted by law.

(5) Make-up of benefit plans:

(a) Standardized medicare supplement benefit plan "A" must be limited to only the basic ("core") benefits common to all benefit plans, as defined in WAC 284-66-063(2).

(b) Standardized medicare supplement benefit plan "B" consists of only the following: The core benefit as defined in WAC 284-66-063(2), plus the medicare Part A deductible as defined in WAC 284-66-063 (3)(a).

(c) Standardized medicare supplement benefit plan "C" consists of only the following: The core benefit as defined in WAC 284-66-063(2), plus the medicare Part A deductible, skilled nursing facility care, medicare Part B deductible and medically necessary emergency care in a foreign country as defined in WAC 284-66-063 (3)(a), (b), (c), and (h), respectively.

(d) Standardized medicare supplement plan "D" consists of only the following: The core benefit, as defined in WAC 284-66-063(2), plus the medicare Part A deductible, skilled nursing facility care, medically necessary emergency care in a foreign country and the at-home recovery benefit as defined in WAC 284-66-063 (3)(a), (b), (h), and (j), respectively.

(e) Standardized medicare supplement benefit plan "E" consists of only the following: The core benefit as defined in WAC 284-66-063(2), plus the medicare Part A deductible,

skilled nursing facility care, medically necessary emergency care in a foreign country and preventive medical care as defined in WAC 284-66-063 (3)(a), (b), (h), and (i), respectively.

(f) Standardized medicare supplement benefit plan "F" consists of only the following: The core benefit as defined in WAC 284-66-063(2), plus the medicare Part A deductible, the skilled nursing facility care, the Part B deductible, one hundred percent of the medicare Part B excess charges, and medically necessary emergency care in a foreign country as defined in WAC 284-66-063 (3)(a), (b), (c), (e), and (h), respectively.

(g) Standardized medicare supplement benefit high deductible plan "F" consists of only the following: One hundred percent of covered expenses following the payment of the annual high deductible plan "F" deductible. The covered expenses include the core benefit as defined in WAC 284-66-063(2), plus the medicare Part A deductible, skilled nursing facility care, the medicare Part B deductible, one hundred percent of the medicare Part B excess charges, and medically necessary emergency care in a foreign country as defined in WAC 284-66-063 (3)(a), (b), (c), (e) and (h) respectively. The annual high deductible plan "F" deductible must consist of out-of-pocket expenses, other than premiums, for services covered by the medicare supplement plan "F" policy, and must be in addition to any other specific benefit deductibles. The annual high deductible plan "F" deductible is one thousand seven hundred thirty dollars for 2005, and is based on the calendar year. The deductible will be adjusted annually by the secretary to reflect the change in the Consumer Price Index for all urban consumers for the twelve-month period ending with August of the preceding year, and rounded to the nearest multiple of ten dollars.

(h) Standardized medicare supplement benefit plan "G" consists of only the following: The core benefit as defined at WAC 284-66-063(2), plus the medicare Part A deductible, skilled nursing facility care, eighty percent of the medicare Part B excess charges, medically necessary emergency care in a foreign country, and the at-home recovery benefit as defined in WAC 284-66-063 (3)(a), (b), (d), (h), and (j), respectively.

(i) Standardized medicare supplement benefit plan "H" consists of only the following: The core benefit as defined in WAC 284-66-063(2), plus the medicare Part A deductible, skilled nursing facility care, basic prescription drug benefit, and medically necessary emergency care in a foreign country as defined in WAC 284-66-063 (3)(a), (b), (f), and (h), respectively. The outpatient prescription drug benefit may not be included in a medicare supplement policy sold after December 31, 2005.

(j) Standardized medicare supplement benefit plan "I" consists of only the following: The core benefit as defined in WAC 284-66-063(2), plus the medicare Part A deductible, skilled nursing facility care, one hundred percent of the medicare Part B excess charges, basic prescription drug benefit, medically necessary emergency care in a foreign country, and at-home recovery benefit as defined in WAC 284-66-063 (3)(a), (b), (e), (f), (h), and (j), respectively. The outpatient prescription drug benefit may not be included in a medicare supplement policy sold after December 31, 2005.

(k) Standardized medicare supplement benefit plan "J" consists of only the following: The core benefit as defined in WAC 284-66-063(2), plus the medicare Part A deductible, skilled nursing facility care, medicare Part B deductible, one hundred percent of the medicare Part B excess charges, extended prescription drug benefit, medically necessary emergency care in a foreign country, preventive medical care, and at-home recovery benefit as defined in WAC 284-66-063 (3)(a), (b), (c), (e), (g), (h), (i), and (j), respectively. The outpatient prescription drug benefit may not be included in a medicare supplement policy sold after December 31, 2005.

(l) Standardized medicare supplement benefit high deductible plan "J" consists of only the following: One hundred percent of covered expenses following the payment of the annual high deductible plan "J" deductible. The covered expenses include the core benefit as defined in WAC 284-66-063(2), plus the medicare Part A deductible, skilled nursing facility care, medicare Part B deductible, one hundred percent of the medicare Part B excess charges, extended outpatient prescription drug benefit, medically necessary emergency care in a foreign country, preventative medical care benefit and at-home recovery benefit as defined in WAC 284-66-063 (3)(a), (b), (c), (e), (g), (h), (i) and (j) respectively. The annual high deductible plan "J" deductible must consist of out-of-pocket expenses, other than premiums, for services covered by the medicare supplement plan "J" policy, and must be in addition to any other specific benefit deductibles. The annual deductible is one thousand seven hundred thirty dollars for 2005, and is based on the calendar year. The deductible will be adjusted annually by the secretary to reflect the change in the Consumer Price Index for all urban consumers for the twelve-month period ending with August of the preceding year, and rounded to the nearest multiple of ten dollars. The outpatient prescription drug benefit may not be included in a medicare supplement policy sold after December 31, 2005.

(6) Make-up of two medicare supplement plans mandated by The Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA):

(a) Standardized medicare supplement benefit plan "K" consists of only those benefits described in WAC 284-66-063(4).

(b) Standardized medicare supplement benefit plan "L" consists of only those benefits described in WAC 284-66-063(5).

(7) New or innovative benefits: An issuer may, with the prior approval of the commissioner, offer policies or certificates with new or innovative benefits in addition to the benefits provided in a policy or certificate that otherwise complies with the applicable standards. The new or innovative benefits may include benefits that are appropriate to medicare supplement insurance, new or innovative, not otherwise available, cost-effective, and offered in a manner which is consistent with the goal of simplification of medicare supplement policies. After December 31, 2005, the innovative benefits may not include an outpatient prescription drug benefit.

NEW SECTION

**WAC 284-66-067 Standard medicare supplement plans issued for delivery on or after June 1, 2010.** No policy or certificate delivered or issued for delivery in this state on or after June 1, 2010, as a medicare supplement policy or certificate may be advertised, solicited, delivered or issued for delivery in this state as a medicare supplement policy or certificate unless it complies with these benefit plan standards. Benefit plan standards applicable to medicare supplement policies and certificates issued before June 1, 2010, remain subject to the requirements of WAC 284-66-066.

(1)(a) An issuer must make available to each prospective policyholder and certificateholder a policy form or certificate form containing only the basic or core benefits, as defined in WAC 284-66-064.

(b) If an issuer makes available any of the additional benefits described in WAC 284-66-064 or offers standardized benefit Plan K or L as described in subsection (5) of this section, then the issuer shall make available to each prospective policyholder and certificateholder, in addition to a policy form or certificate form with only the basic or core benefits as described in (a) of this section, a policy form or certificate form containing either standardized benefit Plan C or standardized benefit Plan F.

(2) No groups, packages or combinations of medicare supplement benefits other than those listed in this section may be offered for sale in this state, except as may be permitted in WAC 284-66-064 and 284-66-073.

(3) Benefit plans must be uniform in structure, language, designation and format to the standard benefit plans listed in this section and conform to the definitions in this chapter. Each benefit must be structured in accordance with the format found in WAC 284-66-064 or in the case of Plans K or L, in subsection (5) of this section, and list the benefits in the order shown. For purposes of this section, "structure, language and format" means style, arrangement and overall content of a benefit.

(4) In addition to the benefit plan designations required in subsection (3) of this section, an issuer may use other designations to the extent permitted by law.

(5) Make-up of 2010 Standardized Benefit Plans:

(a) Standardized medicare supplement benefit Plan A may include only the basic core benefits as defined in WAC 284-66-064.

(b) Standardized medicare supplement benefit Plan B may include only the basic core benefit as defined in WAC 284-66-064 plus one hundred percent of the medicare part A deductible as defined in WAC 284-66-064.

(c) Standardized medicare supplement benefit Plan C may include only the basic core benefit as defined in WAC 284-66-064 plus one hundred percent of the medicare Part A deductible, skilled nursing facility care, one hundred percent of the medicare Part B deductible and medically necessary emergency care in a foreign country as defined in WAC 284-66-064.

(d) Standardized medicare supplement benefit Plan D may include only the basic core benefits as defined in WAC 284-66-064 plus one hundred percent of the medicare Part A deductible, skilled nursing facility care and medically neces-

sary emergency care in a foreign country as defined in WAC 284-66-064.

(e) Standardized medicare supplement regular Plan F may include only the basic core benefit as defined in WAC 284-66-064 plus one hundred percent of the medicare Part A deductible, the skilled nursing facility care, one hundred percent of the medicare Part B deductible, one hundred percent of the medicare Part B excess charges, and medically necessary emergency care in a foreign country as defined in WAC 284-66-064.

(f) Standardized medicare supplement Plan F with high deductible may include only one hundred percent of covered expenses following the payment of the annual deductible set forth in (f)(ii) of this subsection.

(i) The basic core benefit as defined in WAC 284-66-064 plus one hundred percent of the medicare Part A deductible, skilled nursing facility care, one hundred percent of the medicare Part B deductible, one hundred percent of the medicare Part B excess charges, and medically necessary emergency care in a foreign country as defined in WAC 284-66-064.

(ii) The annual deductible in Plan F with high deductible must consist only of out-of-pocket expenses, other than premiums, for services covered by regular Plan F and must be in addition to any other specific benefit deductibles. The basis for the deductible must be one thousand five hundred dollars and will be adjusted annually from 1999 by the Secretary of the U.S. Department of Health and Human Services to reflect the change in the Consumer Price Index for all urban consumers for the twelve-month period ending with August of the preceding year, and rounded to the nearest multiple of ten dollars.

(g) Standardized medicare supplement benefit Plan G may include only the basic core benefit as defined in WAC 284-66-064, plus one hundred percent of the medicare Part A deductible, skilled nursing facility care, one hundred percent of the medicare part B excess charges and medically necessary emergency care in a foreign country as defined in WAC 284-66-064.

(h) Standardized medicare supplement benefit Plan K is mandated by the Medicare Prescription Drug Improvement and Modernization Act of 2003, and may include only the following:

(i) Coverage of one hundred percent of the Part A hospital coinsurance amount for each day used from the 61st through the 90th day in any medicare benefit period;

(ii) Coverage of one hundred percent of the Part A hospital coinsurance amount for each medicare lifetime inpatient reserve day used from the 91st through the 150th day in any medicare benefit period;

(iii) Upon exhaustion of the medicare hospital inpatient coverage, including the lifetime reserve days, coverage of one hundred percent of the medicare Part A eligible expenses for hospitalization paid at the applicable prospective payment system rate or other appropriate medicare standard of payment, subject to a lifetime maximum benefit of an additional three hundred sixty-five days. The provider must accept the insurer's payment as payment in full and may not bill the insured for any balance;

(iv) Coverage for fifty percent of the medicare part A inpatient hospital deductible amount per benefit period until

the out-of-pocket limitation is met as described in (h)(x) of this subsection;

(v) Skilled nursing facility care coverage for fifty percent of the coinsurance amount for each day used from the 21st day through the 100th day in a medicare benefit period for posthospital skilled nursing facility care eligible under medicare Part A until the out-of-pocket limitation is met as described in (h)(x) of this subsection;

(vi) Coverage for fifty percent of cost sharing for all Part A medicare eligible expenses and respite care until the out-of-pocket limitation is met as described in (h)(x) of this subsection;

(vii) Coverage for fifty percent under medicare Part A or B of the reasonable cost of the first three pints of blood or equivalent quantities of packed red blood cells as defined under federal regulations unless replaced in accordance with federal regulations until the out-of-pocket limitation is met as described in (h)(x) of this subsection;

(viii) Except for coverage provided in (h)(ix) of this subsection, coverage for fifty percent of the cost sharing otherwise applicable under medicare Part B after the policyholder pays the Part B deductible until the out-of-pocket limitation is met as described in (h)(x) of this subsection;

(ix) Coverage of one hundred percent of the cost sharing for medicare part B preventive services after the policyholder pays the part B deductible; and

(x) Coverage of one hundred percent of all cost sharing under medicare Parts A and B for the balance of the calendar year after the individual has reached the out-of-pocket limitation on annual expenditures under medicare Parts A and B of four thousand dollars in 2006, indexed each year by the appropriate inflation adjustment specified by the Secretary of the U.S. Department of Health and Human Services.

(i) Standardized medicare supplement Plan L as mandated by the Medicare Prescription Drug, Improvement and Modernization Act of 2003 may include only the following:

(i) The benefits described in (h)(i) through (vi) and (ix) of this subsection; and

(ii) The benefit described in (h)(i) through (vi) and (vii) of this subsection but substituting seventy-five percent for fifty percent; and

(iii) The benefit described in (h)(x) of this subsection but substituting two thousand dollars for four thousand dollars.

(j) Standardized medicare supplement Plan M may include only the basic core benefit as defined in WAC 284-66-064, plus fifty percent of the medicare Part A deductible, skilled nursing facility care and medically necessary emergency care in a foreign country as defined in WAC 284-66-064.

(k) Standardized medicare supplement Plan N may include only the basic core benefit as defined in WAC 284-66-064, plus one hundred percent of the medicare Part A deductible, skilled nursing facility care, and medically necessary emergency care in a foreign country as defined in subsection (3) of this section, with copayments in the following amounts:

(i) The lesser of twenty dollars or the medicare coinsurance or copayment for each covered health care provider office visit, including visits to medical specialists Part B; and

(ii) The lesser of fifty dollars or the medicare Part B coinsurance of copayment for each covered emergency room visit, however this copayment shall be waived if the insured is admitted to any hospital and the emergency visit is subsequently covered as a medicare Part A expense.

(6) An issuer may, with the prior approval of the commissioner, offer policies or certificates with new or innovative benefits in addition to the standardized benefits provided in a policy or certificate that otherwise complies with the applicable standards. The new or innovative benefits may include only benefits that are appropriate to medicare supplement insurance, are new or innovative, are not otherwise available, and are cost-effective. Approval of new or innovative benefits must not adversely impact the goal of medicare supplement simplification. New or innovative benefits may not include an outpatient prescription drug benefit. New or innovative benefits may not be used to change or reduce benefits, including a change of any cost-sharing provision, in any standardized plan.

**AMENDATORY SECTION** (Amending Matter No. R 2004-08, filed 8/4/05, effective 9/4/05)

**WAC 284-66-080 Outline of coverage required.** (1) Issuers must provide an outline of coverage to all applicants at the time an application is presented to the prospective applicant and, except for direct response policies and certificates, must obtain an ~~((acknowledgement))~~ acknowledgment of receipt of the outline from the applicant.

(2) The "outline of coverage," ~~((must be completed in substantially the form))~~ is set forth ((in WAC 284-66-092)) on the commissioner's web site, and incorporated by reference herein in this rule. The issuer's form of outline of coverage must be completed in substantially the form set forth on the commissioner's web site, and filed with the commissioner before being used in this state.

(3) If an outline of coverage is provided at the time of application and the medicare supplement policy or certificate is issued on a basis that would require revision of the outline, a substitute outline of coverage properly describing the policy or certificate must accompany the policy or certificate when it is delivered and contain the following statement, in no less than twelve point type, immediately above the company name: "NOTICE: Read this outline of coverage carefully. It is not identical to the outline of coverage provided upon application and the coverage originally applied for has not been issued."

(4) The outline of coverage provided to applicants set forth in this section consists of four parts: A cover page, premium information, disclosure pages, and charts displaying the features of each benefit plan offered by the issuer. The outline of coverage must be in the language and format prescribed in WAC 284-66-092 in no less than twelve point type. All plans A-~~((E))~~ N must be shown on the cover page, and the plan(s) that are offered by the issuer must be prominently identified. Premium information for plans that are offered must be shown on the cover page or immediately following the cover page and must be prominently displayed. The premium and mode must be stated for all plans that are

offered to the prospective applicant. All possible premiums for the prospective applicant must be illustrated.

society, health care service contractor, or health maintenance organization must substitute appropriate terminology.

(5) Where inappropriate terms are used, such as "insurance," "policy," or "insurance company," a fraternal benefit

**AMENDATORY SECTION** (Amending Order 92-25, filed 12/10/92, effective 1/10/93)

**WAC 284-66-232 Form for medicare supplement refund calculation.**

MEDICARE SUPPLEMENT REFUND CALCULATION FORM  
FOR CALENDAR YEAR \_\_\_\_\_

TYPE \_\_\_\_\_ SMSBP(w) \_\_\_\_\_  
 For the State of \_\_\_\_\_  
 Washington Policy or Certificate Form No(s). \_\_\_\_\_  
 Company Name \_\_\_\_\_  
 NAIC Group Code \_\_\_\_\_ NAIC Company Code \_\_\_\_\_  
 Person Completing This Exhibit \_\_\_\_\_  
 Title \_\_\_\_\_ Telephone Number \_\_\_\_\_

Line	(a) Earned Premium (x)	(b) Incurred Claims (y)
1. Current Year's Experience a. Total (all policy years) b. Current year's issues (z) c. Net (for reporting purposes = 1a - 1b)		
2. Past Years' Experience (All Policy Years)		
3. Total experience (Net Current Year + Past Years' Experience)		
4. Refunds Last year (Excluding Interest)		
5. Previous Since Inception (Excluding Interest)		
6. Refunds Since Inception (Excluding Interest)		
7. Benchmark Ratio Since Inception (SEE WORKSHEET FOR RATIO 1)		
8. Experienced Ratio Since Inception  <b>Total Actual Incurred Claims (line 3, col b)</b> = <b>Ratio 2</b> <b>Total Earned Premium (line 3, col a) - Refunds Since Inception (line 6)</b>		
9. Life Years Exposed Since Inception If the Experienced Ratio is less than the Benchmark Ratio, and there are more than 500 life years exposure, then proceed to calculation of refund.		
10. Tolerance Permitted (obtained from credibility table)		
11. Adjustment to incurred Claims for Credibility  <b>Ratio 3 = Ratio 2 + Tolerance</b>  If Ratio 3 is more than benchmark ratio (ratio 1), a refund or credit to premium is not required. If Ratio 3 is less than the benchmark ratio, then proceed.		
12. Adjust Incurred Claims = <b>[Total Earned Premium (line 3, col. a) - Refunds Since Inception (line 6)]</b> <b>X Ratio 3 (line 11)</b>		
13. Refund = <b>Total Earned Premiums (line 3, col a) - Refunds Since Inception (line 6) - Adjusted Incurred Claims (line 12) Benchmark Ratio (Ratio 1)</b>  If the amount on line 13 is less than .005 times the annualized premium in force as of December 31 of the reporting year, then no refund is made. Otherwise, the amount on line 13 is to be refunded or credited, and a description of the refund and/or credit against premiums to be used must be attached to this form.		

Medicare Supplement Credibility Table

Life Year Exposed Since Inception	Tolerance
10,000+	0.0%
5,000 - 9,999	5.0%
2,500 - 4,999	7.5%
1,000 - 2,499	10.0%
500 - 999	15.0%
If Less than 500	No credibility

MEDICARE SUPPLEMENT REFUND CALCULATION FORM  
FOR CALENDAR YEAR \_\_\_\_\_

TYPE \_\_\_\_\_ SMSBP(w) \_\_\_\_\_  
 For the State of \_\_\_\_\_  
 Washington Policy or Certificate Form No(s). \_\_\_\_\_  
 Company Name \_\_\_\_\_  
 NAIC Group Code \_\_\_\_\_ NAIC Company Code \_\_\_\_\_  
 Person Completing This Exhibit \_\_\_\_\_  
 Title \_\_\_\_\_ Telephone Number \_\_\_\_\_

- (w) "SMSBP" = Standardized Medicare Supplement Benefit Plan
- (x) Includes modal loadings and fees charged.
- (y) Excludes Active Life Reserves.
- (z) This is to be used as "Issue Year Earned Premium" for Year 1 of next year's "Worksheet for Calculation of Benchmark Ratios"

I certify that the above information and calculations are true and accurate to the best of my knowledge and belief.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name - Please Type

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**WORKSHEET #1 - INDIVIDUAL POLICIES**

REPORTING FORM FOR TIME CALCULATION OF  
BENCHMARK RATIO SINCE INCEPTION  
FOR INDIVIDUAL POLICIES  
FOR CALENDAR YEAR \_\_\_\_\_

TYPE \_\_\_\_\_ SMSBP (P) \_\_\_\_\_  
 FOR THE STATE OF WASHINGTON \_\_\_\_\_  
 Washington Policy or Certificate Form No. \_\_\_\_\_  
 Company Name \_\_\_\_\_  
 NAIC Group Code \_\_\_\_\_ NAIC Company Code \_\_\_\_\_  
 Address \_\_\_\_\_  
 Person Completing This Exhibit \_\_\_\_\_  
 Title \_\_\_\_\_ Telephone Number \_\_\_\_\_

(a) Year	(b) Earned Premium	(c) Factor	(d) (b) x (c)	(e) Cumulative Loss Ratio	(f) (d) x (e)	(g) Factor	(h) (b) x (g)	(i) Cumulative Loss Ratio	(j) (h) x (i)	(o) Policy Year Loss Ratio
1		2.770		0.442		0.000		0.000		0.40
2		4.175		0.493		0.000		0.000		0.55
3		4.175		0.493		1.194		0.659		0.65
4		4.175		0.493		2.245		0.669		0.67
5		4.175		0.493		3.170		0.678		0.69
6		4.175		0.493		3.998		0.686		0.71
7		4.175		0.493		4.754		0.695		0.73
8		4.175		0.493		5.445		0.702		0.75
9		4.175		0.493		6.075		0.708		0.76
10		4.175		0.493		6.650		0.713		0.76
11		4.175		0.493		7.176		0.717		0.76
12		4.175		0.493		7.655		0.720		0.77
13		4.175		0.493		8.093		0.723		0.77
14		4.175		0.493		8.493		0.725		0.77
((15)) 15+ <sup>1</sup>		4.175		0.493		8.684		0.725		0.77
Total:			(k):		(l):		(m):		(n):	

**FN for 15+<sup>1</sup>:** To include the earned premium for all years prior to as well as the 15th year prior to the current year.

- Benchmark Ratio Since Inception:  $(1 + n) / (k + m)$ :
- (a): Year 1 is the current calendar year - 1  
Year 2 is the current calendar year - 2 (etc.)  
(Example: If the current year is 1991, then:  
Year 1 is 1990: Year 2 is 1989; etc.)
  - (b): For the calendar year on the appropriate line in column (a), the premium earned during that year for policies issued in that year.
  - (k) = Total of Column "d"
  - (l) = Total of Column "f"
  - (m) = Total of Column "h"
  - (n) = Total of Column "j"
  - (p) "SMSBP" = ((Standardized)) Standardized Medicare Supplement Benefit Plan

(o): These loss ratios are not explicitly used in computing the benchmark loss ratios. They are the loss ratios, on a policy year basis, which result in the ((cumulative)) cumulative loss ratio displayed on this worksheet. They are shown here for informational purposes only.

**WORKSHEET #1 - GROUP POLICIES**

REPORTING FORM FOR TIME CALCULATION OF  
BENCHMARK RATIO SINCE INCEPTION  
FOR GROUP POLICIES  
FOR CALENDAR YEAR \_\_\_\_\_

TYPE \_\_\_\_\_ SMSBP (P) \_\_\_\_\_  
 FOR THE STATE OF WASHINGTON \_\_\_\_\_  
 Washington Policy or Certificate Form No. \_\_\_\_\_  
 Company Name \_\_\_\_\_  
 NAIC Group Code \_\_\_\_\_ NAIC Company Code \_\_\_\_\_  
 Address \_\_\_\_\_  
 Person Completing This Exhibit \_\_\_\_\_  
 Title \_\_\_\_\_ Telephone Number \_\_\_\_\_

(a) Year	(b) Earned Premium	(c) Factor	(d) (b) x (c)	(e) Cumulative Loss Ratio	(f) (d) x (e)	(g) Factor	(h) (b) x (g)	(i) Cumulative Loss Ratio	(j) (h) x (i)	(o) Policy Year Loss Ratio
1		2.770		0.507		0.000		0.000		0.46
2		4.175		0.567		0.000		0.000		0.63
3		4.175		0.567		1.194		0.759		0.75
4		4.175		0.567		2.245		0.771		0.77
5		4.175		0.567		3.170		0.782		0.8

(a) Year	(b) Earned Premium	(c) Factor	(d) (b) x (c)	(e) Cumulative Loss Ratio	(f) (d) x (e)	(g) Factor	(h) (b) x (g)	(i) Cumulative Loss Ratio	(j) (h) x (i)	(o) Policy Year Loss Ratio
6		4.175		0.567		3.998		0.792		0.82
7		4.175		0.567		4.754		0.802		0.84
8		4.175		0.567		5.445		0.811		0.87
9		4.175		0.567		6.075		0.818		0.88
10		4.175		0.567		6.650		0.824		0.88
11		4.175		0.567		7.176		0.828		0.88
12		4.175		0.567		7.655		0.831		0.88
13		4.175		0.567		8.093		0.834		0.89
14		4.175		0.567		8.493		0.837		0.89
<del>((15))</del> 15+		4.175		0.567		8.684		0.838		0.89
Total:			(k):		(l):		(m):		(n):	

FN for 15+: To include the earned premium for all years prior to as well as the 15th year prior to the current year.

- Benchmark Ratio Since Inception:  $(1 + n) / (k + m)$
- (a): Year 1 is the current calendar year - 1  
Year 2 is the current calendar year - 2 (etc.)  
(Example: If the current year is 1991, then:  
Year 1 is 1990; Year 2 is 1989; etc.)
  - (b): For the calendar year on the appropriate line in column (a), the premium earned during that year for policies issued in that year.
  - (c):  $k =$  Total of Column "d"
  - (d):  $l =$  Total of Column "f"
  - (e):  $m =$  Total of Column "h"
  - (f):  $n =$  Total of Column "j"
  - (g): "SMSBP" = ((Standardized)) Standardized Medicare Supplement Benefit Plan

(o): These loss ratios are not explicitly used in computing the benchmark loss ratios. They are the loss ratios, on a policy year basis, which result in the ((cumulative)) cumulative loss ratio displayed on this worksheet. They are shown here for informational purposes only.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending Matter No. R 2004-08, filed 8/4/05, effective 9/4/05)

**WAC 284-66-243 Filing and approval of policies and certificates and premium rates.** (1) An issuer may not deliver or issue for delivery a policy or certificate to a resident of this state unless the policy form or certificate form has been filed with and approved by the commissioner according to the filing requirements and procedures prescribed by the commissioner.

~~(2) ((An issuer must file any riders or amendments to policy or certificate forms to delete outpatient prescription drug benefits as required by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 only with the commissioner in the state that the policy or certificate was issued.~~

~~(3))~~ (3) An issuer may not use or change premium rates for a medicare supplement policy or certificate unless the rates, rating schedule, and supporting documentation have been filed with and approved by the commissioner according to the filing requirements and procedures prescribed by the commissioner.

~~((4))~~ (4)(a) Except as provided in (b) of this subsection, an issuer may not file for approval more than one form of a policy or certificate of each type for each standard medicare supplement benefit plan.

(b) An issuer may offer, with the approval of the commissioner, up to four additional policy forms or certificate

forms of the same type for the same standard medicare supplement benefit plan, one for each of the following cases:

- (i) The inclusion of new or innovative benefits;
- (ii) The addition of either direct response or agent marketing methods;
- (iii) The addition of either guaranteed issue or underwritten coverage;
- (iv) The offering of coverage to individuals eligible for medicare by reason of disability. The form number for products offered to enrollees who are eligible by reason of disability must be distinct from the form number used for a corresponding standardized plan offered to an enrollee eligible for medicare by reason of age.

(c) For the purposes of this section, a "type" means an individual policy, a group policy, an individual medicare SELECT policy, or a group medicare SELECT policy.

~~((5))~~ (5)(a) Except as provided in (a)(i) of this subsection, an issuer must continue to make available for purchase any policy form or certificate form issued after the effective date of this regulation that has been approved by the commissioner. A policy form or certificate form is not considered to be available for purchase unless the issuer has actively offered it for sale in the previous twelve months.

(i) An issuer may discontinue the availability of a policy form or certificate form if the issuer provides to the commissioner in writing its decision at least thirty days before discontinuing the availability of the form of the policy or certificate. After receipt of the notice by the commissioner, the

issuer may no longer offer for sale the policy form or certificate form in this state.

(ii) An issuer that discontinues the availability of a policy form or certificate form under (a)(i) of this subsection, may not file for approval a new policy form or certificate form of the same type for the same standard medicare supplement benefit plan as the discontinued form for a period of five years after the issuer provides notice to the commissioner of the discontinuance. The period of discontinuance may be reduced if the commissioner determines that a shorter period is appropriate.

(b) The sale or other transfer of medicare supplement business to another issuer is considered a discontinuance for the purposes of this subsection.

(c) A change in the rating structure or methodology is considered a discontinuance under (a) of this subsection, unless the issuer complies with the following requirements:

(i) The issuer provides an actuarial memorandum, in a form and manner prescribed by the commissioner, describing the manner in that the revised rating methodology and resultant rates differ from the existing rating methodology and resultant rates.

(ii) The issuer does not subsequently put into effect a change of rates or rating factors that would cause the percentage differential between the discontinued and subsequent rates as described in the actuarial memorandum to change. The commissioner may approve a change to the differential that is in the public interest.

~~((6))~~ (5)(a) Except as provided in (b) of this subsection, the experience of all policy forms or certificate forms of the same type in a standard medicare supplement benefit plan must be combined for purposes of the refund or credit calculation prescribed in WAC 284-66-203.

(b) Forms assumed under an assumption reinsurance agreement may not be combined with the experience of other forms for purposes of the refund or credit calculation.

~~((7))~~ (6) An issuer may set rates only on a community rated basis or on an issue-age level premium basis for policies issued prior to January 1, 1996, and may set rates only on a community rated basis for policies issued after December 31, 1995.

(a) For policies issued prior to January 1, 1996, community rated premiums must be equal for all individual policyholders or certificateholders under a standardized medicare

supplement benefit form. Such premiums may not vary by age or sex. For policies issued after December 31, 1995, community rated premiums must be set according to RCW 48.66.045(3).

(b) Issue-age level premiums must be calculated for the lifetime of the insured. This will result in a level premium if the effects of inflation are ignored.

~~((8))~~ (7) All filings of policy or certificate forms must be accompanied by the proposed application form, outline of coverage form, proposed rate schedule, and an actuarial memorandum completed, signed and dated by a qualified actuary as defined in WAC 284-05-060. In addition to the actuarial memorandum, the following supporting documentation must be submitted to demonstrate to the satisfaction of the commissioner that rates are not excessive, inadequate, or unfairly discriminatory and otherwise comply with the requirements of this chapter:

(a) Anticipated loss ratios stated on a calendar year basis by duration for the period for which the policy is rated. Filings of future rate adjustments must contain the actual calendar year loss ratios experienced since inception, both before and after the refund required, if any and the actual loss ratios in comparison to the expected loss ratios stated in the initial rate filing on a calendar year basis by duration if applicable;

(b) Anticipated total termination rates on a calendar year basis by duration for the period for which the policy is rated. The termination rates should be stated as a percentage and the source of the mortality assumption must be specified. Filings of future rate adjustments must include the actual total termination rates stated on a calendar year basis since inception;

(c) Expense assumptions including fixed and percentage expenses for acquisition and maintenance costs;

(d) Schedule of total compensation payable to agents and other producers as a percentage of premium, if any;

(e) A complete specimen copy of the compensation agreements or contracts between the issuer and its agents, brokers, general agents, as well as the contracts between general agents and agents or others whose compensation is based in whole or in part on the sale of medicare supplement insurance policies. The agreements must demonstrate compliance with WAC 284-66-350 (where appropriate);

(f) Other data necessary in the reasonable opinion of the commissioner to substantiate the filing.

AMENDATORY SECTION (Amending Order R 92-1, filed 2/25/92, effective 3/27/92)

**WAC 284-66-323 Form for reporting multiple medicare supplement policies and certificates.**

Medicare Supplement Regulation

FORM FOR REPORTING  
MEDICARE SUPPLEMENT POLICIES

Company Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone Number: \_\_\_\_\_

Due: March 1, annually

The purpose of this form is to report the following information on each resident of this state (~~who has in force~~) with more than one medicare supplement policy or certificate in force. The information is to be grouped by individual policyholder.

Policy and Certificate #	Date of Issuance

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name and Title (please type)

\_\_\_\_\_  
Date

**REPEALER**

The following sections of the Washington Administrative Code are repealed:

- WAC 284-66-092      Form of "outline of coverage."
- WAC 284-66-247      Interim rate and form filing requirements for standardized plans H, I and J and pre-standardized plans that include outpatient prescription drug benefits.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 3, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 0.

Date Adopted: November 24, 2009.

Mike Kreidler  
Insurance Commissioner

**WSR 09-24-053  
PERMANENT RULES  
OFFICE OF  
INSURANCE COMMISSIONER**

[Insurance Commissioner Matter No. R 2009-06—Filed November 24, 2009, 1:43 p.m., effective December 25, 2009]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Accreditation standards require that a state's laws contain the NAIC's "Model Regulation to Define Standards and Commissioner's Authority for Companies Deemed to be in Hazardous Financial Condition" or a substantially similar provision. This provision authorizes the commissioner to order a company that may be in hazardous condition to take necessary corrective action, provide additional reporting, or cease certain practices. These rules amend the existing regulatory standards to bring them in line with the recently amended NAIC model.

Citation of Existing Rules Affected by this Order: Amending WAC 284-16-300, 284-16-310, and 284-16-320.

Statutory Authority for Adoption: RCW 48.02.060, 48.31.435, 48.44.050, and 48.46.200.

Adopted under notice filed as WSR 09-20-066 on October 5, 2009.

**AMENDATORY SECTION** (Amending Order R 92-9, filed 9/9/92, effective 10/10/92)

**WAC 284-16-300 Purpose.** (1) The purpose of this regulation, WAC 284-16-300 through 284-16-320 is to set forth the standards which the commissioner will use to identify insurers in such condition as to render the continuance of their business hazardous to ~~((the))~~ their policyholders, creditors or to the general public ~~((or to holders of their policies or certificates of insurance))~~.

(2) This regulation shall not be interpreted to limit the powers granted the commissioner by any laws or parts of laws of this state, nor shall this regulation be interpreted to supersede any laws or parts of laws of this state.

**AMENDATORY SECTION** (Amending Order R 92-9, filed 9/9/92, effective 10/10/92)

**WAC 284-16-310 Standards.** The following standards, either singly or a combination of two or more, may be consid-

ered by the commissioner to determine whether the continued operation of any insurer transacting an insurance business in this state might be deemed to be hazardous to ~~((the))~~ its policyholders, creditors, or the general public. The commissioner may consider:

(1) ~~Adverse findings reported in financial condition~~ ~~((and))~~ reports, market conduct examination reports, audit reports, or actuarial opinions, reports or summaries.

(2) ~~The National Association of Insurance Commissioners Insurance Regulatory Information System and its~~ ~~((related))~~ other financial analysis solvency tools and reports.

(3) ~~((The ratios of commission expense, general insurance expense, policy benefits and reserve increases as to annual premium and net investment income which could lead to an impairment of capital and surplus.~~

(4) ~~The insurer's asset portfolio when viewed in light of current economic conditions is not of sufficient value, liquidity, or diversity to assure the company's ability to meet its outstanding obligations as they mature.~~

~~((5))~~ Whether the insurer has made adequate provision, according to presently accepted actuarial standards of practice, for the anticipated cash flows required by the contractual obligations and related expenses of the insurer, when considered in light of the assets held by the insurer with respect to such reserves and related actuarial items including, but not limited to, the investment earnings on such assets, and the considerations anticipated to be received and retained under such policies and contracts.

(4) The ability of an assuming reinsurer to perform and whether the insurer's reinsurance program provides sufficient protection for the ~~((company's))~~ insurer's remaining surplus after taking into account the insurer's cash flow and the classes of business written as well as the financial condition of the assuming reinsurer.

~~((6))~~ (5) Whether the insurer's operating loss in the last twelve month period or any shorter period of time, including but not limited to net capital gain or loss, change in nonadmitted assets, and cash dividends paid to shareholders, is greater than fifty percent of such insurer's remaining surplus as regards policyholders in excess of the minimum required.

(6) Whether the insurer's operating loss in the last twelve-month period or any shorter period of time, excluding net capital gains, is greater than twenty percent of the insurer's remaining surplus as regards policyholders in excess of the minimum required.

(7) ~~Whether ((any affiliate)) a reinsurer, ((subsidiary, or reinsurer)) obligor or any entity within the insurer's insurance holding company system is insolvent, threatened with insolvency, or delinquent in payment of its monetary or other obligation, and which in the opinion of the commissioner may affect the solvency of the insurer.~~

(8) ~~((Contingent liabilities))~~ Contingencies, pledges, or guaranties which either individually or collectively involve a total amount which in the opinion of the commissioner may affect the solvency of the insurer.

(9) Whether any "controlling person" of an insurer is delinquent in the transmitting to, or payment of, net premiums to such insurer.

(10) The age and collectibility of receivables.

(11) Whether the management of an insurer, including officers, directors, or any other person who directly or indirectly controls the operation of such insurer, fails to possess and demonstrate the competence, fitness, and reputation deemed necessary to serve the insurer in such position.

(12) Whether management of an insurer has failed to respond to inquiries relative to the condition of the insurer or has furnished false or misleading information concerning an inquiry.

(13) Whether the insurer has failed to meet financial and holding company filing requirements in the absence of a reason satisfactory to the commissioner.

(14) Whether management of an insurer either has filed any false or misleading sworn financial statement, or has released false or misleading financial statement to lending institutions or to the general public, or has made a false or misleading entry, or has omitted an entry of material amount in the books of the insurer.

~~((14))~~ (15) Whether the insurer has grown so rapidly and to such an extent that it lacks adequate financial ((and)) or administrative capacity to meet its obligations in a timely manner.

~~((15))~~ (16) Whether the ((company)) insurer has experienced or will experience in the foreseeable future, cash flow ((and)) or liquidity problems.

(17) Whether management has established reserves that do not comply with minimum standards established by state insurance laws, regulations, statutory accounting standards, or sound actuarial principles and standards of practice.

(18) Whether management persistently engages in material under reserving that results in adverse development.

(19) Whether transactions among affiliates, subsidiaries or controlling persons for which the insurer receives assets or capital gains, or both, do not provide sufficient value, liquidity or diversity to assure the insurer's ability to meet its outstanding obligations as they mature.

(20) Any other factor determined by the commissioner to be hazardous to the insurer's policyholders, creditors or general public.

**AMENDATORY SECTION** (Amending Order R 92-9, filed 9/9/92, effective 10/10/92)

**WAC 284-16-320 Manner in which commissioner will exercise authority.** (1) For the purpose of making a determination of an insurer's financial condition under this regulation, the commissioner may:

(a) Disregard any credit or amount receivable resulting from transactions with a reinsurer which is insolvent, impaired, or otherwise subject to a delinquency proceeding;

(b) Make appropriate adjustments including disallowance to asset values attributable to investments in or transactions with parents, subsidiaries, or affiliates consistent with the NAIC Accounting Policies and Procedures Manual, state laws or regulations;

(c) Refuse to recognize the stated value of accounts receivable if the ability to collect receivables is highly speculative in view of the age of the account or the financial condition of the debtor; or

(d) Increase the insurer's liability in an amount equal to any contingent liability, pledge, or guarantee not otherwise included if there is a substantial risk that the insurer will be called upon to meet the obligation undertaken within the next twelve-month period.

(2) If the commissioner determines that the continued operation of the insurer authorized to transact business in this state may be hazardous to ~~((the))~~ its policyholders, creditors or the general public, then the commissioner may, in conjunction with or in lieu of a notice required or permitted by RCW 48.05.150, issue an order requiring the insurer to:

(a) Reduce the total amount of present and potential liability for policy benefits by reinsurance;

(b) Reduce, suspend, or limit the volume of business being accepted or renewed;

(c) Reduce general insurance and commission expenses by specified methods;

(d) Increase the insurer's capital and surplus;

(e) Suspend or limit the declaration and payment of dividend by an insurer to its stockholders or to its policyholders;

(f) File reports in a form acceptable to the commissioner concerning the market value of an insurer's assets;

(g) Limit or withdraw from certain investments or discontinue certain investment practices to the extent the commissioner deems necessary;

(h) Document the adequacy of premium rates in relation to the risks insured; ~~((or))~~

(i) File, in addition to regular annual statements, interim financial reports on the form adopted by the National Association of Insurance Commissioners or ~~((or))~~ in such format as promulgated by the commissioner;

(j) Correct corporate governance practice deficiencies, and adopt and utilize governance practices acceptable to the commissioner;

(k) Provide a business plan to the commissioner in order to continue to transact business in the state; or

(l) Notwithstanding any other provision of law limiting the frequency or amount of premium rate adjustments, adjust rates for any nonlife insurance product written by the insurer that the commissioner considers necessary to improve the financial condition of the insurer.

If the insurer is a foreign insurer, the commissioner's order may be limited to the extent provided by statute.

(3) Any insurer subject to an order under subsection (2) of this section may make a written demand for a hearing, subject to the requirements of RCW 48.04.010, by specifying in what respects it is aggrieved and the grounds to be relied upon as basis for the relief to be demanded at the hearing.

### WSR 09-24-055

#### PERMANENT RULES

#### BOARD OF ACCOUNTANCY

[Filed November 24, 2009, 5:12 p.m., effective December 25, 2009]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Solely to clarify process: The examination structure, the use of the computerized based media, and a new "board designee" (CPAES) for administering the examination (RCW 18.04.105(2) and WAC 4-25-720(1)) since the

administering designee's (CASTLEWorldwide) purchased service contract expires December 31, 2009. This clarifying modification does not change the fee amounts charged by the board or the examination processes.

Citation of Existing Rules Affected by this Order: Amending WAC 4-25-530 Fees.

Statutory Authority for Adoption: RCW 18.04.065, 18.04.105 (2) and (3).

Adopted under notice filed as WSR 09-21-080 on October 16, 2009.

Changes Other than Editing from Proposed to Adopted Version: The language was changed to delete fee amounts that are set by third party providers and insert explanations that third party providers set, collect, and retain the section and administrative fees for examinations. Examinations are developed, delivered, and administered by third parties. The agency does not collect the fees; nor does the agency control the section and administrative fees the third party providers charge. The board fee for examinations is \$10 and remains unchanged with this rule amendment. The board fee is collected by the third party provider and remitted to the board and is the only examination fee deposited in the state treasury board account. The fifty-four other U.S. Boards of Accountancy use the same exam and delivery providers for uniformity.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: November 24, 2009.

Richard C. Sweeney  
Executive Director

**AMENDATORY SECTION** (Amending WSR 09-10-019, filed 4/27/09, effective 8/1/09)

**WAC 4-25-530 Fees.** RCW 18.04.065 provides that the board shall set fees related to licensure at a level adequate to pay the costs of administering chapter 18.04 RCW. The board ~~((shall charge))~~ has established the following fee(s) schedule:

- (1) Initial application for individual license, individual license through reciprocity, CPA firm license (sole proprietorships with no employees are exempt from the fee), or registration as a resident nonlicensee firm owner . . . \$330

(2)	Renewal of individual license, CPA-Inactive certificate, CPA firm license (sole proprietorships with no employees are exempt from the fee), or registration as a resident nonlicensee firm owner . . . . .	\$230	((i) Auditing and attestation . . . . . (ii) Financial accounting and reporting . . . . . (iii) Regulation . . . . . (iv) Business environment and concepts . . . . .	\$230.55 \$218.15 \$193.35 \$180.95))
(3)	Application for CPA-Inactive certificateholder to convert to a license . . . . .	\$0	(b) Administrative fees: <u>Administrative fees for the qualification and application processes are set by a third-party provider. These fees are collected and retained by the third-party provider.</u>	
(4)	Application for reinstatement of license, CPA-Inactive certificate, or registration as a resident nonlicensee owner . . . . .	\$480	((i) First time candidate— Four sections . . . . . (ii) First time candidate— Three sections . . . . . (iii) First time candidate— Two sections . . . . . (iv) First time candidate— One section . . . . . (v) Reexam candidate— Four sections . . . . .	\$132.95 \$119.10 \$104.70 \$90.30 \$130.75
(5)	Quality assurance review (QAR) program fee (includes monitoring reviews for up to two years) Firm submits reports for review . . . . . Firm submits a peer review report for review . . . . . Firm is exempted from the QAR program because the firm did not issue attest reports . . . . .	\$400 \$60 \$0	(vi) Reexam candidate— Three sections . . . . . (vii) Reexam candidate— Two sections . . . . . (viii) Reexam candidate— One section . . . . .	\$111.40 \$91.50 \$71.60
(6)	Late fee * . . . . .	\$100	National Association of State Boards of Accountancy candidate data base investigation fee for exam applications submitted without the applicant's Social Security number . . . . .	\$70
(7)	Amendment to firm license except for a change of firm address (there is no fee for filing a change of address) . . . . .	\$35		
(8)	Copies of records, per page exceeding fifty pages . . . . .	\$0.15		
(9)	Computer diskette listing of licensees, CPA-Inactive certificateholders, or registered resident nonlicensee firm owners . . . . .	\$75		
(10)	Replacement CPA wall document . . . . .	\$50	Note:))*	The board may waive late filing fees for individual hardship including, but not limited to, financial hardship, critical illness, or active military deployment.
(11)	Dishonored check fee (including, but not limited to, insufficient funds or closed accounts) . . . . .	\$35		
(12)	CPA examination. Exam fees are comprised of section fees plus administrative fees. <b>The total fee is contingent upon which section(s) is/are being applied for and the number of sections being applied for at the same time.</b> The total fee is the section fee(s) for each section(s) applied for added to the administrative fee for the number of section(s) applied for.			

(a) Section fees: Section fees for the computerized uniform CPA examination are set by third-party providers for the development and delivery of the exam. These fees are collected and retained by the third-party provider.

**WSR 09-24-056**  
**PERMANENT RULES**  
**DEPARTMENT OF AGRICULTURE**  
 [Filed November 25, 2009, 8:13 a.m., effective December 26, 2009]

Effective Date of Rule: Thirty-one days after filing.  
 Purpose: The purpose of this amendment is to change the name of the livestock nutrient management program to the dairy nutrient management program.  
 Citation of Existing Rules Affected by this Order: Amending WAC 16-06-165.  
 Statutory Authority for Adoption: Chapter 43.23 RCW.  
 Other Authority: RCW 34.05.353.  
 Adopted under notice filed as WSR 09-19-098 on September 21, 2009.  
 Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal

Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: November 25, 2009.

Mary Toohey  
Acting Director

**AMENDATORY SECTION** (Amending WSR 09-12-013, filed 5/21/09, effective 6/21/09)

**WAC 16-06-165 Department organization description by division and program.** An organizational description by division and program is as follows:

**Director's office:**

- The director's office covers legislative affairs, internal program review, domestic and international marketing, policy development and review, bioenergy coordination, agency communications, and quality and performance.

**Administrative services division:**

- The administrative services division includes accounting, budget, payroll, forms and records, adjudicative proceedings, public disclosure, Washington administrative code filings, personnel office, information technology services, safety and risk management, commodity commission activities, and the fairs commission program.

**Animal services division:**

- The animal health program conducts programs to monitor, diagnose, manage and eradicate specific animal diseases such as tuberculosis, scrapie, and poultry diseases, and conducts programs to prevent the introduction of foreign animal diseases. The program manages animal health emergencies and responds to certain animal welfare issues.
- The livestock brand inspection program registers brands and inspects livestock when animal ownership changes or animals leave the state. This program provides services to cattle and horse owners in an effort to prevent theft of the animals and licenses feedlots and sales facilities. The establishment and licensure of livestock markets is also implemented within this program.
- The animal identification program implements the voluntary national animal identification system in Washington state to facilitate the tracking of animals and managing animal disease outbreaks.

**Commodity inspection division:**

- The fruit and vegetable inspection program provides phytosanitary certification, shipping point inspection, third-party grading of raw product for processing and export certification, and licenses controlled atmosphere storage facilities.
- The grain inspection program provides inspection, analytical, and weighing services to ensure orderly commerce for grain, dry peas, lentils, rapeseed, and similar commodities produced in Washington state or shipped through Washington ports from other states.
- The grain warehouse audit program licenses, bonds, and audits public grain storage warehouses and grain dealers who buy covered commodities from producers. Auditing procedures include verification of grain records and purchase contracts with producers, and a physical inventory of stored commodities at warehouses.
- The seed program inspects fields for insects and disease; inspects and tests seed for purity and germination; provides phytosanitary certification for export; and issues labeling permits. The program areas of responsibility are seed certification, seed testing, phytosanitary inspection and testing, and seed law enforcement.

**Food safety and consumer services division:**

- The food safety program inspects and licenses dairy and food processing facilities and provides services aimed to protect the public from injury and illness caused by food, dairy, and egg products that are contaminated, adulterated or otherwise unfit for consumption.
- The ~~((livestock))~~ dairy nutrient management program inspects dairy farms; provides assistance; and enforces laws that include state and federal water quality laws and rules regarding animal feeding operations.
- The microbiology laboratory supports the food safety program by testing food and dairy products for quality measures and for food poisoning organisms, and by examining food products for contamination by insects, rodents or filth. The laboratory also supports animal health programs by testing animal blood and tissue for disease to aid in disease eradication programs and to allow animals to move interstate or internationally.
- The organic food program inspects and licenses organic producers and processors. The program provides services to consumers and supports the organic food industry by ensuring that all food products making organic claims meet standards for organic production and labeling.

**Pesticide management division:**

- The pesticide management division administers the laws and rules related to pesticides, animal feed and fertilizer, and administers the waste pesticide disposal program.

- The pesticide compliance program enforces state and federal pesticide laws, conducts routine inspections of pesticide applications and pesticide distribution facilities, and investigates allegations of pesticide misuse.
- The registration services program registers pesticides, fertilizer and animal feed distributed in Washington; inspects fertilizer and feed manufacturing, storage and distribution facilities; conducts waste pesticide collection events; and conducts environmental assessments related to pesticide use in the state of Washington.
- The certification and training program provides outreach and safety training on the use of pesticides, licenses pesticide application equipment, structural pest inspectors, dealer managers, and commercial, public, and private pesticide applicators, operators and consultants; approves recertification courses; and tracks educational credits on pesticide and inspector licensees.

#### Plant protection division:

- The chemistry and hop program supports several department programs by analyzing samples taken in investigations of alleged pesticide misuse; monitors food for pesticide residues; analyzes commercial feed and fertilizer samples to determine if they meet label guarantees; grades hops for seed, stem and leaf content; and analyzes hops for brewing value.
- The commission merchants program licenses commission merchants, dealers, brokers, and cash buyers, which includes administering required bonds and the investigation of complaints.
- The pest program provides services aimed to prevent the establishment of high-risk and exotic insects, plant diseases, weeds and other pest species through surveys, inspections, quarantines, and eradication projects.
- Plant services program provides regulatory inspection of nurseries in an effort to provide consumers and the nursery industry with healthy, pest-free and disease-free plant materials; enforces quarantines to prevent pest introductions; and provides testing and inspection services to assure pest-free planting stock.
- The weights and measures program checks prepackaged items to verify quantity of contents; inspects and tests commercial weighing and measuring devices; licenses public weighmasters and weighers; responds to consumer complaints; surveys labeling and advertising of products packaged or sold by weight, measure, or count; and develops standards and conducts compliance activities related to motor fuels and biofuels.

### WSR 09-24-061 PERMANENT RULES DEPARTMENT OF

#### SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed November 25, 2009, 9:06 a.m., effective January 1, 2010]

Effective Date of Rule: January 1, 2010.

Purpose: The rule implements new policy pertaining to the department's payment or denial of payment for hospital claims that involve adverse events, hospital-acquired conditions, and/or present on admission indicators, and tells hospital providers the conditions under which the department will not pay for, or only make partial payments for these claims. The rule provides a strong incentive for hospitals to make a correct diagnosis of symptoms upon admission (or as soon thereafter), exercise precautions to avoid unnecessary surgical procedures, reduce hospital-acquired conditions, and improve the quality of care medical assistance clients receive in hospitals. In addition, the new section is consistent with the guidelines set by the Centers for Medicare and Medicaid Services (CMS) for medicare payment reforms that support adjusting payments to hospitals based on quality and efficiency of care.

Statutory Authority for Adoption: RCW 74.08.090 and 74.09.500.

Other Authority: Centers for Medicare and Medicaid Services (CMS).

Adopted under notice filed as WSR 09-17-103 on August 18, 2009.

Changes Other than Editing from Proposed to Adopted Version: (~~Strikes~~ represent deleted text; underlines represent new text.)

**WAC 388-550-1650** ~~Series a~~ Adverse events, hospital-acquired conditions, and present on admission indicators.

(1)(a) Inpatient hospital claims with ... on and after ~~November 1, 2009~~ January 1, 2010;

(c) ~~Series a~~ Adverse events, ...

(d) Hospital requirements to report ~~serious~~ adverse events and HACs to the department (see subsection (4)(a) of this section);

(f) Hospital requirements to use POA indicator codes on claims (see subsection ~~(4)(g)~~ (5)(a) of this section).

(2)(a) "~~Series a~~ Adverse events" (also known as "adverse health events," "~~adverse events~~," or "never events" ... These serious reportable events are clearly identifiable ... and serious in their consequences for patients, and ~~of a nature such that the risk of occurrence is significantly frequently~~ their occurrence is influenced by the policies and procedures of the healthcare organization. ~~Some "hospital-acquired conditions (HACs) can become a serious adverse event if the (i) Patient dies or is seriously disabled; or (ii) Level of severity is great, such as the patient develops level 3 or 4 pressure ulcers.~~

(b) "Hospital-acquired condition (HAC)" is a condition ... after admission. HACs are identified by the U.S. Secretary of Health and Human Services per Section 5001(e) of the Deficit Reduction Act (DRA) of 2005 (42 U.S.C. § 1395ww(d)(4)(D)) and the medicare hospital-acquired condition policy [http://www.cms.hhs.gov/HospitalAcqCond/06\\_Hospital-Acquired\\_Conditions.asp#TopOfPage](http://www.cms.hhs.gov/HospitalAcqCond/06_Hospital-Acquired_Conditions.asp#TopOfPage) For medicare payment

purposes, HACs are conditions that the department considers a HAC to be a condition that (i) Are Is high ... cost or high volume, or both; (ii) Results in the assignment of a case ... as a secondary diagnosis; and (iii) Could reasonable [reasonably] have been prevented through the application of evidence-based guidelines; and (iv) Does not conflict with medicare's hospital-acquired conditions policy ([http://www.cms.hhs.gov/HospitalAcqCond/06\\_Hospital-Acquired\\_Conditions.asp#TopOfPage](http://www.cms.hhs.gov/HospitalAcqCond/06_Hospital-Acquired_Conditions.asp#TopOfPage)).

(3)(b) If medicare denies payment for a claim ... for a ~~an~~ serious adverse health event:

**(4) Inpatient hospital claims related to adverse events ... excludes medicare ...**

(a) When the department requires information from a hospital regarding ~~serious~~ serious adverse events ~~that the hospital reported to identified by DOH, the hospital ...~~ If no medical assistance client was affected by a an ~~serious~~ serious adverse event, the ...

(b) The department does not pay for ~~serious~~ serious adverse events ~~reported to identified by DOH and/or by the hospital or identified through the department's retrospective utilization review process (see (a) of this subsection). Some HACs can become an adverse event if the:~~

(i) Patient dies or is seriously disabled; or

(ii) Level [of] severity is great, such as the patient develops level three or level four pressure ulcers.

(d) A hospital may request ... to determine if the hospital is eligible for a partial payment of a ~~for the~~ serious adverse event ~~should be only partially denied.~~

(e) A hospital that requests ... review of a an ~~serious~~ serious adverse event ... of the ~~serious~~ serious adverse claim.

(f) The healthcare information ... analysis of the ~~serious~~ serious adverse event claim,

*(g) is struck and is now part of (5)(a):* ~~(g) All hospitals that have signed a core provider agreement with the department must provide information to the department by using POA indicator codes on each claim (refer to the table in this subsection). These POA indicator codes must designate which procedures or complications were present on admission, and which occurred during, or as a result of, hospital care. POA indicator codes are to be assigned to principal and secondary diagnosis (as defined in Section II of the Official Guidelines for Coding and Reporting), and the external cause of injury codes.~~

**(5) Inpatient hospital claims related to hospital-acquired conditions that do not qualify as an adverse event (excludes medicare crossover inpatient hospital claims discussed in subsection (3) of this section). The department applies the following rules for these claims:**

(a) The department reviews POA indicator codes on inpatient hospital claims in order to determine if a condition was present or incubating at the time the order for inpatient admission occurred, if a condition occurred during, or as a result of, hospital care, or if a condition developed during an outpatient encounter.

(i) All hospitals that have signed a core provider agreement with the department must provide information to the department by using POA indicator codes on each claim (refer to the table in this subsection).

(ii) These POA indicator codes must designate which procedures or complications were present on admission, and which occurred during, or as a result of, hospital care.

(iii) POA indicator codes are to be assigned to principal and secondary diagnosis (as defined in Section II of the Official Guidelines for Coding and Reporting), and the external cause of injury codes.

~~(5) (b)(b)~~ The department does not make additional payments for services in inpatient hospital claims that are attributable to HACs and are coded with POA indicator codes "N" or "U." Specifically, for hospitals paid under the:

(i) Diagnostic [Diagnostic] related group (DRG) payment method, the department ~~does not~~ does not make additional payment for complications and comorbidities (CC) and major complications and comorbidities (MCC) ~~that are coded with POA indicator codes "N" or "U" if the claim meets the definition of an HAC.~~

(ii) ~~Denies payment for any HAC that results in death or serious disability. Per diem payment method, the department does not pay for days beyond the average length-of-stay (LOS) (defined in WAC 388-550-1050).~~

(iii) Departmental weighted costs-to-charges (DWCC) payment method, the department does not pay for services attributable to the HAC.

(iv) DRG and per diem outlier payment methods, the department does not pay for services attributable to the HAC.

(v) Ratio of costs-to-charges (RCC) payment method, the department does not pay for services attributable to the HAC.

(vi) Per case payment method, the department does not pay for services attributable to the HAC.

~~(ii) (6)~~ The department ~~denies~~ denies payment for any HAC that results in death or serious disability.

~~(6) (7)~~ A hospital that disagrees with a ... or partial payment of a an ~~serious~~ serious adverse event ...

A final cost-benefit analysis is available by contacting Carolyn Adams, P.O. Box 45510, Olympia, WA 98504-5504, phone (360) 725-1854, fax (360) 753-9152, e-mail [adamsr@dshs.wa.gov](mailto:adamsr@dshs.wa.gov).

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 0, Repealed 0.

Date Adopted: November 25, 2009.

Susan N. Dreyfus  
Secretary

NEW SECTION**WAC 388-550-1650 Adverse events, hospital-acquired conditions, and present on admission indicators.**

(1) The rules in this section apply to:

(a) Inpatient hospital claims with dates of admission on and after January 1, 2010;

(b) Payment or denial of payment for any inpatient hospital claims identified in (a) of this subsection, including medicaid supplemental or enhanced payments and medicaid disproportionate share hospital (DSH) payments or denial of payment;

(c) Adverse events, hospital-acquired conditions (HACs), and present on admission (POA) indicators (defined in subsection (2) of this section);

(d) Hospital requirements to report adverse events and HACs to the department (see subsection (4)(a) of this section);

(e) Hospital requests for retrospective utilization reviews and the related requirements to provide root cause analysis of events to the department (see subsection (4)(d) through (f) of this section); and

(f) Hospital requirements to use POA indicator codes on claims (see subsection (5)(a) of this section).

(2) The following definitions apply to this section:

(a) **"Adverse events"** (also known as "adverse health events" or "never events") are the events that must be reported to the department of health (DOH) under WAC 246-320-146. These serious reportable events are clearly identifiable, preventable, and serious in their consequences for patients, and frequently their occurrence is influenced by the policies and procedures of the healthcare organization.

(b) **"Hospital-acquired condition (HAC)"** is a condition that is reasonably preventable and was not present or identifiable at hospital admission but is either present at discharge or documented after admission. For medicaid payment purposes, the department considers a HAC to be a condition that:

(i) Is high cost or high volume, or both;

(ii) Results in the assignment of a case to a diagnosis related group (DRG) that has a higher payment when present as a secondary diagnosis;

(iii) Could reasonably have been prevented through the application of evidence-based guidelines; and

(iv) Does not conflict with medicare's hospital-acquired conditions policy ([http://www.cms.hhs.gov/HospitalAcqCond/06\\_Hospital-Acquired\\_Conditions.asp#TopOfPage](http://www.cms.hhs.gov/HospitalAcqCond/06_Hospital-Acquired_Conditions.asp#TopOfPage)).

(c) **"Serious disability"** means a physical or mental impairment that substantially limits the major life activities of a patient.

(d) **"Present on admission (POA) indicator"** is a status code the hospital uses on an inpatient hospital claim that indicates if a condition was present or incubating at the time the order for inpatient admission occurs. A POA indicator can also identify a condition that develops during an outpatient encounter. (Outpatient encounters include, but are not limited to, emergency department visits, diagnosis testing, observation, and outpatient surgery.)

(e) **"Root cause analysis"** is a class of problem-solving methods aimed at identifying the root causes of events instead of addressing the immediate, obvious symptoms.

(3) **Medicare crossover inpatient hospital claims.** The department applies the following rules for these claims:

(a) If medicare denies payment for a claim at a higher rate for the increased costs of care under its HAC and/or POA indicator policies:

(i) The department limits payment to the maximum allowed by medicare;

(ii) The department does not pay for care considered nonallowable by medicare; and

(iii) The client cannot be held liable for payment.

(b) If medicare denies payment for a claim under its National Coverage Determination authority from Section 1862 (a)(1)(A) of the Social Security Act (42 U.S.C. 1395) for an adverse health event:

(i) The department does not pay the claim, any medicare deductible, and/or any co-insurance related to the inpatient hospital services; and

(ii) The client cannot be held liable for payment.

(4) **Inpatient hospital claims related to adverse events (excludes medicare crossover inpatient hospital claims discussed in subsection (3) of this section).** The department applies the following rules for these claims:

(a) When the department requests information from a hospital regarding adverse events identified by DOH, the hospital must provide the information requested for any affected medical assistance client (this includes both fee-for-service clients and clients enrolled in a managed care organization (MCO) contracted with the department). If no medical assistance client was affected by an adverse event, the hospital must provide a written response to the department with an assurance that no medical assistance clients were affected.

(b) The department does not pay for adverse events identified by DOH and/or identified through the department's retrospective utilization review process. Some HACs can become an adverse event if the:

(i) Patient dies or is seriously disabled; or

(ii) Level of severity is great, such as the patient develops level three or level four pressure ulcers.

(c) The client cannot be held liable for payment.

(d) A hospital may request a retrospective utilization review by the department, as described in WAC 388-550-1700 (6) (a) and (b) (iii), from the department or its designee to determine if the hospital is eligible for a partial payment for the adverse event.

(e) A hospital that requests a department retrospective utilization review of an adverse event must provide the department with the hospital's root cause analysis, as described in WAC 246-320-146 (3) and (4), of the adverse event claim.

(f) The healthcare information that is part of the retrospective utilization review, including the root cause analysis of the adverse event claim, is exempt from public disclosure under RCW 42.56.360 (1)(c).

(5) Inpatient hospital claims related to hospital-acquired conditions that do not qualify as an adverse event (excludes medicare crossover inpatient hospital claims discussed in subsection (3) of this section). The department applies the following rules for these claims:

(a) The department reviews POA indicator codes on inpatient hospital claims in order to determine if a condition

was present or incubating at the time the order for inpatient admission occurred, if a condition occurred during, or as a result of, hospital care, or if a condition developed during an outpatient encounter.

(i) All hospitals that have signed a core provider agreement with the department must provide information to the department by using POA indicator codes on each claim (refer to the table in this subsection).

(ii) These POA indicator codes must designate which procedures or complications were present on admission, and which occurred during, or as a result of, hospital care.

(iii) POA indicator codes are to be assigned to principal and secondary diagnosis (as defined in Section II of the Official Guidelines for Coding and Reporting), and the external cause of injury codes.

POA Indicator Codes	
Code	Reason for Code
Y	Diagnosis was present at time of inpatient admission.
N	Diagnosis was not present at time of inpatient admission.
U	Documentation insufficient to determine if condition was present at the time of inpatient admission.
W	Clinically undetermined. Provider unable to clinically determine whether or not the condition was present at the time of inpatient admission.

(b) The department does not make additional payments for services on inpatient hospital claims that are attributable to HACs and are coded with POA indicator codes "N" or "U". Specifically, for hospitals paid under the:

(i) Diagnostic related group (DRG) payment method, the department does not make additional payments for complications and comorbidities (CC) and major complications and comorbidities (MCC).

(ii) Per diem payment method, the department does not pay for days beyond the average length-of-stay (LOS) (defined in WAC 388-550-1050).

(iii) Departmental weighted costs-to-charges (DWCC) payment method, the department does not pay for services attributable to the HAC.

(iv) DRG and per diem outlier payment methods, the department does not pay for services attributable to the HAC.

(v) Ratio of costs-to-charges (RCC) payment method, the department does not pay for services attributable to the HAC.

(vi) Per case payment method, the department does not pay for services attributable to the HAC.

(6) The department denies payment for any HAC that results in death or serious disability.

(7) A hospital that disagrees with a department decision to deny payment or partial payment of an adverse event or hospital-acquired condition may follow the administrative appeal process in WAC 388-502-0220.

**WSR 09-24-062**

**PERMANENT RULES**

**DEPARTMENT OF LICENSING**

[Filed November 25, 2009, 9:15 a.m., effective January 1, 2010]

Effective Date of Rule: January 1, 2010.

Purpose: The department of licensing is revising WAC 308-20-210 for the cosmetology, barbering, manicuring and esthetics professions. Changes to the rules will increase fees and provide a sufficient level of revenue to cover the costs to administer the program.

Citation of Existing Rules Affected by this Order: Amending WAC 308-20-210 Fees.

Statutory Authority for Adoption: RCW 43.24.086, 18.16.030.

Adopted under notice filed as WSR 09-19-138 on September 23, 2009, and continuance filed as WSR 09-21-083 on October 19, 2009.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: November 25, 2009.

Walt Fahrner  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-02-048, filed 12/29/05, effective 2/1/06)

**WAC 308-20-210 Fees.** In addition to any third-party examinations fees, the following fees shall be charged by the professional licensing division of the department of licensing:

Title of Fee	Fee
Cosmetologist:	
<u>License application</u>	<u>\$25.00</u>
Reciprocity license	(( <del>\$40.00</del> ))
	<u>50.00</u>
Renewal (two-year license)	(( <del>40.00</del> ))
	<u>55.00</u>
Late renewal penalty	(( <del>20.00</del> ))
	<u>55.00</u>
Duplicate license	15.00
Certification	25.00

Title of Fee	Fee	Title of Fee	Fee
Instructor:		Salon/shop:	
<u>License application</u>	<u>25.00</u>	License application	<del>((50.00))</del>
Reciprocity license	<del>((40.00))</del>		<u>110.00</u>
	<u>50.00</u>	Renewal (one-year license)	<del>((50.00))</del>
Renewal (two-year license)	<del>((40.00))</del>		<u>110.00</u>
	<u>55.00</u>	Late renewal penalty	50.00
Late renewal penalty	<del>((20.00))</del>	Duplicate license	15.00
	<u>55.00</u>	Mobile unit:	
Duplicate license	15.00	License application	<del>((50.00))</del>
Certification	25.00		<u>110.00</u>
Manicurist:		Renewal (one-year license)	<del>((50.00))</del>
<u>License application</u>	<u>25.00</u>		<u>110.00</u>
Reciprocity license	<del>((40.00))</del>	Late renewal penalty	50.00
	<u>50.00</u>	Duplicate license	15.00
Renewal (two-year license)	<del>((40.00))</del>	Personal services:	
	<u>55.00</u>	License application	<del>((50.00))</del>
Late renewal penalty	<del>((20.00))</del>		<u>110.00</u>
	<u>55.00</u>	Renewal (one-year license)	<del>((50.00))</del>
Duplicate	15.00		<u>110.00</u>
Certification	25.00	Late renewal penalty	50.00
Esthetician:		Duplicate license	15.00
<u>License application</u>	<u>25.00</u>		
Reciprocity license	<del>((40.00))</del>		
	<u>50.00</u>		
Renewal (two-year license)	<del>((40.00))</del>		
	<u>55.00</u>		
Late renewal penalty	<del>((20.00))</del>		
	<u>55.00</u>		
Duplicate	15.00		
Certification	25.00		
Barber:			
<u>License Application</u>	<u>25.00</u>		
Reciprocity license	<del>((40.00))</del>		
	<u>50.00</u>		
Renewal (two-year license)	<del>((40.00))</del>		
	<u>55.00</u>		
Late renewal penalty	<del>((20.00))</del>		
	<u>55.00</u>		
Duplicate license	15.00		
Certification	25.00		
School:			
License application	<del>((175.00))</del>		
	<u>300.00</u>		
Renewal (one-year license)	<del>((175.00))</del>		
	<u>300.00</u>		
Late renewal penalty	175.00		
Duplicate	15.00		
Curriculum review	15.00		

**WSR 09-24-063  
PERMANENT RULES  
DEPARTMENT OF  
SOCIAL AND HEALTH SERVICES**

(Aging and Disability Services Administration)

[Filed November 25, 2009, 9:26 a.m., effective December 26, 2009]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The purpose of these rules is to amend chapter 388-828 WAC, DDD assessment rules and chapter 388-826 WAC, Voluntary placement, regarding the implementation of a standardized tool for determining the number of respite hours clients may receive when they are approved for voluntary placement services in a licensed foster home. The standardized tool will replace DDD's existing negotiated process for determining the amount of annual respite clients may receive when they are approved for these voluntary placement services.

Citation of Existing Rules Affected by this Order: Amending [new section] WAC 388-826-0077.

Statutory Authority for Adoption: RCW 71A.12.010 and 71A.12.030.

Other Authority: Title 71A RCW.

Adopted under notice filed as WSR 09-19-127 on September 22, 2009.

A final cost-benefit analysis is available by contacting Mark Eliason, 640 Woodland Square Loop S.E., Lacey, WA 98504, phone (360) 725-2517, fax (360) 407-0955, e-mail eliasmr@dshs.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal

Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 5, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 5, Amended 0, Repealed 0.

Date Adopted: November 25, 2009.

Susan N. Dreyfus  
Secretary

**NEW SECTION**

**WAC 388-826-0077 Are there limits to the respite care I can receive if I receive voluntary placement services?** The following limitations apply to the respite care you can receive when approved for voluntary placement services:

(1) The DDD assessment will determine how much respite you can receive per chapter 388-828 WAC.

(2) Prior approval by the DDD regional administrator or designee is required:

(a) To exceed fourteen days in a calendar per month for out-of-home respite; or

(b) To pay for more than eight hours in a twenty-four hour period of time for respite care in any setting other than your place of residence.

(3) Respite providers have the following limitations and requirements:

(a) If respite is provided in a private home, the home must be licensed;

(b) The respite provider cannot be the spouse of the foster parent receiving respite if the spouse and the foster parent reside in the same residence;

(c) If you receive respite from a provider who requires licensure, the respite services are limited to those age-specific services contained in the provider's license.

(4) DDD cannot pay for any fees associated with the respite care; for example, membership fees at a recreational facility, or insurance fees.

(5) If you require respite from a licensed practical nurse (LPN) or a registered nurse (RN), services may be authorized as skilled nursing services per WAC 388-845-1700 using an LPN or RN.

(6) Respite cannot replace daycare while your foster parent is at work.

(7) Respite cannot replace natural supports available to the child while in foster care. Family members will not be paid to provide respite.

(8) If you reside in a licensed staffed residential home or group care facility, you are not eligible to receive respite care.

**NEW SECTION**

**WAC 388-828-5985 How does DDD determine your unadjusted respite assessment level if DDD has authorized you to receive voluntary placement services per chapter 388-826 WAC?** DDD determines your unadjusted respite assessment level for voluntary placement services using the following table:

If your Protective Supervision Support Level is:	And your behavioral acuity level is:	Then your unadjusted respite assessment level is:
0	None	1
0	Low	1
0	Medium	2
0	High	2
1	None	1
1	Low	1
1	Medium	2
1	High	3
2 or 3	None	2
2 or 3	Low	2
2 or 3	Medium	2
2 or 3	High	4
4	None	2
4	Low	2
4	Medium	3
4	High	4
5	None	3
5	Low	3
5	Medium	4
5	High	5
6	None	3
6	Low	3
6	Medium	4
6	High	5

**NEW SECTION**

**WAC 388-828-6005 How does DDD determine your voluntary placement services support score per chapter 388-826 WAC?**

If your unadjusted respite assessment level for voluntary placement services in WAC 388-828-5985 is:	Then your voluntary placement services support score is:
1	240
2	240
3	409

If your unadjusted respite assessment level for voluntary placement services in WAC 388-828-5985 is:	Then your voluntary placement services support score is:
4	578
5	747

**NEW SECTION**

**WAC 388-828-6006 How does DDD determine the number to use in the adjustment of your voluntary placement services score?** DDD determines the amount of the adjustment for your voluntary placement services support score using the following tables:

If you are authorized to receive voluntary placement services per chapter 388-826 WAC and		Your ADL support needs level for the SIS per WAC 388-828-5480			
		None	Low	Medium	High
Your medical acuity level per WAC 388-828-5700	None	288	288	321	337
	Low	288	288	321	337
	Medium	288	343	402	443
	High	288	443	619	693

Example: If your ADL support needs level is "medium" and your medical acuity level is "low," the amount of your adjustment is 321.

**NEW SECTION**

**WAC 388-828-6007 How does DDD determine the number of respite hours you may receive annually if you are receiving voluntary placement services?** DDD determines the number of respite hours you may receive annually by adding your voluntary services support score in WAC 388-828-6005 to your adjusted voluntary services support rating score in WAC 388-828-6006.

Example: If your voluntary placement services support score is 240 and your adjusted voluntary placement services score is 321, the number of respite hours you may receive annually is 561.

Recently Enacted State Statutes: New 0, Amended 8, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: November 17, 2009.

Randy I. Dorn  
Superintendent of  
Public Instruction

**WSR 09-24-075**

**PERMANENT RULES**

**SUPERINTENDENT OF  
PUBLIC INSTRUCTION**

[Filed November 30, 2009, 9:31 a.m., effective December 31, 2009]

Effective Date of Rule: Thirty-one days after filing.

Purpose: To amend the WAC for revisions made by the 2008-09 legislative session to authorizing RCW 28A.165-.075 and provide clarifying language.

Citation of Existing Rules Affected by this Order: Amending chapter 392-162 WAC.

Statutory Authority for Adoption: RCW 28A.165.075.

Adopted under notice filed as WSR 09-19-149 on September 23, 2009.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or

**AMENDATORY SECTION** (Amending WSR 08-21-053, filed 10/9/08, effective 11/9/08)

**WAC 392-162-010 Purpose.** The purpose of this chapter is to set forth policies and procedures for the administration of and to ensure district compliance with state requirements for a program designed to provide extended learning opportunities to public school students in grades kindergarten through twelve who score below standard for his or her grade level on the statewide assessments and assessments in the basic skills administered by local school districts.

The learning assistance program requirements in this chapter are designed to:

(1) Provide the means by which a school district becomes eligible for learning assistance program funds and the distribution of those funds;

(2) Promote the use of assessment data when developing programs to assist underachieving students; ~~((and))~~

(3) Guide school districts in providing the most effective and efficient practices when implementing supplemental instruction and services; and

(4) Guide school districts in providing extended learning opportunities to assist underachieving students and students in grades eleven and twelve who are at risk of not meeting state and local graduation requirements.

AMENDATORY SECTION (Amending WSR 08-21-053, filed 10/9/08, effective 11/9/08)

**WAC 392-162-020 Definition—Learning assistance program (LAP).** As used in this chapter, the term "learning assistance program" means a statewide program designed to enhance educational opportunities for public school students in grades kindergarten through twelve who do not meet state standards by providing supplemental instruction and services to those students.

AMENDATORY SECTION (Amending WSR 08-21-053, filed 10/9/08, effective 11/9/08)

**WAC 392-162-036 Definition—Extended learning opportunities.** As used in this chapter the term "extended learning opportunities" means a program of learning assistance in addition to the required basic education instruction designed to improve the educational performance of under-achieving students selected under WAC 392-162-080. The minimum allocation for the learning assistance program shall provide an extended school day and extended school year for each level of school and a per student allocation for maintenance, supplies, and operating costs.

AMENDATORY SECTION (Amending WSR 08-21-053, filed 10/9/08, effective 11/9/08)

**WAC 392-162-054 Definition—District eligibility and distribution of funds.** Each school district with an approved program is eligible for state funds provided for the learning assistance program. The funds shall be appropriated for the learning assistance program in accordance with the ~~((Biennial))~~ Omnibus Appropriations Act and RCW 28A.150.260. The distribution formula is for school district allocation purposes only, but funds appropriated for the learning assistance program must be expended for the purposes of RCW 28A.165.005 through 28A.165.065. The distribution formula shall be based on one or more family income factors measuring economic need.

AMENDATORY SECTION (Amending WSR 08-21-053, filed 10/9/08, effective 11/9/08)

**WAC 392-162-060 District application.** Each district that seeks an allocation from the state for a learning assistance program shall submit an application or significant changes to a previously approved application by July 1st of each year, including the district program plan outlined in WAC 392-162-070, and an annual expenditure plan for

approval on electronic forms provided by the superintendent of public instruction.

AMENDATORY SECTION (Amending WSR 08-21-053, filed 10/9/08, effective 11/9/08)

**WAC 392-162-068 Program plan.** ~~((By July 1st of each year,))~~ (1) A participating school district shall submit the district's plan for using learning assistance funds to the office of the superintendent of public instruction for approval to the extent required under subsection (2) of this section. ~~((Applications must be approved before funds are expended. A school district))~~

The program plan must identify the program activities to be implemented from RCW 28A.165.-035 and implement all of the elements in ~~((subsections (1)))~~ (a) through ~~((8))~~ (h) of this ~~((section))~~ subsection. The school district plan shall include the following:

~~((+))~~ (a) District and school-level data ~~((trends in))~~ on reading, writing, and mathematics achievement as reported pursuant to chapter 28A.655 RCW and relevant federal law;

~~((2))~~ (b) Processes used for identifying the under-achieving students to be served by the program, including the identification of school or program sites providing program activities;

~~((3))~~ Assurance that accelerated learning plans are developed and implemented for participating students. Accelerated learning plans may be developed as part of an existing student achievement plan process such as student plans for achieving state high school graduation standards, individual student academic plans, or the achievement plans for groups of students) (c) How accelerated learning plans are developed and implemented for participating students. Accelerated learning plans may be developed as part of an existing student achievement plan process such as student plans for achieving state high school graduation standards, individual student academic plans, or the achievement plans for groups of students. Accelerated learning plans shall include:

(i) Achievement goals for students;

(ii) Roles of the student, parents or guardians, and teachers in the plan;

(iii) Communication procedures regarding student accomplishments; and

(iv) Plan reviews and adjustments processes;

~~((4))~~ (d) How state level and classroom assessments are used to inform ~~((LAP))~~ instruction;

~~((5))~~ (e) How focused and intentional instructional strategies have been identified and implemented ~~((in the LAP program))~~;

~~((6))~~ (f) How highly qualified instructional staff are developed and supported in the program and in participating schools;

~~((7))~~ (g) How other federal, state, district, and school resources are coordinated with school improvement plans and the district's strategic plan to support underachieving students; and

~~((8))~~ (h) How a program evaluation will be conducted ~~((annually))~~ to determine direction for the following school year

(9) A description of the extended learning opportunities for eligible eleventh and twelfth grade students who are at

risk of not meeting local or state graduation requirements; and

(10) A description of the extended learning opportunities for eligible eighth grade students who have not met standard on the WASL or need additional assistance to successfully enter high school).

(2) If a school district has received approval of its plan once, it is not required to submit a plan for approval under RCW 28A.165.045 or this section unless the district has made a significant change to the plan. If a district has made a significant change to only a portion of the plan, the district need only submit a description of the change made and not the entire plan. Plans or descriptions of changes to the plan must be submitted by July 1st as required under this section. The office of the superintendent of public instruction shall establish guidelines for what a "significant change" is.

AMENDATORY SECTION (Amending WSR 08-21-053, filed 10/9/08, effective 11/9/08)

**WAC 392-162-072 Program plan—Approved activities.** Through the identification of best practices, which maximize the opportunities for student success, services and activities which support the learning assistance program include:

(1) Extended learning time through extended day, week or year activities;

(2) Instructional services to provide extended learning opportunities for eligible eleventh and twelfth grade students who are at risk of not meeting local or state graduation requirements as well as eighth grade students (~~not meeting standard on the Washington assessment of student learning (WASL) or~~) who need additional assistance for a successful entry into high school. The instruction services may include, but are not limited to, the following:

(a) Individual or small group instruction;

(b) Instruction in English language arts and/or mathematics that eligible students need to pass all or part of the Washington assessment of student learning;

(c) Inclusion in remediation programs, including summer school;

(d) Language development instruction for English language learners;

(e) On-line curriculum and instructional support, including programs for credit retrieval;

(3) Professional development for certificated and classified staff that focuses on the needs of diverse student populations, specific literacy and mathematics content and instructional strategies, and the use of student work to guide effective instruction;

(4) Consultant teacher to assist in implementing effective instructional practices by teachers serving participating students;

(5) Tutoring support for participating students; and

(6) Outreach activities and support for parents of participating students.

AMENDATORY SECTION (Amending WSR 07-02-015, filed 12/21/06, effective 1/21/07)

**WAC 392-162-075 Program approval.** A participating school district shall (~~annually~~) submit a program plan to the office of the superintendent of public instruction for approval. The program plan must address all of the elements in RCW 28A.165.025 and identify the program activities to be implemented from RCW 28A.165.035.

School districts achieving state reading and mathematics goals as prescribed in chapter 28A.655 RCW shall have their program approved once the program plan and activities submittal is completed.

School districts not achieving state reading and mathematics goals as prescribed in chapter 28A.655 RCW and that are not in a state or federal program of school improvement shall be subject to program approval once the plan components are reviewed by the office of the superintendent of public instruction for the purpose of receiving technical assistance in the final development of the plan.

School districts with one or more schools in a state or federal program of school improvement shall have their plans and activities reviewed and approved in conjunction with the state or federal program school improvement program requirements.

The superintendent of public instruction shall review and approve each district's program. A district's learning assistance program shall not be implemented prior to approval. If a district does not make significant changes to its learning assistance plan, it is only required to develop and submit a new budget and inform the superintendent of public instruction that no significant changes to the program were made by July 1st. If significant program changes have been made, a new application must be submitted to the superintendent of public instruction. Examples of significant changes include, but are not limited to, changes in the required components in WAC 392-162-068, description of intended uses of funds and the amounts to be expended for approved activities in WAC 392-162-072, number of students to be served by content area and amounts distributed to individual buildings. These changes must be submitted to the superintendent of public instruction by July 1st.

#### WSR 09-24-076

#### PERMANENT RULES SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed November 30, 2009, 9:32 a.m., effective December 31, 2009]

Effective Date of Rule: Thirty-one days after filing.

Purpose: To update and clarify reporting requirements and calculations of the operation allocation formula.

Citation of Existing Rules Affected by this Order: Amending WAC 392-141-185.

Statutory Authority for Adoption: RCW 28A.150.290.

Adopted under notice filed as WSR 09-12-103 on June 2, 2009.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal

Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: July 9, 2009.

Randy I. Dorn  
State Superintendent

**AMENDATORY SECTION** (Amending WSR 07-03-072, filed 1/17/07, effective 2/17/07)

**WAC 392-141-185 Operation allocation computation.** The computation of the transportation operation allocation shall be as follows:

(1) All basic and transit tripper students defined in WAC 392-141-115 who are transported to school shall be measured by radius mile intervals between the bus route stop and the destination sites in accordance with WAC 392-141-170(3) and multiplied by two to yield the round trip totals in each distance interval;

(2) All midday students defined in WAC 392-141-115 and basic shuttle students transported shall be measured by radius mile intervals between the bus route stop and the destination school in accordance with WAC 392-141-170(3). Basic shuttle transportation whose schedule is less than five days a week shall have the weighted units multiplied by the appropriate percent shown in the table below:

No. of days per week	Percent factor
1	20%
2	40%
3	60%
4	100%

(3) The total students in subsections (1) and (2) of this section in each distance interval, multiplied by the applicable distance weighting factor contained in WAC 392-141-170(3) shall equal the weighted student units in each distance interval. Midday transportation students whose schedule is one day per week shall have the weighted student units multiplied by twenty percent;

(4) The district's minimum load factor, if applicable, is calculated pursuant to WAC 392-141-170(5). This factor is multiplied by the total weighted student units generated by basic and tripper students. This total is the additional weighted units attributable to the district's small average bus load;

(5) The sum of the cumulative weighted student units calculated in subsections (3) and (4) of this section, if applicable, equals the total basic transportation weighted units;

(6) The basic allocation is the total basic transportation weighted units calculated in subsection (5) of this section multiplied by the standard student mile allocation rate;

(7) All special students defined in RCW 28A.155.020 transported on special transportation bus routes to school or agencies for related services shall be measured by radius mile intervals between their bus route stops and destinations sites in accordance with WAC 392-141-170(3) and multiplied by two to yield the round trip total in each distance interval;

(8) All special shuttle students transported between schools or agencies less frequently than five days a week shall be measured by radius mile intervals between the bus route stop and destination sites in accordance with WAC 392-141-170(3);

(9) The total students in subsections (7) and (8) of this section in each distance interval multiplied by the applicable distance weighting factor contained in WAC 392-141-170(3) shall equal the weighted student units in each distance interval. Special shuttle transportation whose schedule is less than five days a week shall have the weighted units multiplied by the appropriate percent shown in the table below:

No. of days per week	Percent factor
1	20%
2	40%
3	60%
4	100%

(10) The district's special transportation load factor, if applicable, is calculated pursuant to WAC 392-141-170. The factor is multiplied by the total weighted student units generated by special students (not special shuttle students);

(11) The weighted student units calculated in subsections (9) and (10) of this section, if applicable, equals the total special transportation weighted units;

(12) The special allocation is the total special transportation weighted units calculated in subsection (11) of this section, multiplied by the standard student mile allocation rate;

(13) The one radius mile allocation for basic trippers and midday kindergarten students shall be calculated by the number of kindergarten through fifth grade students enrolled during the five consecutive day count week and living one radius mile or less from their enrollment school less kindergarten through fifth grade special education students living and transported within one mile, multiplied by the allocation rate, and further multiplied by a factor established by the Biennial Appropriations Act;

(14) The district car allocation is computed for each vehicle and then totaled to equal the district car allocation. The computation is based on one hundred eighty days and fifty mile increments multiplied by the appropriate district car operation and depreciation rates published by the superintendent of public instruction. All vehicles traveling over two hundred fifty miles receive only the depreciation rate for miles in excess of two hundred fifty for the one hundred eighty day period;

(15) The district's annual allocation for transportation operation is the total of the calculations made in subsections (6), (12), (13) and (14) of this section;

(16) The allocation for kindergarten through fifth grade students living one radius mile or less from their school of enrollment may be used for transporting students, funding crossing guards or local and the state matching funds for capital projects. Projects managed by the federal government are ineligible;

(17) When a district submits a revised report pursuant to WAC 392-141-165, to the extent funds are available, the district's operation allocation shall be recalculated. Any increase in operations allocations shall be prorated for the remainder of the annual school term or until termination of activities before the end of the scheduled school term. The date that the district documents first meeting the ten percent increase in eligible students transported shall be used to prorate any increase in annual transportation operation allocations.

(18) The funding assumption for the transportation operation allocation is that kindergarten through twelfth grade (K-12) school transportation services are provided by the school district five days per week, to and from school, before and after the regular school day. K-12 service being provided on any other basis is subject to corresponding proration of the operation allocation.

**WSR 09-24-078**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**FINANCIAL INSTITUTIONS**  
(Securities Division)

[Filed November 30, 2009, 11:44 a.m., effective December 31, 2009]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The securities division is amending WAC 460-44A-503 to correct a typographical error. The rules in WAC 460-44A-503 set forth the requirements for filing notices on Form D in connection with offerings of securities that are conducted in reliance upon the private and limited offering exemptions from securities registration set forth in WAC 460-44A-504 and 460-44A-505, and for offerings of securities made in reliance on federal Rule 506 of Regulation D under the Securities Act of 1933 in combination with WAC 460-44A-506. These rules were amended in 2008 to adopt, among other things, text from federal Rule 503 of Regulation D to require amendments to Form D be filed with the securities division in the same circumstances and on the same schedule as required by the Securities and Exchange Commission. The final codification of these rules contains a typographical error in that current WAC 460-44A-503 (3)(b)(x) should have been numbered WAC 460-44A-503 (3)(c). The securities division is now amending WAC 460-44A-503 to correct this typographical error. The text of WAC 460-44A-503 marked to show the amendment is filed with this notice.

Citation of Existing Rules Affected by this Order:  
Amending WAC 460-44A-503.

Statutory Authority for Adoption: RCW 21.20.450, 21.20.320 (1), (9), (17).

Adopted under notice filed as WSR 09-19-087 on September 18, 2009.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: November 30, 2009.

Scott Jarvis  
Director

AMENDATORY SECTION (Amending WSR 08-16-072, filed 7/31/08, effective 9/15/08)

**WAC 460-44A-503 Filing of notice and payment of fee.** (1) An issuer offering or selling securities in reliance on WAC 460-44A-504, 460-44A-505, or 460-44A-506 shall file with the administrator of securities of the department of financial institutions or his or her designee a notice and pay a filing fee as follows:

(a)(i)(A) For an offering of a security in reliance upon the Securities Act of 1933, Regulation D, Rule 230.506 and RCW 21.20.327(2) and 21.20.320(1), the issuer shall file a notice on Securities and Exchange Commission Form D marking Rule 506 and pay a filing fee of three hundred dollars no later than fifteen days after the first sale of such securities in the state of Washington, unless the end of that period falls on a Saturday, Sunday or holiday, in which case the due date would be the first business day following.

(B) For an offering in reliance on Securities and Exchange Commission Rule 505 and WAC 460-44A-505, the issuer shall file the initial notice on Securities and Exchange Commission Form D marking Rule 505 and pay a filing fee of three hundred dollars no later than fifteen days after the first sale of securities in the state of Washington which results from an offer being made in reliance upon WAC 460-44A-505, unless the end of that period falls on a Saturday, Sunday or holiday, in which case the due date would be the first business day following;

(C) For an offering in reliance on Securities and Exchange Commission Rule 504 and WAC 460-44A-504, the issuer shall file the initial notice on Securities and Exchange Commission Form D marking Rule 504 and pay a filing fee of fifty dollars no later than ten business days (or such lesser period as the administrator may allow) prior to receipt of consideration or the delivery of a signed subscription agreement by an investor in the state of Washington which results from an offer being made in reliance upon WAC 460-44A-504;

(D) For an offering in reliance on Securities and Exchange Commission Rule 147 and WAC 460-44A-504, the issuer shall file the initial notice on Washington Securities Division Form WAC 460-44A-504/Rule 147 and pay a filing fee of fifty dollars no later than ten business days (or such lesser period as the administrator may allow) prior to receipt of consideration or the delivery of a signed subscription agreement by an investor in the state of Washington which results from an offer being made in reliance on the exemption of WAC 460-44A-504;

(ii) The issuer shall include with the initial notice a statement indicating:

(A) The date of first sale of securities in the state of Washington; or

(B) That sales have yet to occur in the state of Washington.

(b) The issuer shall file with the administrator or his or her designee such other notices on Form D as are required to be filed with the Securities and Exchange Commission. For purposes of this section, the initial notice on Securities and Exchange Commission Form D shall consist of either the Temporary Form D (17 CFR 239.500T) as adopted by the Securities and Exchange Commission together with an executed uniform consent to service of process on Form U-2 while Temporary Form D remains in effect from September 15, 2008 through March 15, 2009, or the notice of sales on Form D filed in paper or electronic format with the Securities and Exchange Commission through the Electronic Data Gathering, Analysis, and Retrieval System (EDGAR) in accordance with EDGAR rules set forth in Regulation S-T (17 CFR Part 232) and in effect on September 15, 2008.

(c) If the issuer files a notice of sales on Temporary Form D or a copy of the notice of sales on Form D filed in electronic format with the Securities and Exchange Commission, it shall either be manually signed by a person duly authorized by the issuer or a photocopy of a manually signed copy.

(d) By filing for the exemption of WAC 460-44A-504 or 460-44A-505, the issuer undertakes to furnish to the administrator, upon request, the information to be furnished or furnished by the issuer under WAC 460-44A-502 (2)(b) or otherwise to any purchaser that is not an accredited investor. Failure to submit the information in a timely manner will be a ground for denial or revocation of the exemption of WAC 460-44A-504 or 460-44A-505.

(2) An issuer may file an amendment to a previously filed notice of sales on Form D at any time.

(3) An issuer must file an amendment to a previously filed notice of sales on Form D for an offering:

(a) To correct a material mistake of fact or error in the previously filed notice of sales on Form D, as soon as practicable after discovery of the mistake or error;

(b) To reflect a change in the information provided in the previously filed notice of sales on Form D, as soon as practicable after the change, except that no amendment is required to reflect a change that occurs after the offering terminates or a change that occurs solely in the following information:

(i) The address or relationship of the issuer of a related person identified in response to Item 3 of the notice of sales on Form D;

(ii) An issuer's revenues or aggregate net asset value;

(iii) The minimum investment amount, if the change is an increase, or if the change, together with all other changes in that amount since the previously filed notice of sales on Form D, does not result in a decrease of more than ten percent;

(iv) Any address or state(s) of solicitation shown in response to Item 12 of the notice of sales on Form D;

(v) The total offering amount, if the change is a decrease, or if the change, together with all other changes in that amount since the previously filed notice of sales on Form D, does not result in an increase of more than ten percent;

(vi) The amount of securities sold in the offering or the amount remaining to be sold;

(vii) The number of nonaccredited investors who have invested in the offering, as long as the change does not increase the number to more than thirty-five;

(viii) The total number of investors who have invested in the offering;

(ix) The amount of sales commissions, finders' fees or use of proceeds for payments to executive officers, directors or promoters, if the change is a decrease, or if the change, together with all other changes in that amount since the previously filed notice of sales on Form D, does not result in an increase of more than ten percent; and

~~((\*)~~) (c) Annually, on or before the first anniversary of the filing of the notice of sales on Form D or the filing of the most recent amendment to the notice of sales on Form D, if the offering is continuing at that time.

(4) An issuer that files an amendment to a previously filed notice of sales on Form D must provide current information in response to all requirements of the notice of sales on Form D regardless of why the amendment is filed.

(5) Amendments to notices filed before September 15, 2008 and to notices filed on or after September 15, 2008 in paper format using Temporary Form D (17 CFR 239.500T) must use Temporary Form D but need only report the issuer's name and the information required by Part C and any material change in the facts from those set forth in Parts A and B.

## WSR 09-24-080

### PERMANENT RULES

### DEPARTMENT OF ECOLOGY

[Order 04-02—Filed November 30, 2009, 2:25 p.m., effective December 31, 2009]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The adoption of this water management rule is needed to protect instream values within portions of the Quilcene-Snow watershed, to avoid injury to existing water rights from future appropriations of water, and implement recommendations of the WRIA 17 Quilcene-Snow watershed planning unit. This rule sets instream flows, closes or seasonally closes subbasins to future withdrawals, establishes reserves of water for future use, specifies conditions of use for access to the reserves, and requires metering for all new withdrawals. This rule helps the Washington state department of ecology meet statutory obligations to manage waters for public use and for the protection of instream flows.

Statutory Authority for Adoption: Chapters 90.54, 90.22, 90.82, 90.03, and 90.44 RCW.

Adopted under notice filed as WSR 09-11-095 on May 18, 2009.

Changes Other than Editing from Proposed to Adopted Version: There are a number of changes from the proposed rule published with the CR-102 and the rule adopted and published with the CR-103. The changes were made in response to comments, as well as upon ecology's initiative. The changes made do not change the general subject matter or the intent of the rule as proposed.

A typographical error was corrected in the title.

**WAC 173-517-010 Purpose and introduction.**

In subsection (3) deleted last sentence that mentioned rainwater catchment provisions. The rainwater provisions in the proposed rule were deleted in response to publication of ecology's rainwater policy interpretive statement 1017. This policy states ecology's interpretation that the on-site storage and/or beneficial use of rooftop or guzzler collected rainwater is not subject to the permit process of chapter 90.03 RCW.

In subsection (4)(b) deleted language that discussed setting limits on future ground water withdrawals in coastal management areas. Ecology did not adopt WAC 173-517-130 of the proposed rule. Ecology chose to postpone rule making to address closures and water management requirements in the coastal management areas in light of recently issued Attorney General Opinion 2009 No. 6. Eliminating these provisions has no effect on remaining elements of the rule. More time is needed to assess management approaches for the coastal areas.

**WAC 173-517-020 Authority and applicability.**

In subsection (4) deleted the phrase "existing on the effective date of this chapter" to be consistent with other rules.

In subsection (4) added language clarifying the applicability of the rule to existing permit-exempt withdrawals. This clarification is consistent with original rule intent and was also made in response to comments.

**WAC 173-517-030 Definitions.**

In subsection (8) clarified the definition of hydraulically connected to say "between" ground water sources. This change was made in response to a comment from the Jamestown S'Klallam Tribe.

**WAC 173-517-040 Compliance and enforcement.**

No changes were made.

**WAC 173-517-050 Appeals.**

No changes were made.

**WAC 173-517-060 Regulation review.**

In subsection (3) changed "regularly" to "annually" for reviewing reserve quantities. This change was made in response to several comments requesting clarification of the review frequency.

**WAC 173-517-070 Maps.**

Deleted Map C which showed the locations of three streams in the coastal management areas. Ecology chose to postpone rule making to address closures and water management requirements in the coastal management areas in light of recently issued Attorney General Opinion 2009 No. 6. Eliminating these provisions has no effect on remaining ele-

ments of the rule. More time is needed to assess management approaches for the coastal areas.

**WAC 173-517-080 Establishment of stream management units.**

No changes were made.

**WAC 173-517-090 Instream flows.**

In subsection (3)(a) the word "on" was replaced with "before" making this provision more specific and consistent with rule intent. This change was made in response to comments.

**WAC 173-517-100 Closures.**

Deleted subsection (2) of this section, deleted reference to subsection (2) and renumbered remaining sections. The deleted language would have closed surface and ground water in coastal management areas. Ecology chose to postpone rule making to address closures and water management requirements in the coastal management areas in light of recently issued Attorney General Opinion 2009 No. 6. Eliminating these provisions has no effect on remaining elements of the rule. More time is needed to assess management approaches for the coastal areas.

**WAC 173-517-110 Future new water use—Generally.**

In subsections (2), (3), and (3)(a) eliminated references to subsection WAC 173-517-100(2) which has been deleted.

In subsection (3)(b) eliminates reference to WAC 173-517-130, and instead refers to Map B of WAC 173-517-070 for designating coastal management areas. This change was made to maintain internal consistency in light of ecology's decision to not adopt WAC 173-517-130 of the proposed rule.

Language changes in subsection (4) to clarify submittal and approval of mitigation plans. These changes were made in response to comments from the Jamestown S'Klallam Tribe, American Rivers, and the Washington Environmental Council.

Deleted subsection (8) and edited introductory paragraph of WAC 173-517-110 for internal consistency. The rainwater provisions in the proposed rule were deleted in response to publication of ecology's rainwater policy interpretive statement 1017. This policy states ecology's interpretation that the on-site storage and/or beneficial use of rooftop or guzzler collected rainwater is not subject to the permit process of chapter 90.03 RCW.

**WAC 173-517-120 Conservation standard.**

Added language to subsection (1)(b) to clarify that the provisions of this rule may not be modified by county ordinance. The change was made in response to a comment from American Rivers and Washington Environmental Council.

Added language to subsection (2) clarifying that uses associated with a group domestic system may also mitigate for water use above the conservation standard. This change is consistent with original rule intent.

**WAC 173-517-130 Designated coastal management areas.**

Ecology chose to postpone rule making to address closures and water management requirements in the coastal management areas in light of recently issued Attorney General Opinion 2009 No. 6. Eliminating these provisions has no effect on remaining elements of the rule. More time is

needed to assess management approaches for the coastal areas.

**WAC 173-517-140 Maximum future allocations for interruptible use.**

No changes to this section.

**WAC 173-517-150 Reserves of water for future use.**

Subtitles were added to subsections (4), (5), (6), (7), and (8) to aid in readability.

In subsections (5), (6), and (7) the "or" was replaced with "and" to clarify that all the listed uses are allowed in the named reserve management areas. This change is a grammatical correction and consistent with original intent.

In subsection (8) clarified the use allowed in the Chimacum reserve management area by adding reference to the applicable definition in WAC 173-517-030. This change provides clarification and is consistent with original intent.

In subsection (8)(a) modified language for internal consistency with clarification in subsection (8) of this section.

In subsection (8)(b) added clarifying language to state this provision applies "within the Chimacum subbasin." This language is consistent with the original intent.

In subsection (10) added reference to WAC 173-517-110 and modified language for consistency with WAC 173-517-110. The change clarifies the applicability of the provisions in section 173-517-110 and was made in response to a comment from the Jamestown S'Klallam Tribe.

**WAC 173-517-160 Accounting for use under the reserves.**

In subsection (5) modified language to allow any water to be credited to a reserve if a water user permanently ceases use. This change allows more flexibility for managing reserves and was made in response to a comment from Jefferson County.

In subsection (6) added an ecology commitment to publish a public notice about remaining quantities in the reserves. This change [change] was made in response to comments received about WAC 173-517-060 Regulation review.

**WAC 173-517-170 Lakes and ponds.**

No change to this section.

**WAC 173-517-180 Measuring water use.**

Modified language to require "each" new appropriation to meter water use, and deleted the word "source" to clarify that meters may be required for each connection. This change was made in response to a comment from the department of commerce.

Add the word "or" to the last sentence to clarify reporting requirements.

**WAC 173-517-190 Conveying stock water away from streams.**

Ecology did not adopt WAC 173-517-190 of the proposed rule. This section of the proposed rule was not adopted because existing ecology policy number 1025, *Conveying Stockwater Away from Streams to Protect Water Quality*, contains the same provisions as the proposed rule language.

**WAC 173-517-200 Future surface water withdrawals for environmental restoration.**

No change to this section.

**WAC 173-517-210 Out of subbasin water use.**

No change to this section.

A final cost-benefit analysis is available by contacting Barbara Anderson, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-6607, fax (360) 407-6574, e-mail btov461@ecy.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 19, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 19, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: November 30, 2009.

Ted Sturdevant  
Director

**Chapter 173-517 WAC**

**WATER RESOURCES MANAGEMENT PROGRAM  
FOR THE QUILCENE-SNOW WATER RESOURCE  
INVENTORY AREA (WRIA 17)**

**PART A - GENERAL PROVISIONS**

NEW SECTION

**WAC 173-517-010 Purpose and Introduction.** (1) The purpose of this chapter is to retain rivers, streams, lakes and ponds in the Quilcene-Snow water resource inventory area (WRIA 17) with instream flows and levels necessary to protect and preserve wildlife, fish, stock water, scenic, aesthetic, recreation, water quality and other environmental values and navigational values.

(2) WRIA 17 is located on the northeastern Olympic Peninsula and includes portions of Jefferson and Clallam counties. This chapter excludes part of the Clallam County portion of WRIA 17.

(3) This chapter sets forth the department of ecology's (ecology) policies to guide the protection, use and management of WRIA 17 surface water and ground water resources. It establishes instream flows and closures, and sets forth a program for the administration of future water appropriation and use. For the Chimacum subbasin, where water availability is severely limited, a small amount of water is reserved for restricted out of stream use to provide a transition until alternative sources of water can be developed.

(4) This chapter designates two types of management areas for administering future water appropriation and use:

(a) **Reserve management areas.** This chapter establishes reserves of water within specified reserve management areas.

(b) **Coastal management areas.** This chapter designates coastal management areas.

(5) This chapter does not release anyone from complying with other relevant laws and rules.

#### NEW SECTION

**WAC 173-517-020 Authority and applicability.** (1) This chapter is adopted under the authority of the Water Resources Act of 1971 (chapter 90.54 RCW), Minimum Water Flows and Levels Act (chapter 90.22 RCW), Watershed Planning Act (chapter 90.82 RCW), Water code (chapter 90.03 RCW), Regulation of public ground waters (chapter 90.44 RCW) and the water resources management program rule (chapter 173-500 WAC).

(2) Except as provided in subsection (3) of this section, this chapter applies to the use and appropriation of:

(a) All surface waters within WRIA 17, including all streams, and their tributaries, that drain to salt water; and

(b) All ground water within WRIA 17, including ground water hydraulically connected to surface water bodies, as well as ground water that drains to salt water.

(3) The following portion of WRIA 17 located in Clallam County, as shown in Map B in WAC 173-517-070, will be addressed through future rule making and is excluded from coverage under this chapter:

- Johnson Creek;
- West Sequim Bay;
- Dean Creek;
- Jimmycomelately Creek;
- Chicken Coop Creek; and
- The portion of Miller Peninsula in Clallam County.

(4) This chapter shall not affect existing water rights, including perfected riparian rights, or other appropriative rights, unless otherwise provided for in the conditions of the water right in question. An existing permit-exempt withdrawal is not subject to the rule to the extent such withdrawal has been put to beneficial use on the subject property for the purpose of use in question.

(5) This chapter shall not affect federal or Indian reserved rights. The Jamestown S'Klallam, Port Gamble S'Klallam, Lower Elwha Klallam, and Skokomish Tribes reserve the right to claim a treaty-derived off-reservation instream flow right with senior priority. The extent of such rights can only be determined in other forums outside of this chapter.

(6) This chapter does not limit ecology's authority to establish flow requirements or conditions under other laws, including hydropower licensing under RCW 90.48.260.

#### NEW SECTION

**WAC 173-517-030 Definitions.** For the purposes of this chapter, the following definitions apply. If these definitions differ from those in related rules, the definitions presented here shall apply for this chapter:

(1) "Allocation" means the designating of specific amounts of water.

(2) "Appropriation" means the process of legally acquiring the right to specific amounts of water for beneficial uses, as consistent with ground and surface water codes and other

applicable statutes. This term refers to both surface and ground water right permits and to ground water withdrawals exempted from permit requirements under RCW 90.44.050.

(3) "Commercial agriculture" means the production of crops for sale, crops intended for widespread distribution (e.g., markets), and nonfood crops such as hay and lavender. Commercial agriculture includes livestock production and livestock grazing. Commercial agriculture does not include crops grown for household consumption (e.g., household vegetable gardens or fruit trees).

(4) "Consumptive use" means a beneficial use of water that diminishes the amount or quality of water in the water source.

(5) "Domestic use" means use of water associated with human health and welfare requirements, including water used for drinking, bathing, sanitary requirements, cooking, laundering and other incidental household uses, including potable domestic water requirements associated with commercial and industrial purposes.

(6) "Ecology" means the Washington state department of ecology.

(7) "Group domestic system" means domestic use of the ground water exemption for two or more residences.

(8) "Hydraulically connected" means saturated conditions exist that allow water to move between two or more sources of water, either between surface water and ground water or between ground water sources.

(9) "Individual user" means all uses on an individual parcel or adjoining parcels under common ownership that do not qualify as a group domestic system.

(10) "Instream flow" means a stream flow level set in rule to protect and preserve wildlife, fish, scenic, aesthetic, recreation, water quality and other environmental values, and navigational values. The term "instream flow" means a base flow under chapter 90.54 RCW, a minimum flow under chapter 90.03 or 90.22 RCW, or a minimum instream flow under chapter 90.82 RCW.

(11) "Interruptible use" means a use, authorized under a water right, which must cease diversion or withdrawal when stream flows fall below the instream flow levels established in this rule.

(12) "Mitigation plan" means a plan, submitted to and approved by ecology, to offset the impacts of a proposed consumptive use. A mitigation plan may address impacts to a stream, basin, reach, or other area, for an individual withdrawal or for multiple withdrawals in a subbasin.

(a) A mitigation plan must show that the proposed withdrawal with mitigation in place, will not:

- Impair existing water rights, including instream flow rights;
- Be detrimental to the public interest; or
- Consume water from a closed source.

(b) The plan must include financial assurance, ensure mitigation measures for the duration of the water use and prohibit water provided for the purpose of mitigation from appropriation for any other purpose.

(c) The plan must include a monitoring and reporting plan, including a quality assurance/quality control plan.

(13) "Outdoor irrigation" means watering greenhouse or outdoor plants, lawns, or gardens.

(14) "Permit-exempt withdrawals" or "permit-exempt well" means a ground water withdrawal exempted from permit requirements under RCW 90.44.050, but otherwise subject to the surface and ground water statutes and other applicable laws, including this chapter.

(15) "Reserve" means a one-time, finite allocation of water for future appropriations.

(16) "Stream management unit" means a stream segment, reach, or tributary used to describe the part of the relevant stream to which a particular instream flow level applies.

(17) "Subbasin" means a reserve management area or coastal management area as shown on Map B in WAC 173-517-070.

(18) "Withdrawal" means the appropriation or use of ground water, or the diversion or use of surface water. Withdrawal includes both withdrawals under a water right permit and permit-exempt withdrawals.

- Significant new information becomes available.
- Significant changes in conditions such as population growth trends, water service areas and ground water levels occur.

(3) Ecology, in consultation with the counties, Jefferson County PUD #1, tribal governments and the WRIA 17 planning unit (if active), will annually review the allocated and unallocated amounts for each reserve management area.

#### NEW SECTION

##### **WAC 173-517-040 Compliance and enforcement.** (1)

In accordance with RCW 90.03.605, to assist the public in complying with this chapter, ecology shall prepare and distribute technical and educational information regarding the scope and requirements of this chapter.

(2) When ecology determines that a violation has occurred, it shall:

(a) First attempt to achieve voluntary compliance. One method is to offer information and technical assistance to the person, in writing, showing one or more means to legally accomplish the person's purposes.

(b) If education and technical assistance do not achieve compliance, ecology may issue a notice of violation, a formal administrative order under RCW 43.27A.190, or assess penalties under RCW 43.83B.336, 90.03.400, 90.03.410, 90.03.600, 90.44.120, and 90.44.130.

(3) Nothing in this section is intended to prevent ecology from taking immediate action to cause a violation to be ceased immediately if in the opinion of the department the nature of the violation is causing harm to other water rights or to public or tribal resources.

#### NEW SECTION

**WAC 173-517-050 Appeals.** All of ecology's final written decisions pertaining to permits, regulatory orders, and related decisions made pursuant to this chapter may be appealed to the pollution control hearings board in accordance with chapter 43.21B RCW.

#### NEW SECTION

**WAC 173-517-060 Regulation review.** (1) Ecology reserves the right to review and amend this rule as needed.

(2) Ecology, in consultation with the counties, the city of Port Townsend, Jefferson County PUD #1, tribal governments, other state agencies, and the WRIA 17 planning unit (if active), may initiate a review, and if necessary a modification through rule making, of this chapter as appropriate, including whenever:

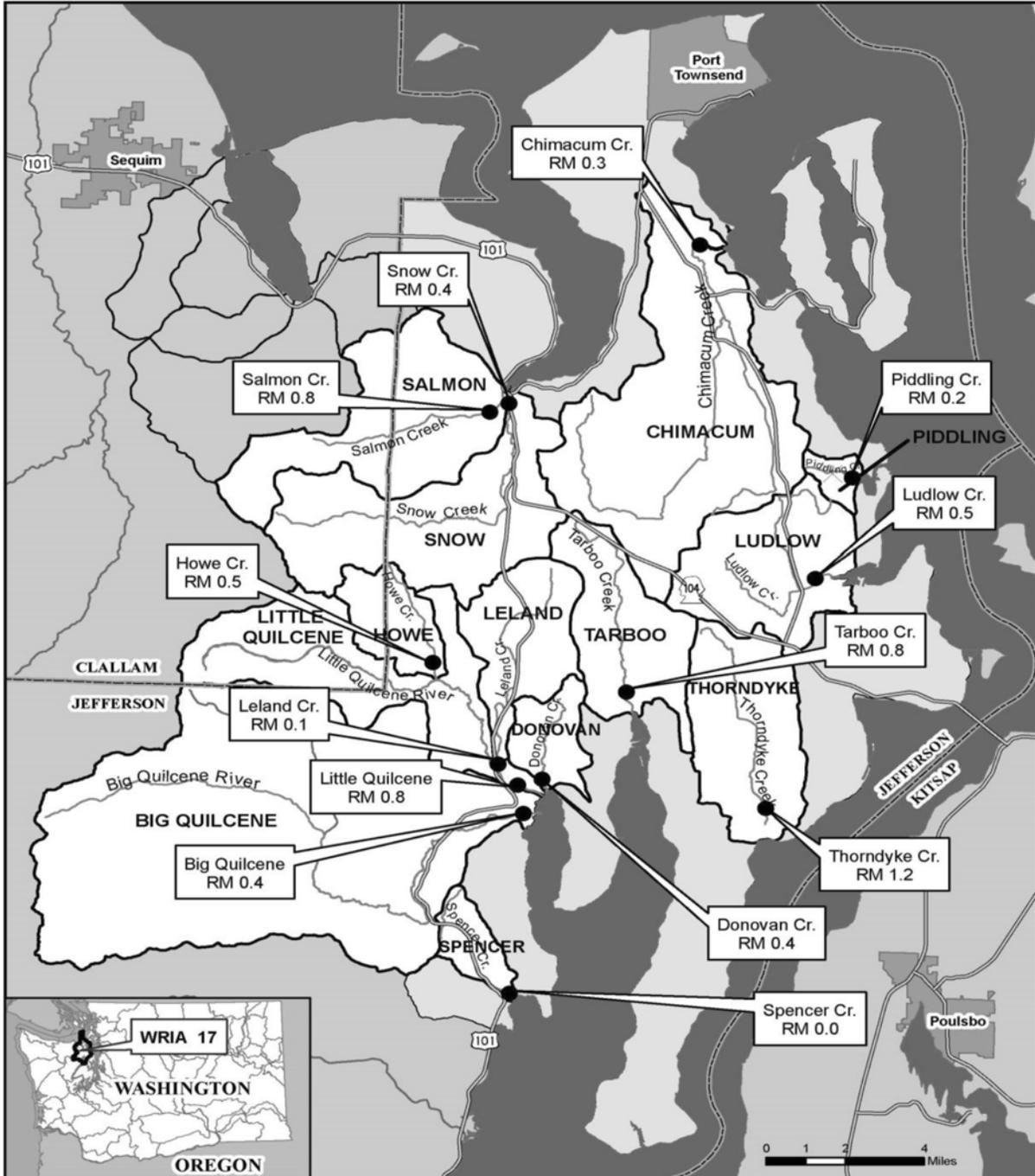
- Applicable statutory changes are enacted.

NEW SECTION

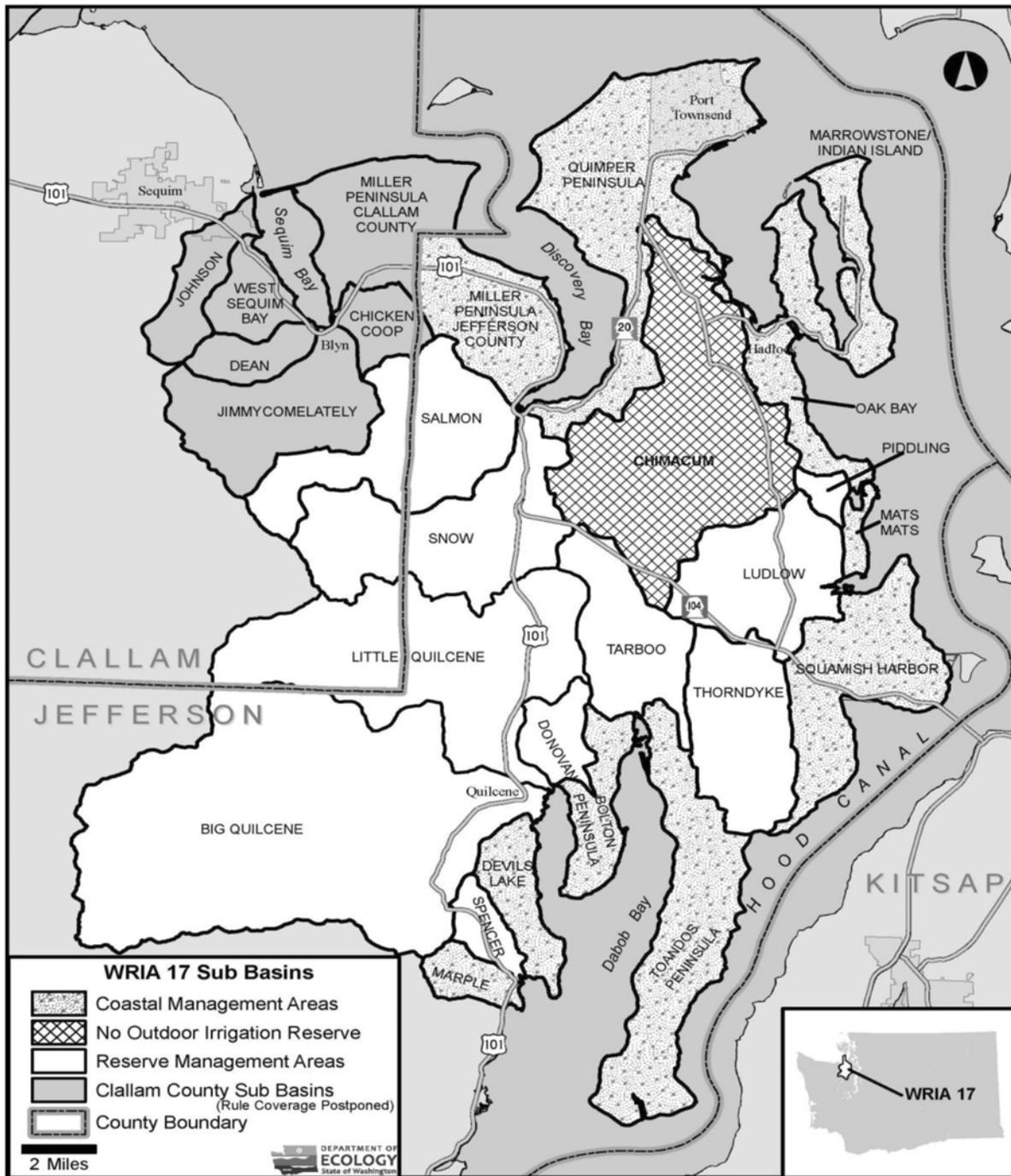
**WAC 173-517-070 Maps.** For the purpose of administering this chapter, two maps are provided. Map A shows the boundaries of the stream management units and the control points. Map B shows reserve management areas, coastal management areas, and the portion of WRIA 17 not covered by this chapter.

**Map A**

**WRIA 17 Stream Management Units and Control Points**



Map B



PART B - INSTREAM FLOWS AND CLOSURES

NEW SECTION

**WAC 173-517-080 Establishment of stream management units.** Ecology hereby establishes the following stream management units, with accompanying control points. A

control point is a designated location on a stream used to set and measure instream flow levels. Each control point location is identified by estimated river mile and approximate latitude and longitude in Table 1. The control points and boundaries of the stream management units are shown on Map A in WAC 173-517-070.

**Table 1**  
**Stream Management Unit Information**

<b>Stream Management Unit Name</b>	<b>Control Point by River Mile (RM); Latitude North (Lat) and Longitude West (Long)</b>	<b>Stream Management Reach</b>
Big Quilcene River	RM 0.4 Lat 47° 49' 07" N, Long 122° 52' 17" W	From mouth to headwaters, including tributaries.
Chimacum Creek	RM 0.3 Lat 48° 03' 00" N, Long 122° 47' 07" W	From mouth to headwaters, including tributaries.
Donovan Creek	RM 0.4 Lat 47° 49' 58" N, Long 122° 51' 43" W	From mouth to headwaters, including tributaries.
Howe Creek	RM 0.5 Lat 47° 52' 43" N, Long 122° 55' 24" W	From mouth to headwaters, including tributaries.
Leland Creek	RM 0.1 Lat 47° 50' 18" N, Long 122° 53' 10" W	From mouth to headwaters, including tributaries.
Little Quilcene River	RM 0.8 Lat 47° 49' 48" N, Long 122° 52' 30" W	From mouth to headwaters, including tributaries except Leland and Howe creeks.
Ludlow Creek	RM 0.5 Lat 47° 55' 00" N, Long 122° 43' 00" W	From mouth to headwaters, including tributaries.
Piddling Creek #17.0200	RM 0.2 Lat 47° 57' 27" N, Long 122° 41' 54" W	From mouth to headwaters, including tributaries.
Salmon Creek	RM 0.8 Lat 47° 58' 49" N, Long 122° 53' 49" W	From mouth to headwaters, including tributaries.
Snow Creek	RM 0.4 Lat 47° 59' 02" N, Long 122° 53' 12" W	From mouth to headwaters, including tributaries.
Spencer Creek	RM 0.0 Lat 47° 44' 45" N, Long 122° 52' 33" W	From mouth to headwaters, including tributaries.

<b>Stream Management Unit Name</b>	<b>Control Point by River Mile (RM); Latitude North (Lat) and Longitude West (Long)</b>	<b>Stream Management Reach</b>
Tarboo Creek	RM 0.8 Lat 47° 52' 08" N, Long 122° 49' 03" W	From mouth to headwaters, including tributaries.
Thorndyke Creek	RM 1.2 Lat 47° 49' 24" N, Long 122° 44' 23" W	From mouth to headwaters, including tributaries.

NEW SECTION

**WAC 173-517-090 Instream flows.** (1) Instream flows established in this chapter are flow levels which protect and preserve wildlife, fish, stock water, scenic, aesthetic, recreation, water quality and other environmental values, and navigational values.

(2) Instream flows established in this chapter are water rights, which protect instream values from future consumptive appropriations. The priority date of the instream flows is the effective date of this chapter.

(3) Instream flows will be protected from impairment by any new water rights commenced after the effective date of this chapter and by all future changes and transfers of senior and junior water rights, including both surface and ground water rights. The following water rights are not subject to instream flows:

(a) Water rights existing before the effective date of this chapter as explained in WAC 173-517-020(4).

(b) Water rights appropriated from the reserves of water established in WAC 173-517-150.

(c) Future withdrawals for environmental restoration purposes under WAC 173-517-200, unless included as a permit condition.

(4) Instream flows are expressed in cubic feet per second (cfs), and measured at the control points identified in WAC 173-517-080.

(5) Instream flows are established in Tables 2 through 4 below, for the stream management units identified in WAC 173-517-080.

**Table 2**  
**Instream Flows (in cfs) for Big and Little Quilcene Rivers, with Ecology Gauge Number and River Mile (RM)**

<b>Month</b>	<b>Big Quilcene River Ecology Gauge #17A060 RM 0.4</b>	<b>Little Quilcene River Ecology Gauge #17D060 RM 0.8</b>
January	120	61
February	120	61
March	190	100
April	190	100
May	190	92

<b>Month</b>	<b>Big Quilcene River Ecology Gauge #17A060 RM 0.4</b>	<b>Little Quilcene River Ecology Gauge #17D060 RM 0.8</b>
June	190	66
July	190	66
August	167	27
September	94	30
October	180	48
November	120	61
December	120	61

**Table 3**  
**Instream Flows (in cfs) for Named Creeks with Ecology Stream Gauges**  
**(including gauge number and River Mile (RM))**

<b>Month</b>	<b>Chimacum Creek Ecology Gauge #17B050 RM 0.3</b>	<b>Salmon Creek Ecology Gauge #17F060 RM 0.8</b>	<b>Snow Creek Ecology Gauge #17E060 RM 0.4</b>	<b>Tarboo Creek Ecology Gauge #17G060 RM 0.8</b>	<b>Thorndyke Creek Ecology Gauge #17H060 RM 1.2</b>
January	25	21	35	20	24
February	25	21	35	20	24
March	46	40	50	25	45
April	46	35	50	16	45
May	32	26	50	8	30
June	10	26	35	8	30
July	10	9	17	8	12
August	10	9	15	8	12
September	17	9	20	8	12
October	20	12	35	8	12
November	25	21	35	20	24
December	25	21	35	20	24

**Table 4**  
**Instream Flows (in cfs) for Other Named Creeks (including River Mile (RM))**

<b>Month</b>	<b>Donovan Creek RM 0.4</b>	<b>Howe Creek RM 0.5</b>	<b>Leland Creek RM 0.1</b>	<b>Ludlow Creek RM 0.5</b>	<b>Piddling Creek RM 0.2</b>	<b>Spencer Creek RM 0.0</b>
January	15.5	17.1	33.1	32.1	5.8	13.3
February	10.2	11.3	21.8	21.2	3.8	8.8
March	29.8	32.6	58.3	56.8	12.4	26.1
April	29.8	32.6	58.3	56.8	12.4	26.1
May	19.7	21.5	38.5	37.9	8.2	17.2
June	19.7	21.5	38.5	37.9	8.2	17.2
July	6.1	6.8	13.9	13.5	2.1	5.2
August	6.1	6.8	13.9	13.5	2.1	5.2
September	6.1	6.8	13.9	13.5	2.1	5.2
October	6.1	6.8	13.9	13.5	2.1	5.2
November	15.5	17.1	33.1	32.1	5.8	13.3
December	15.5	17.1	33.1	32.1	5.8	13.3

NEW SECTION

**WAC 173-517-100 Closures.** (1) Based on past and current low flows, ecology has determined that no waters are reliably available for new consumptive uses from the streams and tributaries in WRIA 17 listed in Table 5, with the exception of certain times of year in the Big Quilcene River and Chimacum Creek. Therefore, all surface waters listed in Table 5 are closed to any further consumptive appropriation, except as provided in WAC 173-517-110.

Ecology finds that there is some water available above the instream flows at specific locations and times of year in the Big Quilcene River and Chimacum Creek that could be appropriated for storage or other projects that do not require year-round water supplies. These withdrawals require a water right permit from ecology and are subject to the seasonal restrictions in Table 5, the instream flows established in WAC 173-517-090, and the allocation limits defined in WAC 173-517-140.

(2) Closures in subsection (1) of this section include future withdrawals from ground water that would have an adverse impact on closed surface water, including permit-exempt withdrawals.

(3) Exceptions to the closures are provided in WAC 173-517-110.

**Table 5  
Surface Water Closures**

<b>Stream Management Unit Name</b>	<b>Affected Reach</b>	<b>Timing</b>
Big Quilcene River	From mouth to headwaters, including tributaries.	June 16 to November 15
Chimacum Creek	From mouth to headwaters, including tributaries.	March 1 to November 30
Donovan Creek	From mouth to headwaters, including tributaries.	All Year
Howe Creek	From mouth to headwaters, including tributaries.	All Year
Leland Creek	From mouth to headwaters, including tributaries.	All Year
Little Quilcene River	From mouth to headwaters, including tributaries except Leland and Howe creeks.	All Year

<b>Stream Management Unit Name</b>	<b>Affected Reach</b>	<b>Timing</b>
Ludlow Creek	From mouth to headwaters, including tributaries.	All Year
Piddling Creek #17.0200	From mouth to headwaters, including tributaries.	All Year
Salmon Creek	From mouth to headwaters, including tributaries.	All Year
Snow Creek	From mouth to headwaters, including tributaries.	All Year
Spencer Creek	From mouth to headwaters, including tributaries.	All Year
Tarboo Creek	From mouth to headwaters, including tributaries.	All Year
Thorndyke Creek	From mouth to headwaters, including tributaries.	All Year

**PART C - FUTURE NEW WATER USE**

NEW SECTION

**WAC 173-517-110 Future new water use—Generally.** A new surface or ground water appropriation (including any permit-exempt ground water withdrawal) or other new use may occur only if consistent with the surface and ground water statutes and the applicable requirements of law and if any one of the following seven conditions (subsections (1) through (7) of this section) apply:

- (1) The proposed use is nonconsumptive.
- (2) The proposed surface water appropriation would not have an adverse effect on any of the surface waters closed in WAC 173-517-100(1).
- (3) The proposed ground water withdrawal is located where it would not adversely affect any of the surface waters closed in WAC 173-517-100(1), by meeting either condition (a) or (b) of this subsection:
  - (a) The person or entity seeking to commence a proposed ground water appropriation shows, through scientifically sound studies and technical analysis, that the ground water use would not have an adverse effect on any of the surface

waters closed in WAC 173-517-100(1), and receives approval of a water right.

(b) The proposed ground water appropriation occurs in a coastal management area designated in Map B of WAC 173-517-070.

(4) The person or entity seeking to commence the new appropriation submits a mitigation plan as defined in WAC 173-517-030(12), and such plan is approved by ecology. If monitoring shows the mitigation is not effective, use of water under the appropriation shall then be subject to the instream flows. In the case of a closed basin, the use shall cease until an effective mitigation plan, approved by ecology, is put in place.

(5) The proposed water appropriation qualifies as an interruptible use and meets the criteria in WAC 173-517-140.

(6) The proposed water appropriation qualifies for the reserves established and conditioned in WAC 173-517-150.

(7) The proposed water appropriation is for an environmental restoration project and meets the criteria in WAC 173-517-200.

NEW SECTION

**WAC 173-517-120 Conservation standard.** Ecology has determined that a conservation standard for new permit-exempt withdrawals authorized under RCW 90.44.050 is necessary to conserve available water and protect instream resources.

(1) For the purposes of this chapter the conservation standard for permit-exempt withdrawals is defined as follows:

(a) Water use from a permit-exempt well must be consistent with Jefferson County or Clallam County code, as applicable, and other applicable laws, including the statute on permit exemptions, RCW 90.44.050, and this rule.

(b) A permit-exempt well serving an individual user shall not exceed a maximum of 500 gpd or an annual average more than 350 gpd, for all permit-exempt uses authorized under RCW 90.44.050.

(c) A well serving a group domestic system shall not exceed a maximum use of 500 gpd or an annual average more than 350 gpd, for each residence, and shall not exceed a total use of 5,000 gpd for the group. The design and construction of group domestic systems must be consistent with applicable state department of health requirements and applicable Jefferson County or Clallam County requirements.

(2) New permit-exempt well use exceeding 500 gpd for an individual use, including individual uses associated with a group domestic withdrawal, may occur provided all of the following are met:

(a) Water use greater than 500 gpd must be offset through implementation of an approved mitigation plan as described in WAC 173-517-030(12). If monitoring of a mitigation plan shows the mitigation is not effective, departmental approval of the mitigation plan shall be suspended and the water use shall cease until the department approves a new or revised mitigation plan; and

(b) Total water use shall not exceed 5,000 gpd.

(3) New permit-exempt withdrawals must measure water use in accordance with WAC 173-517-180.

NEW SECTION

**WAC 173-517-140 Maximum future allocations for interruptible use.** (1) Ecology finds there may be water available in excess of instream flows at certain times of year, which may be appropriated for interruptible uses. This water is only available from the Big Quilcene River from November 16 to June 15 and from Chimacum Creek from December 1 to February 29.

(2) A person or entity seeking a new interruptible appropriation must provide assurances that any negative effects on surface water that may result from withdrawals will be limited to the above locations and times.

(3) In no case shall total cumulative appropriations exceed the allocation limit specified in Table 7 for each river. However, ecology may lower these allocation limits on a case-by-case basis, upon consultation with the state department of fish and wildlife and tribes, whenever more protection of habitat-forming functions is needed.

(4) Interruptible uses must not impair existing water rights and instream flows set in WAC 173-517-090.

**Table 7  
Open Period and Allocation Limit**

<b>Water Source</b>	<b>Open Period</b>	<b>Allocation Limit in Cubic Feet Per Second (cfs) and Gallons Per Day (gpd)</b>
Big Quilcene River	Open Period: November 16 to June 15	Allocation Limit: 15 cfs; 9.69 million gpd
Chimacum Creek	Open Period: December 1 to February 29	Allocation Limit: 3 cfs; 1.94 million gpd

NEW SECTION

**WAC 173-517-150 Reserves of water for future use.**

(1) Ecology has weighed the public interest that supports reserving a limited amount of water for new consumptive uses against the potential for negative impact to instream resources. For the subbasins discussed in this section ecology finds that the public interest advanced by limited reserves clearly overrides the potential for small negative impact to instream resources.

Based on this finding, ecology hereby allocates an amount of water for each reserve management area as indicated in Table 8. These reserves of water are not subject to the instream flows established in WAC 173-517-090 or closures established in WAC 173-517-100. The priority date of an appropriation from a reserve is the effective date of this chapter.

These reserves are available to a user only if the conditions set forth in this section are met, as well as any applicable requirements of law, including, but not limited to, all water resource laws and regulations.

(2) These reserves shall be available for use only after the county with jurisdiction commits to ecology in writing

confirming that determinations of adequate potable water for building permits and subdivision approvals will be consistent with this chapter.

(3) Permit-exempt well withdrawals from reserves may not occur where a public water supplier can provide a connection in a timely and reasonable manner. Determinations of what it means to provide water service in a timely and reasonable manner shall be consistent with public water system plans, if applicable, and applicable state and local laws including, but not limited to, Jefferson County or Clallam County code.

(4) **Donovan, Ludlow, Piddling, Spencer, and Tarboo subbasins.** Withdrawals from the reserves of water in Donovan, Ludlow, Piddling, Spencer, and Tarboo reserve management areas shall be limited to permit-exempt well use consistent with the conservation standard defined in WAC 173-517-120.

(5) **Salmon and Snow subbasins.** Withdrawals from the reserves of water in Salmon and Snow reserve management areas shall be limited to permit-exempt well use consistent with the conservation standard defined in WAC 173-517-120, and the following: Up to 5,000 gallons per day of the Salmon Creek reserve, and up to 3,000 gallons per day of the Snow Creek reserve may be used for a permit-exempt withdrawal for commercial agriculture.

(a) Each user must register with ecology or its designee before water use for commercial irrigation begins.

(b) If the commercial agricultural use ceases, then the balance of the water returns to the reserve and use of the well shall be consistent with the conservation standard defined in WAC 173-517-120.

(6) **Little Quilcene and Thorndyke subbasins.** Withdrawals from the reserves of water in Little Quilcene (includes Leland and Howe creeks), and Thorndyke reserve management areas shall be limited to permit-exempt well use consistent with the conservation standard defined in WAC 173-517-120, and the uses listed below through approval of a water right permit subject to a public interest evaluation that takes into account water availability for future domestic use in the subbasin:

(a) Municipal or community domestic water supply with domestic hookups consistent with the conservation standard defined in WAC 173-517-120.

(b) Agricultural irrigation.

(c) Industrial.

(7) **Big Quilcene subbasin.** Withdrawals from the reserve of water in the Big Quilcene reserve management area shall be limited to permit-exempt well use consistent with the conservation standard defined in WAC 173-517-120, and the following:

(a) Permit exempt withdrawal for commercial agriculture.

(i) Each user is limited to 5,000 gpd as a permit-exempt well under RCW 90.44.050.

(ii) Each user must register with ecology or its designee before water use for commercial irrigation begins.

(iii) If the commercial agricultural use ceases, then the balance of the water returns to the reserve and use of the well shall be consistent with the conservation standard defined in WAC 173-517-120.

(b) The uses listed below through approval of a water right permit subject to a public interest evaluation that takes into account water availability for future domestic use in the subbasin:

(i) Municipal or community domestic water supply with domestic hookups consistent with the conservation standard defined in WAC 173-517-120.

(ii) Agricultural irrigation.

(iii) Industrial.

(8) **Chimacum subbasin.** Future withdrawals from the reserve of water in the Chimacum reserve management area shall be limited to domestic permit-exempt well use as defined in WAC 173-517-030(5), and such use shall not include outdoor irrigation, except for the following:

(a) When alternative water supply or a mitigation strategy is approved by ecology and implemented, this limitation to domestic use for the Chimacum basin no longer applies and permit-exempt well use consistent with the conservation standard defined in WAC 173-517-120 is allowed.

(b) If the report for U.S. Geological Survey ground water model currently under construction for the Chimacum Creek subbasin identifies specific areas within the Chimacum subbasin where new well pumping will not have any effect on creek flows, withdrawals from new wells in those areas will not be deducted from the reserve and will not be subject to the restriction on outdoor irrigation. Instead, use of new permit-exempt wells will be regulated by the statutory permit exemption found in RCW 90.44.050. If such a change occurs, ecology shall notify the public of these findings through publication of a *Chimacum Creek Water Supply Bulletin*.

(9) The place of use of water taken from the reserve is limited to the reserve management area from which it is withdrawn unless ecology, in consultation with the applicable county, department of fish and wildlife, and tribes allow specific transfers between subbasins. An applicant for a water right that includes out of subbasin water use must comply with WAC 173-517-210.

(10) When each reserve is fully appropriated, the applicable reserve management areas are hereby closed to any further consumptive appropriation. Under such circumstances water for new uses may be available in accordance with WAC 173-517-110, such as:

- Mitigation is provided;
- The proposed use is nonconsumptive;
- Alternative sources of water are available; or
- An existing water right can be changed or transferred.

**Table 8**  
**Reserve Management Areas, Reserve Quantities and Allowed Uses**

Reserve Management Area Water Source (including tributaries)	Reserve Quantity Maximum Average Daily Use in Gallons (gpd)	Allowed Uses of Reserve*
Big Quilcene	200,400 gpd	<ul style="list-style-type: none"> <li>• Permit-exempt uses under the conservation standard per WAC 173-517-120</li> <li>• Permit-exempt withdrawals for agriculture</li> <li>• Water right permits subject to public interest test for domestic availability</li> </ul>
Chimacum	1,940 gpd	<ul style="list-style-type: none"> <li>• Permit-exempt withdrawals for domestic use, no outdoor irrigation</li> </ul>
Donovan	2,326 gpd	<ul style="list-style-type: none"> <li>• Permit-exempt uses under the conservation standard per WAC 173-517-120</li> </ul>
Little Quilcene (includes Leland and Howe creeks)	38,800 gpd	<ul style="list-style-type: none"> <li>• Permit-exempt uses under the conservation standard per WAC 173-517-120</li> <li>• Water right permits subject to public interest test for domestic availability</li> </ul>
Ludlow	7,830 gpd	<ul style="list-style-type: none"> <li>• Permit-exempt uses under the conservation standard per WAC 173-517-120</li> </ul>
Pidling	1,845 gpd	<ul style="list-style-type: none"> <li>• Permit-exempt uses under the conservation standard per WAC 173-517-120</li> </ul>
Salmon	9,050 gpd	<ul style="list-style-type: none"> <li>• Permit-exempt uses under the conservation standard per WAC 173-517-120</li> <li>• Permit-exempt withdrawals for agriculture</li> </ul>
Snow	4,140 gpd	<ul style="list-style-type: none"> <li>• Permit-exempt uses under the conservation standard per WAC 173-517-120</li> <li>• Permit-exempt withdrawals for agriculture</li> </ul>
Spencer	2,200 gpd	<ul style="list-style-type: none"> <li>• Permit-exempt uses under the conservation standard per WAC 173-517-120</li> </ul>
Tarboo	7,110 gpd	<ul style="list-style-type: none"> <li>• Permit-exempt uses under the conservation standard per WAC 173-517-120</li> </ul>
Thorndyke	31,670 gpd	<ul style="list-style-type: none"> <li>• Permit-exempt uses under the conservation standard per WAC 173-517-120</li> <li>• Water right permits subject to public interest test for domestic availability</li> </ul>

\*This table lists the types of allowed uses. See the text of the rule for specific requirements for each use.

**NEW SECTION**

**WAC 173-517-160 Accounting for use under the reserves.** (1) Ecology shall maintain a record of all appropriations from the reserves.

(2) For an appropriation under a permit, ecology will account for water use under the reserve based on authorized quantities under water right permits or certificates, and metering data.

(3) For permit-exempt ground water appropriations from reserves other than Chimacum subbasin, ecology will deduct a standard amount of 250 gpd for each single domestic use. For a permit-exempt agricultural use, ecology will deduct

5,000 gpd for the Big Quilcene and Salmon Creek subbasins and 3,000 gpd for the Snow Creek subbasin. The amounts deducted from the reserves may be adjusted periodically by ecology, to reflect actual use during low flow conditions based on metering data or other measurements.

(4) For permit-exempt ground water appropriations from the Chimacum reserve, ecology will deduct a standard amount of 13 gpd for each single domestic use.

(5) If a water user permanently ceases use of water, ecology may credit the water to the appropriate reserve, upon demonstration, through written certification, that the well or surface water diversion has been decommissioned.

(6) Ecology shall notify the county (or counties) with jurisdiction, and publish a public notice, when it determines that fifty percent, seventy-five percent, and one hundred percent, respectively, of a reserve is appropriated.

(7) If a new appropriation, located in a subbasin with a reserve, is fully offset through implementation of an approved mitigation plan as described in WAC 173-517-030(12), then ecology will not deduct the amount of new water use from the reserve.

#### NEW SECTION

**WAC 173-517-170 Lakes and ponds.** RCW 90.54.020 (3)(a) requires, in part, that the quality of the natural environment shall be protected, and where possible, enhanced, and that lakes and ponds shall be retained substantially in their natural condition.

Any withdrawal from a lake or pond in WRIA 17 requires a water right permit from ecology, and must be consistent with the provisions of this chapter.

#### NEW SECTION

**WAC 173-517-180 Measuring water use.** Each future new appropriation of ground water or surface water, including permit-exempt well use, is required to install and maintain a measuring device (water meter) meeting specifications provided by ecology. The user must report to ecology, by December 31 of each year, meter readings demonstrating water use for the previous water year, October 1 through September 30, or as directed by ecology.

#### NEW SECTION

**WAC 173-517-200 Future surface water withdrawals for environmental restoration.** Ecology finds that the public interest advanced by future withdrawals for environmental restoration projects (ERPs), as defined and conditioned in this section, clearly overrides the minimal negative impacts on instream flows.

(1) Ecology may approve a future withdrawal for an ERP only if it meets all the following:

(a) The proposed water use is for a bypass flow for salmonid habitat restoration, or for riparian planting, and the primary purpose of the project is restoration of salmonids;

(b) The proposed project will result in aquatic habitat benefits, and such benefits will exceed any detriment to aquatic habitat that may be caused by reductions in flow at specific locations and times of withdrawal; and

(c) The proposed use qualifies for a temporary permit.

(2) Ecology, in consultation with the department of fish and wildlife and tribes, will evaluate proposed ERPs. ERPs approved by ecology are not subject to closures or instream flows set in this chapter, unless otherwise conditioned by the permit.

#### NEW SECTION

**WAC 173-517-210 Out of subbasin water use.** (1) Ecology recognizes that rainfall patterns, and the rain shadow effect of the Olympic Mountains, affect water availability in

WRIA 17. In addition, population growth patterns in WRIA 17 have historically shown highest growth in areas with less rainfall. For these reasons, ecology recognizes that future water right applicants may request using water from one subbasin in a different subbasin, and that such out of subbasin water use may have lasting effects on the community. Such use may occur only if consistent with all applicable requirements of state and federal law.

(2) An applicant for a water right that includes out of subbasin water use shall:

(a) Provide the public an opportunity to review and comment on the proposed application. The applicant shall:

- Advertise and convene a public meeting to explain the proposal; and

- Allow for public comment on the potential for the proposed use to be harmful to the public interest.

(b) The applicant shall provide ecology a report which identifies:

- Alternatives examined;

- Any alternatives/modifications that the applicant has rejected and why; and

- Any alternatives/modifications that the applicant accepts and, if relevant, have been made.

(c) The report in (b) of this subsection shall also summarize the comments received through the public meeting in (a) of this subsection on the potential for the proposed use to be harmful to the public interest.

### WSR 09-24-082

#### PERMANENT RULES DEPARTMENT OF LABOR AND INDUSTRIES

[Filed November 30, 2009, 3:39 p.m., effective January 1, 2010]

Effective Date of Rule: January 1, 2010.

Purpose: The following amendments will clarify our rules and make them easier to administer and understand.

WAC 296-17A-0101 Logging machine operators, inactivate subclassification (move to 5005 mechanical logging).

WAC 296-17A-5001 Logging, change reference from classification 0101 to classification 5005.

WAC 296-17A-5005 Mechanized logging, create subclassification to report hours from newly inactivated 0101-41 (logging machine operators), change references from classification 0101 to classification 5005.

Citation of Existing Rules Affected by this Order: Amending WAC 296-17A-5001, 296-17A-5005, and 296-17A-0101.

Statutory Authority for Adoption: RCW 51.16.035, 51.16.100.

Adopted under notice filed as WSR 09-19-132 on September 22, 2009.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 3, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 0.

Date Adopted: November 30, 2009.

Judy Schurke  
Director

**AMENDATORY SECTION** (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

**WAC 296-17A-0101 Classification 0101.**

**0101-00 Land clearing: Highway, street and road construction, N.O.C.**

Applies to contractors engaged in clearing right of ways for subsurface construction on a new or existing highway, street, or roadway project that is not covered by another classification (N.O.C.). The subsurface is the roadbed foundation consisting of dirt, sand, gravel and/or ballast which has been leveled and compressed. Unless the finished project is a compressed gravel road, the subsurface or sub base is constructed prior to any asphalt or concrete paving activities. Work contemplated by this classification involves the excavation of rocks and boulders, removal of tree stumps, clearing or scraping land of vegetation, grubbing, earth excavation, cut and fill work, and bringing the roadbed to grade. Equipment used by contractors subject to this classification includes a variety of earth moving equipment such as, but not limited to, shovels, scrapers, bulldozers, graders, rollers, and dump trucks.

This classification excludes asphalt surfacing or resurfacing on roadways which is to be reported separately in classification 0210; construction specialty services such as the installation of guardrails, lighting standards and striping which is to be reported separately in classification 0219; bridge or tunnel construction including the abutments and approaches which is to be reported separately in classification 0201; felling of trees which is to be reported separately in the applicable logging classification; and logging road construction which is to be reported separately in classification 6902.

**0101-01 Land clearing: Airport landing strips, runways and taxi ways; alleys and parking lots**

Applies to contractors primarily engaged in clearing right of ways for subsurface construction on a new or existing airport landing strip, runway, and taxi way. This classification also includes clearing of right of ways for alley and parking lot projects. The subsurface is the foundation consisting of dirt, sand, gravel and/or ballast which has been leveled and compressed. Unless the finished project is compressed gravel, the subsurface or sub base is constructed prior to any asphalt or concrete paving activities. Work contemplated by this classification involves the excavation of rocks and boulders,

removal of tree stumps, clearing or scraping land of vegetation, grubbing, earth excavation, cut and fill work, and bringing the roadbed or project site to grade. Equipment used by contractors subject to this classification includes a variety of earth moving equipment such as, but not limited to, shovels, scrapers, bulldozers, graders, rollers, and dump trucks.

This classification excludes asphalt surfacing or resurfacing on roadways which is to be reported separately in classification 0210; construction specialty services such as the installation of guardrails, lighting standards and striping which is to be reported separately in classification 0219; and felling of trees which is to be reported separately in the applicable logging classification.

**0101-02 Excavation work, N.O.C.**

Applies to contractors engaged in general excavation work for others that is not covered by another classification (N.O.C.). Work contemplated by this classification involves excavating or digging of earth to form the foundation hole such as for a wood-frame or nonwood-frame building and side sewer hookups (street to house) when performed as part of the excavation contract. Activities include, but are not limited to, excavation of rocks and boulders, removal of tree stumps, clearing or scraping land of vegetation, grubbing, piling or pushing of earth, earth excavation, cut and fill work, backfilling, etc. Equipment used by contractors subject to this classification includes a variety of earth moving equipment such as, but not limited to, shovels, scrapers, bulldozers, graders and dump trucks.

This classification excludes asphalt surfacing or resurfacing on roadways which is to be reported separately in classification 0210 and felling of trees which is to be reported separately in the applicable logging classification.

**0101-03 Grading work, N.O.C.**

Applies to contractors engaged in various forms of grading work for others that are not covered by another classification (N.O.C.). Typical equipment used is a grader, but other equipment such as a bulldozer and a front end loader may also be used. Work contemplated by this classification includes, but is not limited to, leveling and grading lands, spreading dirt, sand, gravel and/or ballast to desired contour on farm lands or other tracts of land.

**0101-04 Land clearing, N.O.C.**

Applies to contractors engaged in general land clearing work that is not covered by another classification (N.O.C.). This classification includes, but is not limited to, excavation of rocks and boulders, removal of tree stumps, clearing or scraping land of vegetation, grubbing, piling or pushing of earth to rearrange the terrain, earth excavation, cut and fill work, backfilling, and slope grooming. Equipment used by contractors subject to this classification includes a variety of earth moving equipment such as, but not limited to, shovels, scrapers, bulldozers, graders and dump trucks.

This classification excludes felling of trees which is to be reported separately in the applicable logging classification.

**0101-16 Railroad line: Construction, maintenance and repair, N.O.C.**

Applies to contractors engaged in the construction, maintenance and repair of railroad tracks not covered by another classification (N.O.C.), including the dismantling of track and the sale of salvaged track metal and ties. Work contemplated by this classification includes all operations on new or existing main lines, side tracks and spurs to industrial properties. This classification includes, but is not limited to, the laying of rock or ballast, laying of ties and track, installation of crossover frogs and switches, erection of switch stands and switch mechanism, erection of cattle guards, the placing of grade crossing planks, and similar activities related to the laying or relaying of railroad lines and also includes the dismantling of railroad main lines, side tracks and spurs to include track, ties, etc., and the subsequent storage and sale of salvaged material after the railroad line is dismantled.

This classification excludes asphalt surfacing/resurfacing and all concrete construction work which is to be reported separately in the applicable asphalt or concrete construction classification; logging railroad construction which is to be reported separately in classification 6902; and the construction, maintenance, or repair of an elevated railway which is to be reported separately in classification 0508.

**0101-17 Retaining wall: Construction or repair when done in connection with road, street and highway construction, N.O.C.**

Applies to contractors engaged in the construction or repair of retaining walls in connection with highway, street, or roadway projects that are not covered by another classification (N.O.C.). Retaining walls are often constructed to protect against potential problems such as earth slides or erosion of banks alongside a roadway or overpass. Work contemplated by this classification involves large scale excavation to contour a specific area of earth serving as a retaining wall. Activities include, but are not limited to, excavation, clearing, cut and fill work, backfilling, grading and slope grooming. Fill material used may include dirt, sand, stone or boulder. Equipment used by contractors subject to this classification includes, but is not limited to, scrapers, bulldozers, graders, backhoes and dump trucks.

This classification excludes asphalt surfacing or resurfacing on roadways which is to be reported separately in classification 0210; concrete construction which is to be reported separately in the applicable concrete construction classification; construction specialty services such as the installation of guardrails, lighting standards and striping which is to be reported separately in classification 0219; bridge or tunnel construction including the abutments and approaches which is to be reported separately in classification 0201; felling of trees by chain saw which is to be reported separately in classification 5001; logging road construction which is to be reported separately in classification 6902; and tunnels and approaches including lining, cofferdam work, shaft sinking and well digging with caissons which is to be reported separately in classification 0201.

**0101-36 Tree care and pruning services, N.O.C.**

Applies to specialist contractors engaged in providing a variety of tree care services such as tree topping and tree

pruning that are not covered by another classification (N.O.C.). Work contemplated by this classification generally takes place in residential areas, parking lots, business parks, shopping malls, or settings adjacent to nonforestry or timberland roadways. A primary purpose of this work is to remove tree or branch hazards from power lines, structures, or buildings. This classification includes, but is not limited to, incidental ground operations such as picking up branches and limbs, operating mobile chip machines used in connection with a tree care service, spraying or fumigating of trees, debris removal and stump removal when conducted by employees of an employer subject to this classification.

This classification excludes tree care services done in connection with an orchard operation which is to be reported separately in classification 4803 when performed by orchard employees; tree care services done in connection with a nursery operation which is to be reported separately in classification 4805; tree care services done in connection with a public or private forest or timberland which is to be reported separately in classification 5004; tree care services done in connection with a Christmas tree farm operation which is to be reported separately in classification 7307; and felling trees which is to be reported separately in classification 5001.

**0101-37 Soil remediation**

Applies to establishments engaged in various types of remediation of soil contaminated with hazardous or toxic materials. Soil remediation can take place at the site of the contamination, or the contaminated soil may be hauled to another area for remediation. This classification also includes oil spill cleanup on land. Equipment used will include backhoes and front end loaders, as well as other types of dirt moving equipment.

The methods used for soil remediation include, but are not limited to:

- Bio-remediation: Contaminated soil is mixed with nutrients, sawdust, and various other additives. Naturally occurring bacteria in the soil break down the pollutants.

- Encapsulation: Contaminated soil is enclosed in some type of protective material to prevent drainage into surrounding soil.

- Excavation and hauling to an approved disposal site.

- Hot air vapor extraction: A burner unit is mounted on a trailer. Contaminated soil is arranged in layers on which an aluminum perforated pipe system is placed at 2' intervals, with a return pipe on the top layer. The soil stack is enclosed in visqueen, then hot air is pumped into the piping system which creates the steam that is recycled through the system and carries the contaminants back through the catalytic burner. Because of the catalytic action there are virtually no contaminants exhausted into the atmosphere.

- Soil vapor extraction: A series of holes are bored in the ground and vacuum pumps are used to suck the trapped gases which are drawn through carbon filters for decontamination.

- In situ vitrification: Graphite electrodes are fed into contaminated soil at a specified rate, where high voltage "melts" the organic and inorganic materials in the soil and forms a solid, glasslike substance.

- Land farming: Contaminated soil is deposited and spread out by a farm type spreader on an area of ground dedicated for this purpose. Chemical or manure fertilizer is

added to provide a medium for naturally occurring bacteria to thrive. (This part is similar to bio-remediation.) The soil is turned frequently by tillers or rototillers to assist in the aeration of the soil and in the growth of the bacteria. It may take anywhere from a month to two years to cleanse the soil, depending on the volatility of the contaminants. This method is used particularly with soil that is heavily contaminated with oil.

- Mobile incineration: Contaminated soil is loaded onto a conveyor belt which carries it into the hopper of a mobile unit mounted on a lowboy trailer. The unit is heated to burn off the contaminants in the soil. The mobile unit contains a type of dust-collecting mechanism which filters out gases and other nondesirable elements so only clean air enters the atmosphere as the refreshed soil is produced. There are various methods of mobile incineration, but the general process and the end result are similar.

- Thermal desorption: A process similar to mobile incineration.

- Stabilization: Concrete landfill cells are created by mixing cement with refuse or other contaminated soil to stabilize the material and reduce the seepage into the surrounding soil.

This classification excludes oil spill cleanup involving diking or ditching work which is to be reported separately in classification 0201.

### **0101-39 Pool or pond excavation**

#### **Placement of pool or pond liners**

Applies to contractors engaged in the excavation of pools or ponds. Work contemplated by this classification involves excavating or digging of earth to form the hole such as for a swimming pool or pond. Work contemplated by this classification includes excavation of rocks and boulders, removal of tree stumps, clearing or scraping land of vegetation, grubbing, piling or pushing of earth, earth excavation, cutting, filling or backfilling, etc. Equipment used by contractors subject to this classification includes a variety of earth moving equipment such as, but not limited to, shovels, bulldozers, backhoes and dump trucks. This classification includes the placement of plastic pool and pond liners provided it is not in connection with concrete work.

This classification excludes concrete construction which is to be reported separately in the applicable concrete construction classification.

### **0101-40 Mowing or chemical spraying of roadway median strips, roadsides, and/or power line right of ways**

Applies to contractors engaged in mowing, grooming, picking up litter, and chemical spraying of roadway median strips and edges, roadsides, and power line right of ways. Work contemplated by this classification includes spraying chemicals to control weeds and unwanted vegetation, tall grass, brush, brambles and tree seedlings as part of a roadway, roadside or right of way maintenance contract. Equipment used by contractors subject to this classification includes, but is not limited to, a variety of equipment such as backhoes, tractors, push mowers, brush mowers, weed eaters, as well as hand tools such as machetes, sickles, and pruners.

This classification excludes mowing and/or grooming of roadway median strips, roadsides, and power line right of

ways when performed by employees of cities, counties, state agencies, or other municipalities which is to be reported in the classification applicable to the type of municipality performing the work; forest, timber or range land contract work which is to be reported separately in the classification applicable to the work being performed; and the felling and removal of trees by chain saw which is to be reported separately in classification 5001.

**Special note:** Classification 0301, "landscape construction," and classification 0308, "landscape maintenance," are not to be assigned to mowing and/or grooming of roadway median strips, roadsides, and power line right of ways.

### ~~(0101-41 Logging machine operators~~

~~This classification applies to employees of a logging company that does not qualify as a mechanized operation but operates equipment such as a feller buncher, processor, forwarder, skidder, log loader, or tower and who are in a protective cab. This classification also applies to firms who contract with logging firms to provide such equipment and operators to a logging site. The operator does not leave the cab to perform duties as part of the logging operation. Equipment used by employers subject to this classification are required to meet WISHA guidelines for roll-over protection standards (ROPS) and falling object protection standards (FOPS).~~

~~This classification does not allow a division of an employee's work hours between this classification and any other classification during a work shift.~~

~~This classification excludes all logging activities being performed on the ground which are to be reported separately in classification 5001.~~

~~**Special note:** This classification does not apply to classification 5005 "logging and/or tree thinning - mechanical operations" whereby logging activities are performed exclusively by machine and no employees are on the ground.)~~

AMENDATORY SECTION (Amending WSR 07-12-047, filed 5/31/07, effective 7/1/07)

### **WAC 296-17A-5001 Classification 5001.**

#### **5001-03 Logging, N.O.C.**

Applies to establishments engaged in various logging operations not covered by another classification (N.O.C). Typical work contemplated by this classification includes, but is not limited to, high lead or tower logging, ground logging, and team logging with horses. For purposes of this rule, logging is the complete operation of felling, skidding, yarding, delimiting, and bucking of trees into logs or block wood and loading them onto trucks or rail cars.

#### *Definitions:*

*High Lead or Tower Logging* - usually occurs in steep terrain where a metal tower is set-up on a hilltop with a system of heavy cables running down the hillside and fastened to a stump or tree and has other smaller cables with chokers hanging from it. A choker is wrapped around each fallen tree and pulled back to the landing site.

*Helicopter logging* - includes ground crews that work with the use of helicopters to hoist fallen trees or bucked log lengths to the landing side.

*Chokers* - chains or cables which are attached to the fallen trees for skidding to the landing site.

*Ground logging* - usually occurs on relatively flat land; fallen trees are moved to a landing by a skidder, cat or shovel.

*Bucking* - stripping or delimiting tree of branches and cutting the tree to desired log lengths.

*Skidding* - process of dragging the fallen logs to the landing site.

*Landing* - place where the fallen logs are brought for sorting and loading onto log trucks.

*Yarding* - usually performed at the landing site with use of a log loader to sort the logs by species, length and diameter, prior to loading onto log trucks.

This classification excludes flight crews of helicopters used in helicopter logging which are to be reported separately in classification 6803; log hauling which is to be reported separately in classification 5003; logging road construction which is to be reported separately in classification 6902; logging machine operators which are to be reported separately in classification ~~((0104))~~ 5005-01; and mechanical or mechanized logging operations which are to be reported separately in classification ~~((5005))~~ 5005-00 provided the classification has been approved by the classification services section.

#### **5001-04 Shake, shingle bolt, and post cutting**

Applies to establishments engaged in the cutting of shakes, shingle bolts (blocks), and fence posts in the woods. For the purposes of this rule, this classification includes all operations performed in the woods such as, but not limited to, the felling of trees, stripping or delimiting of branches, and all further cutting or splitting of trees/logs to produce shakes, shingle bolts or fence posts. This classification includes all transporting of shakes, shingle bolts or fence posts from the cutting site when conducted by employees of employers subject to this classification.

#### **5001-05 Firewood cutting**

Applies to establishments engaged in the cutting of firewood in the woods. For the purposes of this rule, this classification includes all operations performed in the woods such as, but not limited to, the felling of trees, stripping or delimiting of branches, and all further cutting or splitting of trees/logs to produce firewood. This classification includes all transporting of log lengths, rounds or split wood from the cutting site when conducted by employees of employers subject to this classification.

#### **5001-06 Sawmill operations conducted in the woods in connection with logging operations**

Applies to establishments operating a temporary or portable sawmill operation in the woods. This type of work is usually performed on privately owned land. A portable sawmill and saw tables, similar to those at a permanent sawmill location, are transported directly to the logging site. Log lengths are fed through a circular saw that is capable of producing various sized rough cut timber, blocks, boards and planks. This classification includes all transporting of rough cut timber, blocks, boards and planks from the cutting and/or sawing site when conducted by employees of employers subject to this classification.

This classification excludes sawmill operations which are not conducted in the woods in connection with a logging

operation which is to be reported separately in the applicable sawmill classification.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

#### **WAC 296-17A-5005 Classification 5005.**

#### **5005-00 Logging and/or tree thinning - mechanized operations**

##### ***(to be assigned only by classification services staff)***

Applies to establishments engaged in mechanized logging or tree thinning operations. For purposes of this classification, mechanized logging is defined as the entire process of felling, removal (skidding), yarding, processing, delimiting, bucking and loading of trees/logs by machine. This classification can be used by a logging contractor only if the entire side is being logged using methods and equipment described in this rule. If any portion of the side is being logged by conventional methods the entire operation must be reported in classification 5001 - Logging, N.O.C. or ~~((0104))~~ 5005-01 Logging Machine Operators. *For example*, an employer that subcontracts to fell trees with a feller/buncher or processor but is not involved in the removal (skidding) of the trees, the processing (delimiting and bucking) of the trees and the loading of trees is excluded from classification ~~((5005))~~ 5005-00 and is to be reported in classification ~~((5004))~~ 5001 - Logging, N.O.C. or ~~((0104))~~ 5005-01 Logging Machine Operators. Any employer whose operation includes any manual felling, removal, processing, or loading of trees is excluded from classification ~~((5005))~~ 5005-00 and is to be reported in classification 5001 - Logging, N.O.C. Work contemplated by this classification includes the falling of trees with a machine such as a feller buncher or processor; skidding logs to the landing with use of a grapple skidder or forwarder; delimiting logs with a mechanized delimeter such as a stroke delimeter, processor, CTR or harvester; and loading logs onto log trucks with a mechanical loader or shovel. Equipment used by employers subject to this classification will consist of the following:

*Feller/buncher* - used to fell trees and place felled trees into stacks (bunches) for removal to the log landing for further processing. The operator of this machine does not leave the cab of the machine in the performance of duties in the logging operation.

*Processor* - used to fell trees, delimit them, buck tree to desired log length and stack the bunches for removal to the landing where they will be segregated by general grade and loaded onto log trucks. A processor is sometimes used at the landing to delimit trees and buck them to log length, especially when the trees are felled by a feller/buncher. The operator of this machine does not leave the cab of the machine in the performance of duties in the logging operation.

*Grapple skidder* - is used to remove (ground skid) stacks (bunches) of felled trees from the woods to the landing. The industry refers to both the skidder and the bulldozers as a tractor. The two are distinguished from one another in that the skidder is a tire-driven tractor and the bulldozer is a track-driven tractor. A bulldozer equipped with a grapple is an acceptable piece of equipment to be used in the removal of trees. The operator of either the grapple skidder or bulldozer

equipped with grapple does not leave the cab of the machine in the performance of duties in the logging operation.

*Forwarder* - is used to remove logs as cut by a processor from the woods to an awaiting log truck or to be stacked in piles for a future pick up by a log truck. This is a small specialized tractor equipped with a self-loader and a log bunk. The operator of this machine does not leave the machine in the performance of duties in the logging operation.

*Harvester* - is used at the landing of the logging side to delimb trees and buck trees to desired log length. This machine can also be used to load logs onto log trucks. The operator of this machine does not leave the cab of the machine in the performance of duties in the logging operation.

*Loader* - is used at the landing to load logs onto log trucks. The operator of this machine does not leave the cab of the machine in the performance of duties in the logging operation.

This classification excludes log hauling which is to be reported separately in classification 5003, logging road construction which is to be reported separately in classification 6902, logging machine operators which are to be reported separately in classification ((0404)) 5005-01, and logging operations which are to be reported separately in classification 5001.

**Special notes:** If any portion of the logging contract is performed manually or by hand, the establishment does not qualify for this classification. If any portion of the logging contract is subcontracted out to another business and is performed manually or by hand, then none of the businesses involved in the logging contract will qualify for this classification and are to be reported separately in classification 5001 or ((0404)) 5005-01.

All equipment used by employers subject to this classification must meet WISHA guidelines for Roll Over Protection Standards (ROPS) and Falling Object Protection Standards (FOPS).

See classification 5206 (WAC 296-17-675) for permanent shop/yard operations.

#### **5005-01 Logging machine operators**

##### **(to be assigned only by classification services staff)**

This classification applies to employees of a logging company that does not qualify as a mechanized operation but operates equipment such as a feller buncher, processor, forwarder, skidder, log loader, or tower and who are in a protective cab. This classification also applies to firms who contract with logging firms to provide such equipment and operators to a logging side. The operator does not leave the cab to perform duties as part of the logging operation. Equipment used by employers subject to this classification are required to meet WISHA guidelines for roll over protection standards (ROPS) and falling object protection standards (FOPS).

This classification excludes all logging activities being performed on the ground which are to be reported separately in classification 5001.

**Special note:** This classification does not apply to classification 5005-00 "logging and/or tree thinning - mechanical operations" whereby logging activities are performed exclusively by machine and no employees are on the ground.

#### **WSR 09-24-085 PERMANENT RULES DEPARTMENT OF LABOR AND INDUSTRIES**

[Filed November 30, 2009, 4:31 p.m., effective March 1, 2010]

Effective Date of Rule: March 1, 2010.

Purpose: These changes will improve the quality of the independent medical examination (IME), the IME report and the worker's satisfaction with the IME process. The purpose of the proposed rules is to ensure the medical providers who become independent medical examiners know and meet the department's requirements. In the proposed rules, the existing requirements were clarified and additional requirement[s] were added.

These rules demonstrate the department's willingness to address stakeholder concerns regarding the IME process and make the necessary changes. These rules also demonstrate and support the department's continuing efforts to improve quality in the process and the final product, the examination and the report which ultimately affects the resolution of workers' compensation claims.

Citation of Existing Rules Affected by this Order: Amending WAC 296-23-302, 296-23-317, 296-23-337, and 296-23-387.

Statutory Authority for Adoption: RCW 51.32.055, 51.32.112 [51.32.112], 51.32.114, 51.36.060, 51.36.070.

Adopted under notice filed as WSR 09-11-101 on May 19, 2009.

Changes Other than Editing from Proposed to Adopted Version:

- Added roll out plan for all current IME providers to apply within first year to be in compliance with new rule.
- Added exception language to pretestimony and testimony conference time frames.

A final cost-benefit analysis is available by contacting Anita L. Austin, P.O. Box 44322, Olympia, WA 98504-4322, phone (360) 902-6825, fax (360) 902-4292, e-mail [Sund235@LNI.wa.gov](mailto:Sund235@LNI.wa.gov).

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 4, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 4, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 4, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: November 30, 2009.

Judy Schurke  
Director

AMENDATORY SECTION (Amending WSR 04-04-029, filed 1/27/04, effective 3/1/04)

**WAC 296-23-302 Definitions.** Approved independent medical examination (IME) provider - A doctor or firm whose credentials are approved to conduct an independent medical examination, rating evaluation, or provide IME associated services including but not limited to file preparation, scheduling of examinations and processing billing. An approved IME provider is assigned a unique provider number.

Department - For the purpose of this section, department means the department of labor and industries industrial insurance workers' compensation state fund and self-insured programs.

Direct patient care((-)) - For the purpose of meeting the qualifications of an independent medical examination (IME) provider, direct patient care means face-to-face contact with the patient for the purpose of evaluation and management of care that includes, but is not limited to:

- History taking and review of systems;
- Physical examination;
- Medical decision making;
- Coordination of care with other providers and agencies.

This does not include time spent in independent medical examinations.

Impairment rating examination((-)) - An examination to determine whether or not the injured/ill worker has any permanent impairment(s) as a result of the industrial injury or illness after the worker has reached maximum medical improvement. An impairment rating may be conducted by a qualified attending provider, a medical consultant, or an approved examiner. An impairment rating may be a component of an IME.

Independent medical examination (IME)((-)) - An objective medical-legal examination requested (by the department or self-insurer) to establish medical facts about a worker's physical condition. These examinations may only be conducted by department-approved examiners.

Independent medical examination (IME) provider((-)) - A firm, partnership, corporation, or individual doctor (examiner) who has been approved and given an independent medical examination (IME) provider number by the department to perform IMEs.

Medical director((-)) - A licensed doctor in the firm, partnership, corporation or other legal entity responsible to provide oversight on quality of independent medical examinations, impairment ratings and reports.

Medical Examiners' Handbook((-)) - A handbook distributed by the department containing department policy and information to assist ((doctors)) providers who perform independent medical examinations and impairment rating examinations.

Patient related services - Patient related services are defined as one or more of the following professional activities:

- Direct patient care;
- Locum tenens;
- Clinical consultations for treating/attending doctors;

• Clinical or classroom instruction of medical, osteopathic, dental, podiatry, or chiropractic students and/or residents;

• On-call emergency services;

• Volunteer clinician providing patient care services in his or her specialty;

• Participation in clinically based peer review or quality review activities.

Provider number((-)) - A unique number(s) assigned to a provider by the department of labor and industries. The number identifies the provider and is linked to a tax identification number that has been designated by the provider for payment purposes. A provider may have more than one provider number assigned by the department.

Suspension - A department action during which the provider is approved by the department but not available to accept referrals.

Temporarily unavailable - Provider is approved by the department but is temporarily unavailable to accept referrals. Temporarily unavailable applies at the provider's request for personal reasons or by the department as part of an administrative action. Provider remains unavailable until the issue is resolved.

Termination - The permanent removal of a provider from the list of approved IME examiners. All IME provider numbers assigned to the examiner are inactivated.

AMENDATORY SECTION (Amending WSR 04-04-029, filed 1/27/04, effective 3/1/04)

**WAC 296-23-317 What qualifications must a provider meet to ((receive)) become an approved independent medical examination (IME) provider and be assigned an IME provider number?** In order to ensure ((high-quality)) that independent medical examinations((-the department shall only approve an IME provider number for persons)) are of the highest quality and propriety, examiners, firms, partnerships, corporations, or other legal entities ((that)) must apply and meet the following ((qualification)) requirements for department approval:

(1) ((Providers who wish to bill or get paid for independent medical examinations or related services must apply for and receive an IME provider number. Issuance of an IME provider number does not guarantee IME referrals.

(2) Providers must have and maintain a current license to practice in the state in which they conduct IMEs and meet at least one of the two following requirements:

(a) Board certification in their medical specialty; or

(b) A minimum of an average of eight hours per week over the past two years of direct patient care in their medical specialty (excluding IMEs).

(3)) For all examiner applicants:

(a) Have a current, unrestricted, and active professional license to practice in this state or in any other jurisdiction where the applicant would conduct an examination.

(i) Unrestricted is defined as not currently having a temporary or permanent probation, suspension, revocation or any other limitation of any kind placed on a professional license or privilege to practice by any court, board, or administrative agency in any jurisdiction.

(ii) If any restriction once existed against the applicant's license, the department must automatically deny the application if the applicant's record has not been clear for at least five years. If after five years the record has been cleared, then the department exclusively reserves the right to grant or deny the application based on the nature of the prior restriction.

(iii) Exception to the five-year limit may be granted for any restriction or offense deemed by the department to be of a minor or clerical nature.

(iv) If an applicant has any pending action on their privilege to practice by any court, board, or administrative agency, or by any health care institution such as a hospital in any jurisdiction, the department exclusively reserves the right to grant or deny the application based upon the nature of the action.

(b) Have no final action by the department to suspend or revoke a previously assigned provider number as a treating or independent medical provider.

(i) If the applicant has any criminal history, history of a violation of statutes or rules by any administrative agency, court or board in any jurisdiction, the department must automatically deny the application if such history exists within five years of the application. If such history exists but is older than five years, then the department exclusively reserves the right to grant or deny the application based upon the nature of the history.

(ii) Exception to the five-year limit may be granted for any restriction or offense deemed by the department to be of a minor or clerical nature.

(c) If an applicant has any pending action in any jurisdiction, the department will not process the application until the matter has been resolved.

(d) Applicants must attest that all information submitted on the application is true and accurate and must sign under penalty of perjury.

(e) Other requirements:

(i) Providers must comply with all federal and state laws, regulations, and other requirements with regard to business operations, including specific requirements for the provision of medical services.

(ii) Providers must adhere to the independent medical examination standards of conduct, and all other laws, rules, and policies. These include but are not limited to the following:

- Provider application agreement;
- Medical Aid Rules and Fee Schedules (MARFS);
- Payment policies;
- Medical Examiners' Handbook.

(iii) Providers must review and sign the IME report and attest to its accuracy.

(iv) Providers must achieve a passing score on the Medical Examiners' Handbook test prior to initial application and every three years thereafter.

(v) Providers must meet one of the following two criteria:

(A) Providers must document a minimum of three hundred eighty-four hours of patient related services (excluding independent medical examinations) per calendar year; or

(B) Providers may complete a minimum of twelve continuing medical education (CME) units of department-

approved education and training per year or a total of thirty-six CMEs in three years. This training would focus on improving the provider's skills in completing IMEs or staying current in the provider's specialty. Topics include but are not limited to:

- Report writing;
- Providing testimony;
- Standards of practice;
- Medical ethics;
- Patient care;
- Impairment rating.

(vi) Providers must conduct examinations in a facility designed as a professional office suitable for medical, dental, podiatric, chiropractic or psychiatric examinations where the primary use of the site is for medical services. The site must not be residential, commercial, educational or retail in nature. The site must be clean, sanitary and provide adequate access, climate control, light, space, and equipment. The site must provide for the comfort and safety of the worker and for the privacy necessary to conduct examinations and discuss medical issues. Providers must have a private disrobing area and adequate provision of examination gowns.

(vii) Providers must have telephone answering capability during regular business hours, Monday through Friday, in order to facilitate scheduling of independent examinations and means for workers to contact the provider regarding their scheduled examination. If the office is open on Saturday, telephone access must be available.

(viii) Providers will agree that either they or the department may inactivate their IME provider number or numbers. If an IME provider number has been inactivated and the provider wishes to resume performing IMEs, they must reapply and meet current requirements.

(ix) Providers must keep the department informed and updated with any new information.

(x) In order to maintain an active IME provider number, providers must reapply every three years. For the current IME providers to be in compliance with the new rule, they must reapply in the first year. Each provider will be notified by mail sixty days prior to their application due date.

(2) Additional examiner requirements:

(a) Medical physician and surgeon (MD) or osteopathic physician and surgeon (DO) applicants must: Hold a current board certification in their specialty; or have completed a residency and be within five years of obtaining board certification.

(i) Residency must be in a program approved by the American College of Graduate Medical Education (ACGME) or the American Osteopathic Association (AOA) or equivalent approving body.

(ii) Fellowships will not be accepted in lieu of accredited residency training though they may be used to determine examination specialty qualifications.

(b) Chiropractic physician (DC) applicants must be a chiropractic consultant for the department for at least two years.

(c) Podiatric physician (DPM) applicants must: Have a current board certification in his or her specialty; or have completed a residency and be within five years of obtaining board certification.

(i) Complete a residency program approved by the American Podiatric Medical Association (APMA).

(ii) Fellowships will not be accepted in lieu of accredited residency training though they may be used to determine examination specialty qualifications.

(d) Dentist (doctor of dental science/doctor of dental medicine) (DDS/DMD) applicants must:

(i) Hold current certification in their specialty; or

(ii) Have two years of postdoctoral clinical experience, and complete at least one year of postdoctoral training in a program approved by the American Dental Association Commission on Dental Accreditation (CODA).

Only providers in the following practice specialties who meet all other requirements may perform IMEs(=):

Examiner is:	Doctors licensed to practice:				
	Medicine & surgery	Osteopathic medicine & surgery	Podiatric medicine & surgery	Chiropractic	Dentistry
<b>In Washington</b>	Yes	Yes	Yes	Yes	Yes
<b><del>(Not in)</del> Outside Washington</b>	Yes	Yes	Yes	No	Yes

~~((4) A provider licensed to practice chiropractic in Washington must also meet all the following requirements:~~

~~(a) Be a chiropractic consultant for the department for at least two years;~~

~~(b) Take an impairment rating course approved by the department; and~~

~~(c) Attend the department's chiropractic consultant and examiners' seminar during the twenty-four months prior to application.~~

~~(5) Business requirements:~~

~~(a) Providers must conduct independent medical examinations only in a professional office suitable for medical, dental, podiatric, chiropractic or psychiatric examinations where the primary use of the examination site is for medical services; not residential, commercial, educational or retail in nature. The site must have, at a minimum, adequate access, climate control, light, space and equipment to provide for the comfort and safety of the injured/ill worker and provide the privacy necessary for workers to discuss their medical issues.~~

~~(b) Providers must comply with all federal and state laws, regulations and other requirements with regard to business operations, including specific requirements for business operations for the provision of medical services.~~

~~(c) Providers must have a private disrobing area and adequate provision of examination gowns.~~

~~(d) Providers must have telephone answering capability during regular business hours, Monday through Friday, in order to facilitate scheduling of independent medical examinations and means for workers to contact the provider regarding their scheduled examination. If the office is open on Saturday, telephone access must be available.~~

~~(e) In order to be assigned an IME provider number, an IME firm, partnership, corporation or other legal entity must have a medical director. The medical director must be a licensed provider and be responsible to provide oversight on the quality of independent medical examinations, impairment ratings and reports.) (3) All other provider applicants that derive income from independent medical examinations must:~~

~~(a) Comply with all federal and state laws, regulations, and other requirements with regard to business operations including specific requirements for any business operations for the provision of medical services.~~

~~(b) Attest that all information submitted on the application is true and accurate and must sign under penalty of perjury.~~

(c) Have no previous action taken by any federal or state agency for any business previously owned or operated.

(d) Have no previous business or audit action by the department to suspend or revoke an assigned provider number.

(e) In order to be assigned an IME provider number, an IME firm, partnership, corporation or other legal entity, have a medical director. The medical director must be a licensed provider, be responsible to provide oversight on the quality of independent medical examinations, impairment ratings and reports, and be available to resolve any issue that department staff may bring to the medical director's attention.

(f) Conduct examinations in a facility designed as a professional office suitable for medical, dental, podiatric, chiropractic or psychiatric examinations where the primary use of the site is for medical services. The site must not be residential, commercial, educational or retail in nature. The site must be clean, sanitary and provide adequate access, climate control, light, space, and equipment. The site must provide for the comfort and safety of the worker and for the privacy necessary to conduct examinations and discuss medical issues. Providers must have a private disrobing area and adequate provision of examination gowns.

(g) Have telephone answering capability during regular business hours, Monday through Friday, in order to schedule independent medical examinations and communicate with workers about scheduled examinations. If the office is open on Saturday, telephone access must be available.

(h) Facilitate scheduling of providers both for the examination and for any required follow up, including amendments to the report, subsequent reports, or for any testimony required. If the provider fails to participate in scheduling or otherwise causes an undue expense to the department, whether intentionally or not, the department may fine the provider up to five hundred dollars per violation.

(i) Agree to keep the department informed and updated with any new information such as exam site or administrative office locations, phone numbers or contact information.

(j) Agree that either the provider or the department may inactivate their IME provider number or numbers. If an IME provider number has been inactivated and the provider wishes to resume performing IMEs, they must reapply and meet current requirements.

(k) In order to maintain an active IME provider number, the provider must reapply every three years.

AMENDATORY SECTION (Amending WSR 04-04-029, filed 1/27/04, effective 3/1/04)

**WAC 296-23-337 (~~What factors does~~) For what reasons shall the department's medical director (~~consider in suspending~~) or designee suspend or (~~terminating~~) terminate approval of an independent medical examination (IME) (~~provider number~~) examiner or firm?** ((The department's medical director may consider several factors in suspending or terminating an IME provider number. Examples include, but are not limited to:

- (1) Complaints about the provider;
- (2) Disciplinary proceedings or actions;
- (3) Proceedings in any court dealing with the provider's professional conduct, quality of care and criminal actions;
- (4) Ability to effectively convey and substantiate medical opinions and conclusions concerning workers;
- (5) Untimely reports;
- (6) Substandard quality of reports or failure to comply with current department policy on report contents;
- (7) Unavailability or lack of willingness to responsibly communicate with the department or self-insurer;
- (8) Unavailability or lack of willingness to testify on behalf of the department or self-insurer, worker, or employer;
- (9) Failure to stay current in the area of specialty and in the areas of impairment rating, performance of IMEs, industrial injury and occupational disease/illness, industrial insurance statutes, regulations and policies;
- (10) Failure to continue to maintain the criteria to be an IME provider;
- (11) Misrepresentation of information provided to the department;
- (12) Failure to inform the department of changes affecting the provider's status as an IME provider;
- (13) Failure to comply with the department's orders, statutes, rules, or policies; and
- (14) Failure to accept the department fee schedule rate for testimony or independent medical examinations.)) In order to ensure high quality independent medical examinations (IMEs), the department's medical director or designee shall terminate, suspend or inactivate approval of examiners, firms, partnerships, corporations, or other legal entities in the situations described below. When an IME examiner or other entity is terminated or suspended, they may not perform IMEs for the department.

(1) AUTOMATIC TERMINATION OF EXAMINERS. The department's medical director or designee shall terminate approval of examiners in situations including, but not limited to the following:

- (a) Their license has been revoked in any jurisdiction.
- (b) A final order or stipulation to informal disposition has been issued against the examiner by a state authority in any jurisdiction, including, but not limited to the Washington state department of health, when such charges involve conduct or behavior as defined in chapter 18.130 RCW, Uniform Disciplinary Act. These include, but are not limited to:
  - (i) Sexually inappropriate conduct, behavior or language.
  - (ii) Behavior that puts patients' safety or well-being at risk.

(c) The examiner has committed perjury or falsified documents provided to the department or insurer.

(d) The examiner has a criminal felony history in any jurisdiction.

(e) The examiner has failed to reapply every three years.

(2) AUTOMATIC SUSPENSION FOR REVIEW. The department's medical director or designee shall suspend approval of examiners in situations listed below. The department will initiate the review within ninety days of notification. The results of the review will determine if further action is necessary, which may include termination.

(a) The examiner has failed to meet all qualifications for approval as an IME provider.

(b) The examiner's license has been restricted in any jurisdiction. Exceptions may be granted for any restriction or offense deemed by the department to be of a minor or clerical nature.

(c) The examiner has lost hospital privileges for cause.

(d) A statement of charges has been filed against the examiner by a state authority in any jurisdiction, including, but not limited to the Washington state department of health, when such charges involve conduct or behavior as defined in chapter 18.130 RCW, Uniform Disciplinary Act. These include, but are not limited to:

(i) Sexually inappropriate conduct, behavior or language.

(ii) Behavior that puts patients' safety or well-being at risk.

(e) The examiner has any pending or history of criminal charges or violation of statutes or rules by any administrative agency, court or board in any jurisdiction.

(3) AUTOMATIC TERMINATION OF NONEXAMINER IME PROVIDERS. The department's medical director or designee shall terminate approval of firms, partnerships, corporations, or other legal entities that derive income from independent medical examinations in situations when they fail to meet all requirements for approval as an IME provider, including failing to reapply every three years.

(4) AUTOMATIC SUSPENSION OF NONEXAMINER IME PROVIDERS. The department's medical director or designee shall suspend approval of firms, partnerships, corporations, or other legal entities that derive income from independent medical examinations in situations listed below. The department will review the matter to determine if further action is necessary, which may include termination.

(a) The provider has failed to meet all qualifications for approval as an IME provider.

(b) The provider has committed perjury or falsified documents provided to the department or insurer.

(c) The provider's behavior has placed patients' safety or well-being at risk.

(5) NONAUTOMATIC TERMINATIONS AND SUSPENSIONS. In addition to automatic terminations and suspensions described in subsections (1) through (4) of this section, the department's medical director or designee shall consider any of the following factors in determining a change in status for all providers. These status changes include temporarily unavailable, suspension or termination of the approval to conduct IMEs.

These factors include, but are not limited to:

- (a) Substantiated complaints or pattern of complaints about the provider.
- (b) Other disciplinary proceedings or actions not listed in subsections (1) through (4) of this section.
- (c) Other proceedings in any court dealing with the provider's professional conduct, quality of care or criminal actions not listed in subsections (1) through (4) of this section.
- (d) Substandard quality of reports, failure to comply with current department policy on report contents, or inability to effectively convey and substantiate medical opinions and conclusions concerning workers.
- (e) Untimely reports.
- (f) Unavailable or unwilling to responsibly communicate with the department.
- (g) Unavailable or unwilling to testify on behalf of the department, worker, or employer.
- (h) Failure to cooperate with all attorneys representing a party in industrial insurance litigation at the board of industrial insurance appeals (board) by not cooperating in a timely manner to schedule preparatory activities and/or testimony during business hours and within the dates ordered by the board to complete testimony.
- (i) Inability to support examination and report findings in any legal proceeding as evidenced by board decisions finding the testimony less credible.
- (j) Failure to stay current in the area of specialty and in the areas of impairment rating, performance of IMEs, industrial injury and occupational disease/illness, industrial insurance statutes, regulations and policies.
- (k) Failure to maintain the criteria to be an IME provider.
- (l) Misrepresentation of information provided to the department.
- (m) Failure to inform the department of changes affecting the provider's status as an IME provider.
- (n) Failure to comply with the department's orders, statutes, rules, or policies.
- (o) Failure to accept the department fee schedule rate for independent medical examinations.
- (p) Any pending action in any jurisdiction.

**AMENDATORY SECTION** (Amending WSR 04-04-029, filed 1/27/04, effective 3/1/04)

**WAC 296-23-387 What are the responsibilities of an independent medical examination (IME) provider regarding testimony?** IME providers must make themselves reasonably available to testify at the board of industrial insurance appeals (board) or by deposition. Reasonably available to all parties means cooperating in the timely scheduling of the pretestimony conference and testimony and being available to testify during business hours (7:00 a.m. to 6:00 p.m.) as ordered by the judge and within the dates ordered by the board to complete testimony, unless a different time is needed and agreed upon by all parties. In signing the application to be an independent medical examination provider, the provider agrees to perform examinations and be available to testify and to answer questions about the medical facts of the case at rates established under the authority of Washing-

ton industrial insurance law. The department may fine the firm and/or examiner up to five hundred dollars per violation for failure to comply with these requirements, whether the failure was intentional or not.

In addition, failure to comply with ~~((this))~~ these requirements may result in suspension or termination of the IME provider number.

**WSR 09-24-086**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**

[Filed November 30, 2009, 4:36 p.m., effective January 1, 2010]

Effective Date of Rule: January 1, 2010.

Purpose: This rule proposal will amend the tables of classification base premium rates, experience rating plan parameters, experience modification factor calculation limitations and retrospective rating plan size groupings for the workers' compensation insurance program for calendar year 2010. Classification base rates were amended in order to base the rates on updated loss and payroll experience and the proposed decision to increase premium rates an overall average 7.6% per hour worked.

Citation of Existing Rules Affected by this Order: Amending chapter 296-17 WAC, General reporting rules, audit and recordkeeping, rates and rating system for Washington workers' compensation insurance, WAC 296-17-855 Experience modification, 296-17-875 Table I, 296-17-880 Table II, 296-17-885 Table III, 296-17-890 Table IV, 296-17-895 Industrial insurance accident fund base rates and medical aid base rates by class of industry, 296-17-89502 Industrial insurance accident fund, medical aid and supplemental pension rates by class of industry for nonhourly rated classifications, 296-17-89504 Horse racing industry industrial insurance, medical aid, and supplemental pension by class, 296-17-90492 Table I (retro), and 296-17-920 Assessment for supplemental pension fund.

Statutory Authority for Adoption: RCW 51.16.035 Base rates, 51.32.073 Supplemental pension, 51.08.010 Retrospective rating, and 51.04.020(1) General authority.

Adopted under notice filed as WSR 09-19-137 on September 22, 2009.

Changes Other than Editing from Proposed to Adopted Version: The department proposed two options (Option 1 and Option 2) of rating tables and rating calculations as a result of a pending rule making which would change the way occupational disease claims are allocated for retro and non-retro employers. The choice of which tables would be used depended on the adoption or nonadoption of that rule making. The rule making was adopted October 26, 2009, as WSR 09-22-024. The rating tables and rating calculations being adopted for this rate rule making are Option 1 which increases rates by 7.6%.

Updates were made to the rates for two classifications for horse racing as a result of testimony given by the Washington horse racing commission.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 10, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 10, Repealed 0.

Date Adopted: November 30, 2009.

Judy Schurke  
Director

**AMENDATORY SECTION** (Amending WSR 08-24-074, filed 12/1/08, effective 1/1/09)

**WAC 296-17-855 Experience modification.** The basis of the experience modification shall be a comparison of the actual losses charged to an employer during the experience period with the expected losses for an average employer reporting the same exposures in each classification. The comparison shall contain actuarial refinements designed to weigh the extent to which the actual experience is credible, due consideration being given to the volume of the employer's experience. Except for those employers who qualify for an adjusted experience modification as specified in WAC 296-17-860 or 296-17-865, the experience modification factor shall be calculated from the formula:

$$\text{EXPERIENCE MODIFICATION FACTOR} = \frac{(\text{Credible Actual Primary Loss} + \text{Credible Actual Excess Loss}) / \text{Expected Loss}}$$

Where

$$\begin{aligned} \text{Credible Actual Primary Loss} &= \text{Actual Primary Loss} \times \text{Primary Credibility} \\ &+ \text{Expected Primary Loss} \times (100\% - \text{Primary Credibility}) \\ \text{Credible Actual Excess Loss} &= \text{Actual Excess Loss} \times \text{Excess Credibility} \\ &+ \text{Expected Excess Loss} \times (100\% - \text{Excess Credibility}) \end{aligned}$$

The meaning and function of each term in the formula is specified below.

For each claim, the actual primary loss is the first dollar portion of the claim costs, which has been shown in actuarial studies, to have the greater credibility in predicting future experience. These amounts are summed over all claims. For each claim in excess of \$20,112 the actual primary loss shall be determined from the formula:

$$\text{ACTUAL PRIMARY LOSS} = \frac{50,280}{(\text{Total loss} + 30,168)} \times \text{total loss}$$

For each claim, less than \$20,112 the full value of the claim shall be considered a primary loss.

For each claim, the excess actual loss is the remaining portion of the claim costs, which have been shown in actuarial studies to have less credibility in predicting future experience. The excess actual loss for each claim shall be determined by subtracting the primary loss from the total loss. These amounts are summed over all claims.

For any claim without disability benefits (time loss, partial permanent disability, total permanent disability or death) either actually paid or estimated to be paid, the total actual losses for calculating the primary loss and excess loss shall first be reduced by the lesser of ((\$1,790)) \$1,950 or the total cost of the claim. Here are some examples for these claims:

	<b>Total Loss (after deduction)</b>		
<b>Total Loss</b>	<b>Primary Loss</b>	<b>Excess Loss</b>	
200	-	-	-
2,000	((210))	((210))	-
	<u>50</u>	<u>50</u>	
20,000	((18,210))	((18,210))	-
	<u>18,050</u>	<u>18,050</u>	
200,000	((198,210))	((43,638))	((154,572))
	<u>198,050</u>	<u>43,634</u>	<u>154,416</u>
2,000,000	((217,994))	((44,168))	((173,826))
	<u>220,638</u>	<u>44,232</u>	<u>176,406</u>

**Note:** The deduction, ((\$1,790)) \$1,950, is twice the average case incurred cost of these types of claims occurring during the three-year period used for experience rating. On average this results in reducing the average actual loss about seventy percent for these types of claims adjusted. This is done to help make the transition between the two different experience rating methods better by helping make the change in experience factor reasonable for small changes to the actual losses. The \$2,000,000 loss is limited by the Maximum Claim Value before the reduction of ((\$1,790)) \$1,950 is applied.

For each employer, the primary credibility and the excess credibility determines the percentage weight given to the corresponding actual primary losses and the actual excess losses, included in the calculation of the experience modification, based on the volume of expected losses. Primary credibility and excess credibility values are set forth in Table II.

An employer's expected losses shall be determined by summing the expected loss for each of the three years of the experience period, which are calculated by multiplying the reported exposure in each classification during the year by the corresponding classification expected loss rate and rounding the result to the nearest cent. Classification expected loss rates by year are set forth in Table III.

Expected losses in each classification shall be multiplied by the classification "Primary-Ratio" to obtain "expected primary losses" which shall be rounded to the nearest cent. Expected excess losses shall then be calculated by subtracting expected primary losses from expected total losses rounded to the nearest cent. Primary-Ratios are also set forth in Table III.

AMENDATORY SECTION (Amending WSR 08-24-074, filed 12/1/08, effective 1/1/09)

((Base Rates Effective January 1, 2009

**WAC 296-17-895 Industrial insurance accident fund base rates and medical aid base rates by class of industry.**  
 Industrial insurance accident fund and medical aid fund base rates by class of industry shall be as set forth below.

Class	((Base Rates Effective January 1, 2009		Class	((Base Rates Effective January 1, 2009	
	Accident Fund	Medical Aid Fund		Accident Fund	Medical Aid Fund
0101	1.4201	0.7919	0604	1.0350	0.7875
0103	1.8731	1.0883	0606	0.5603	0.4171
0104	0.9743	0.5776	0607	0.5815	0.3832
0105	1.3340	0.9448	0608	0.3748	0.2554
0107	1.5385	0.7554	0701	2.5621	0.8113
0108	0.9743	0.5776	0803	0.4786	0.3529
0112	0.7665	0.4485	0901	1.6702	0.8978
0201	3.0830	1.2529	1002	1.0846	0.7437
0202	3.4809	1.8499	1003	0.8101	0.5813
0210	1.3189	0.6465	1004	0.5915	0.3431
0212	1.5467	0.7824	1005	9.5086	5.0081
0214	1.6053	0.7553	1007	0.3929	0.2295
0217	1.1233	0.6366	1101	0.7735	0.5553
0219	1.1082	0.7109	1102	1.5531	0.8588
0301	0.6143	0.4811	1103	1.3179	0.8681
0302	2.3051	1.0352	1104	0.5364	0.4678
0303	2.1201	0.9602	1105	0.9318	0.5859
0306	1.1379	0.5825	1106	0.3199	0.3192
0307	1.0150	0.5969	1108	0.6549	0.4734
0308	0.5073	0.4317	1109	1.5631	1.1391
0403	1.8060	1.1964	1301	0.6644	0.3747
0502	1.5731	0.7752	1303	0.2283	0.1678
0504	1.7700	1.1499	1304	0.0313	0.0228
0507	3.0409	2.0125	1305	0.4609	0.3486
0508	2.2983	1.0135	1401	0.4643	0.3943
0509	2.0795	1.0417	1404	0.8011	0.6283
0510	1.7460	1.1258	1405	0.6416	0.4908
0511	1.8024	0.9758	1407	0.4924	0.4428
0512	1.8408	0.9556	1501	0.6417	0.4109
0513	0.8190	0.4795	1507	0.6234	0.4252
0514	2.1075	1.1506	1701	0.9739	0.6308
0516	1.7158	0.9922	1702	2.5254	1.0630
0517	2.0148	1.2441	1703	1.0537	0.3926
0518	1.6702	0.8978	1704	0.9739	0.6308
0519	2.2845	1.2724	1801	0.5388	0.3835
0521	0.6278	0.3759	1802	0.7997	0.5498
0601	0.6876	0.4100	2002	0.7511	0.6038
0602	0.8974	0.4551	2004	0.9427	0.7552
0603	1.2107	0.5791	2007	0.5193	0.4051
			2008	0.3369	0.2565
			2009	0.3815	0.3530
			2101	0.6651	0.5401
			2102	0.5103	0.4543
			2104	0.2978	0.3377

((Base Rates Effective  
January 1, 2009

((Base Rates Effective  
January 1, 2009

Class	((Base Rates Effective January 1, 2009		Class	((Base Rates Effective January 1, 2009	
	Accident Fund	Medical Aid Fund		Accident Fund	Medical Aid Fund
2105	0.5766	0.4591	3603	0.4577	0.3961
2106	0.4157	0.3654	3604	0.7790	0.7499
2201	0.2458	0.1994	3605	0.5653	0.3873
2202	0.7393	0.5364	3701	0.2893	0.2229
2203	0.4607	0.3990	3702	0.4543	0.3588
2204	0.2458	0.1994	3708	0.6364	0.4331
2401	0.5295	0.3538	3802	0.1999	0.1676
2903	0.6258	0.5344	3808	0.4682	0.2971
2904	0.7088	0.5718	3901	0.1501	0.1699
2905	0.5638	0.5072	3902	0.4600	0.4107
2906	0.3395	0.2840	3903	1.0222	1.0146
2907	0.5290	0.4463	3905	0.1413	0.1547
2908	1.0958	0.7203	3906	0.4769	0.4227
2909	0.3813	0.3349	3909	0.2487	0.2507
3101	0.8945	0.5634	4002	1.5304	0.8604
3102	0.2893	0.2229	4101	0.3429	0.2565
3103	0.5700	0.4152	4103	0.4425	0.4299
3104	0.6574	0.4421	4107	0.1690	0.1352
3105	0.7457	0.5906	4108	0.1595	0.1353
3303	0.4440	0.3465	4109	0.2099	0.1680
3304	0.4435	0.4226	4201	0.8231	0.4123
3309	0.4256	0.3217	4301	0.5923	0.5603
3402	0.5644	0.4175	4302	0.6974	0.5380
3403	0.2136	0.1620	4304	0.9344	0.8358
3404	0.5176	0.4135	4305	1.3197	0.7852
3405	0.2979	0.2621	4401	0.4028	0.3654
3406	0.2054	0.1967	4402	0.8173	0.6911
3407	0.8455	0.5224	4404	0.5382	0.4726
3408	0.1921	0.1522	4501	0.1749	0.1947
3409	0.1584	0.1481	4502	0.0392	0.0374
3410	0.2711	0.2471	4504	0.1011	0.1194
3411	0.5181	0.3454	4601	0.7613	0.5948
3412	0.6489	0.3729	4802	0.3222	0.2955
3414	0.5931	0.4101	4803	0.2626	0.3063
3415	0.8920	0.6069	4804	0.5044	0.4592
3501	1.1007	0.7991	4805	0.2692	0.2691
3503	0.2598	0.3053	4806	0.0566	0.0530
3506	1.1511	0.6000	4808	0.4804	0.4246
3509	0.3861	0.3638	4809	0.3350	0.3336
3510	0.3533	0.3053	4810	0.1237	0.1406
3511	0.6999	0.5424	4811	0.2627	0.2910
3512	0.3329	0.3418	4812	0.3909	0.3642
3513	0.4440	0.4103	4813	0.1411	0.1479
3602	0.1308	0.1085	4900	0.2965	0.1511

((Base Rates Effective January 1, 2009			((Base Rates Effective January 1, 2009		
Class	Accident Fund	Medical Aid Fund	Class	Accident Fund	Medical Aid Fund
4901	0.0758	0.0528	6201	0.3319	0.2288
4902	0.1184	0.0869	6202	0.6250	0.5460
4903	0.1678	0.1350	6203	0.0836	0.1150
4904	0.0268	0.0256	6204	0.1147	0.1158
4905	0.3333	0.3588	6205	0.2645	0.2269
4906	0.0983	0.0785	6206	0.2276	0.1997
4907	0.0518	0.0479	6207	0.9275	1.1319
4908	0.0770	0.1114	6208	0.2111	0.2389
4909	0.0373	0.0642	6209	0.3054	0.3003
4910	0.4714	0.3805	6301	0.1543	0.0837
4911	0.0611	0.0492	6303	0.0722	0.0561
5001	7.2480	3.4652	6304	0.3606	0.3977
5002	0.6387	0.4508	6305	0.0954	0.1005
5003	2.4263	1.2277	6306	0.3201	0.2588
5004	0.8974	0.6738	6308	0.0671	0.0581
5005	0.6526	0.3922	6309	0.1936	0.1780
5006	1.7310	0.8658	6402	0.2597	0.2501
5101	0.9327	0.6884	6403	0.1624	0.1733
5103	0.7072	0.6748	6404	0.2345	0.2224
5106	0.7072	0.6748	6405	0.5954	0.4214
5108	0.8683	0.7836	6406	0.1118	0.1183
5109	0.5732	0.4017	6407	0.2674	0.2463
5201	0.4313	0.3162	6408	0.4230	0.3305
5204	0.9572	0.6534	6409	0.8370	0.5244
5206	0.4430	0.2869	6410	0.2856	0.2492
5207	0.1518	0.1709	6501	0.1624	0.1442
5208	0.8149	0.6490	6502	0.0366	0.0309
5209	0.7339	0.5598	6503	0.0883	0.0534
5300	0.1172	0.0927	6504	0.3398	0.3873
5301	0.0371	0.0315	6505	0.0908	0.1183
5302	0.0185	0.0154	6506	0.1002	0.1021
5305	0.0500	0.0503	6509	0.3408	0.3423
5306	0.0590	0.0576	6510	0.5165	0.3006
5307	0.6305	0.4024	6511	0.3539	0.3415
5308	0.0809	0.0687	6512	0.1913	0.1532
6103	0.0742	0.0842	6601	0.1878	0.1707
6104	0.3463	0.3269	6602	0.5114	0.4383
6105	0.3871	0.2718	6603	0.3522	0.2687
6107	0.1275	0.1596	6604	0.0827	0.0777
6108	0.4337	0.4229	6605	0.2896	0.3348
6109	0.1051	0.0807	6607	0.1633	0.1429
6110	0.6270	0.5057	6608	0.6594	0.2789
6120	0.2949	0.2233	6620	4.0932	2.6961
6121	0.3840	0.2842	6704	0.1594	0.1301

((Base Rates Effective  
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((Base Rates Effective  
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Class	Accident Fund	Medical Aid Fund
6705	0.6642	0.8191
6706	0.2851	0.2866
6707	3.7267	4.7882
6708	6.8366	9.4509
6709	0.2634	0.2708
6801	0.6947	0.4762
6802	0.5344	0.4384
6803	1.0751	0.4951
6804	0.3131	0.2620
6809	4.6022	4.8001
6901	0.0000	0.0619
6902	1.2039	0.5354
6903	8.2570	4.4850
6904	0.5186	0.2985
6905	0.4324	0.3028
6906	0.0000	0.3028
6907	1.3282	1.0454
6908	0.4708	0.3619
6909	0.1132	0.1088
7100	0.0319	0.0277
7101	0.0248	0.0200
7102	3.0489	4.9215
7103	0.7006	0.4465
7104	0.0307	0.0293
7105	0.0311	0.0288
7106	0.1931	0.1909
7107	0.1990	0.2367
7108	0.1788	0.1952
7109	0.1289	0.1308
7110	0.3673	0.2290
7111	0.4592	0.2625
7112	0.6442	0.5805
7113	0.3484	0.3457
7114	0.4421	0.4636
7115	0.5541	0.5533
7116	0.6570	0.5633
7117	1.6550	1.4537
7118	1.3613	1.2231
7119	1.3686	1.0544
7120	6.2512	4.8373
7121	5.8067	4.5171
7122	0.4794	0.5044
7200	1.3937	0.8325
7201	1.6940	0.9449

Class	Accident Fund	Medical Aid Fund
7202	0.0359	0.0229
7203	0.1029	0.1602
7204	0.0000	0.0000
7205	0.0000	0.0000
7301	0.4830	0.4187
7302	0.9645	0.8427
7307	0.4597	0.4214
7308	0.3087	0.3690
7309	0.2283	0.2551
7400	1.6940	0.9449

Base Rates Effective  
January 1, 2010

Class	Accident Fund	Medical Aid Fund
0101	1.4171	0.8290
0103	1.9338	1.2162
0104	1.0096	0.6354
0105	1.3556	0.9833
0107	1.5715	0.7938
0108	1.0096	0.6354
0112	0.7694	0.4834
0201	3.3385	1.3070
0202	3.7335	2.0036
0210	1.3643	0.6803
0212	1.5700	0.8234
0214	1.7231	0.8805
0217	1.1270	0.6759
0219	1.2680	0.8069
0301	0.6707	0.5364
0302	2.3884	1.1450
0303	2.1114	1.0183
0306	1.1288	0.6136
0307	1.0347	0.6405
0308	0.5270	0.4717
0403	1.8851	1.2485
0502	1.5522	0.8223
0504	1.8623	1.2855
0507	3.1354	2.1578
0508	2.3390	1.0577
0509	2.3461	1.1925
0510	1.8754	1.2515
0511	1.8230	1.0339
0512	1.8524	1.0148
0513	0.8355	0.5102

<u>Base Rates Effective</u> <u>January 1, 2010</u>			<u>Base Rates Effective</u> <u>January 1, 2010</u>		
<u>Class</u>	<u>Accident</u> <u>Fund</u>	<u>Medical Aid</u> <u>Fund</u>	<u>Class</u>	<u>Accident</u> <u>Fund</u>	<u>Medical Aid</u> <u>Fund</u>
0514	2.1954	1.2756	1802	0.8426	0.6411
0516	1.7452	1.0601	2002	0.7986	0.6569
0517	2.2429	1.4494	2004	0.9340	0.7782
0518	1.6739	0.9394	2007	0.5582	0.4592
0519	2.2514	1.3304	2008	0.3639	0.2948
0521	0.6528	0.4036	2009	0.4009	0.3796
0601	0.7014	0.4297	2101	0.7088	0.5904
0602	0.9119	0.4800	2102	0.5491	0.5042
0603	1.3023	0.6556	2104	0.2933	0.3622
0604	1.0991	0.8748	2105	0.5858	0.4942
0606	0.5892	0.4476	2106	0.4456	0.4007
0607	0.6405	0.4453	2201	0.2549	0.2160
0608	0.3793	0.2749	2202	0.7879	0.5985
0701	2.6692	0.8643	2203	0.4773	0.4394
0803	0.5012	0.3928	2204	0.2549	0.2160
0901	1.6739	0.9394	2401	0.6002	0.3776
1002	1.1556	0.8052	2903	0.6590	0.5855
1003	0.8526	0.6326	2904	0.7282	0.5975
1004	0.6353	0.3850	2905	0.6153	0.5586
1005	10.0027	5.4183	2906	0.3636	0.3214
1007	0.4178	0.2336	2907	0.5502	0.4716
1101	0.8323	0.6186	2908	1.1640	0.8225
1102	1.6845	0.9535	2909	0.4014	0.3672
1103	1.3856	0.9186	3101	0.8596	0.5807
1104	0.5841	0.5301	3102	0.3026	0.2349
1105	0.9692	0.6107	3103	0.5839	0.4394
1106	0.3297	0.3397	3104	0.6910	0.4946
1108	0.6918	0.5210	3105	0.7751	0.6618
1109	1.6232	1.1602	3303	0.4543	0.3759
1301	0.6755	0.4030	3304	0.4710	0.4735
1303	0.2296	0.1777	3309	0.4301	0.3308
1304	0.0325	0.0245	3402	0.6066	0.4628
1305	0.5022	0.3979	3403	0.2269	0.1753
1401	0.4683	0.4139	3404	0.5421	0.4520
1404	0.8551	0.6952	3405	0.3139	0.2830
1405	0.6934	0.5449	3406	0.2340	0.2224
1407	0.5018	0.4713	3407	0.9562	0.5987
1501	0.6745	0.4526	3408	0.2141	0.1754
1507	0.6612	0.4698	3409	0.1607	0.1541
1701	1.0210	0.6847	3410	0.2693	0.2555
1702	2.5362	1.0757	3411	0.5572	0.3813
1703	1.1360	0.4290	3412	0.7240	0.4160
1704	1.0210	0.6847	3414	0.6268	0.4499
1801	0.5465	0.3923	3415	0.9404	0.6604

<u>Base Rates Effective</u> <u>January 1, 2010</u>			<u>Base Rates Effective</u> <u>January 1, 2010</u>		
<u>Class</u>	<u>Accident</u> <u>Fund</u>	<u>Medical Aid</u> <u>Fund</u>	<u>Class</u>	<u>Accident</u> <u>Fund</u>	<u>Medical Aid</u> <u>Fund</u>
3501	1.1501	0.8573	4805	0.2827	0.2909
3503	0.2669	0.3257	4806	0.0602	0.0591
3506	1.1081	0.6052	4808	0.4878	0.4655
3509	0.3939	0.3892	4809	0.3266	0.3530
3510	0.3614	0.3151	4810	0.1324	0.1525
3511	0.7003	0.5643	4811	0.2869	0.3416
3512	0.3638	0.3723	4812	0.3979	0.3819
3513	0.4852	0.4738	4813	0.1530	0.1654
3602	0.1356	0.1148	4900	0.2575	0.1366
3603	0.4839	0.4354	4901	0.0782	0.0555
3604	0.7954	0.7977	4902	0.1288	0.0962
3605	0.5918	0.4192	4903	0.1730	0.1435
3701	0.3026	0.2349	4904	0.0279	0.0273
3702	0.4686	0.3837	4905	0.3406	0.3978
3708	0.6605	0.4568	4906	0.1024	0.0834
3802	0.2084	0.1845	4907	0.0545	0.0541
3808	0.4888	0.3266	4908	0.0806	0.1218
3901	0.1579	0.1826	4909	0.0382	0.0669
3902	0.4684	0.4432	4910	0.5009	0.4089
3903	1.0645	1.0981	4911	0.0634	0.0524
3905	0.1444	0.1662	5001	8.4242	4.3361
3906	0.4899	0.4481	5002	0.6681	0.4872
3909	0.2702	0.2707	5003	2.6380	1.3541
4002	1.4751	0.8685	5004	0.8890	0.6982
4101	0.3687	0.2912	5005	0.7338	0.4382
4103	0.5002	0.4946	5006	1.8037	0.9098
4107	0.1727	0.1409	5101	0.9643	0.7056
4108	0.1857	0.1589	5103	0.7549	0.7505
4109	0.2167	0.1816	5106	0.7549	0.7505
4201	0.8514	0.4386	5108	0.8738	0.8176
4301	0.6312	0.6235	5109	0.5952	0.4182
4302	0.7332	0.5802	5201	0.4450	0.3385
4304	0.9278	0.8790	5204	1.0081	0.6895
4305	1.4217	0.8551	5206	0.4385	0.2985
4401	0.4275	0.4082	5207	0.1522	0.1736
4402	0.8814	0.7486	5208	0.8554	0.7154
4404	0.5500	0.4857	5209	0.7818	0.6011
4501	0.1831	0.2083	5300	0.1327	0.1029
4502	0.0412	0.0392	5301	0.0393	0.0342
4504	0.1062	0.1284	5302	0.0180	0.0156
4601	0.8262	0.6540	5305	0.0544	0.0554
4802	0.3456	0.3288	5306	0.0569	0.0586
4803	0.2709	0.3226	5307	0.6843	0.4378
4804	0.5040	0.4945	5308	0.0910	0.0973

<u>Base Rates Effective</u> <u>January 1, 2010</u>			<u>Base Rates Effective</u> <u>January 1, 2010</u>		
<u>Class</u>	<u>Accident</u> <u>Fund</u>	<u>Medical Aid</u> <u>Fund</u>	<u>Class</u>	<u>Accident</u> <u>Fund</u>	<u>Medical Aid</u> <u>Fund</u>
6103	0.0785	0.0929	6601	0.1992	0.1824
6104	0.3692	0.3480	6602	0.5314	0.4813
6105	0.4232	0.3039	6603	0.3655	0.2939
6107	0.1442	0.1821	6604	0.0828	0.0818
6108	0.4638	0.4655	6605	0.3174	0.3731
6109	0.1177	0.0910	6607	0.1711	0.1566
6110	0.6429	0.5387	6608	0.6901	0.2936
6120	0.3149	0.2402	6620	3.7083	2.4009
6121	0.3910	0.2994	6704	0.1546	0.1354
6201	0.3403	0.2493	6705	0.7293	0.8933
6202	0.6530	0.5826	6706	0.2918	0.3046
6203	0.0925	0.1277	6707	4.0650	5.0433
6204	0.1183	0.1208	6708	7.0901	10.5720
6205	0.2728	0.2393	6709	0.2563	0.2809
6206	0.2415	0.2228	6801	0.7462	0.4947
6207	1.0143	1.2759	6802	0.6026	0.5085
6208	0.2244	0.2592	6803	1.1557	0.5314
6209	0.3077	0.3166	6804	0.3567	0.3226
6301	0.1609	0.0880	6809	4.7521	5.4232
6303	0.0762	0.0610	6901	0.0000	0.0687
6304	0.3542	0.4100	6902	1.2346	0.5839
6305	0.1049	0.1123	6903	8.5839	4.8015
6306	0.3104	0.2629	6904	0.5686	0.3353
6308	0.0699	0.0643	6905	0.4538	0.3325
6309	0.2111	0.1985	6906	0.0000	0.3325
6402	0.2715	0.2652	6907	1.3582	1.0936
6403	0.1738	0.1925	6908	0.4740	0.3841
6404	0.2606	0.2635	6909	0.1230	0.1210
6405	0.6054	0.4414	7100	0.0332	0.0298
6406	0.1197	0.1319	7101	0.0256	0.0213
6407	0.2795	0.2637	7102	3.1418	5.3264
6408	0.4542	0.3596	7103	0.7334	0.4845
6409	0.8423	0.5516	7104	0.0317	0.0323
6410	0.3063	0.2770	7105	0.0298	0.0296
6501	0.1664	0.1496	7106	0.2208	0.2251
6502	0.0357	0.0308	7107	0.2138	0.2577
6503	0.0913	0.0569	7108	0.1890	0.2086
6504	0.3467	0.4042	7109	0.1393	0.1477
6505	0.0950	0.1352	7110	0.3825	0.2465
6506	0.1047	0.1099	7111	0.4967	0.2923
6509	0.3708	0.3856	7112	0.6743	0.6337
6510	0.5342	0.3342	7113	0.3770	0.3843
6511	0.3872	0.3769	7114	0.4426	0.5004
6512	0.1844	0.1476	7115	0.5418	0.5626

Base Rates Effective  
January 1, 2010

Class	<u>Accident</u>	<u>Medical Aid</u>
	<u>Fund</u>	<u>Fund</u>
7116	0.6358	0.5641
7117	1.6923	1.5334
7118	1.4536	1.3427
7119	1.4657	1.1602
7120	6.5297	5.2259
7121	6.0861	4.8878
7122	0.5045	0.5382
7200	1.5557	0.9474
7201	1.7720	1.0474
7202	0.0377	0.0240
7203	0.1054	0.1650
7204	0.0000	0.0000
7205	0.0000	0.0000
7301	0.4802	0.4316
7302	0.9712	0.8900
7307	0.4627	0.4419
7308	0.3701	0.4328
7309	0.2372	0.2761
7400	1.7720	1.0474

AMENDATORY SECTION (Amending WSR 08-24-074, filed 12/1/08, effective 1/1/09)

**WAC 296-17-89502 Industrial insurance accident fund, medical aid and supplemental pension rates by class of industry for nonhourly rated classifications.** The base rates as set forth below are for classifications whose premium rates are based on units other than hours worked.

((Base Rates Effective  
January 1, 2009

Class	<u>Accident</u> <u>Fund</u>	<u>Medical Aid</u> <u>Fund</u>	<u>Supplemental- Pension Fund</u>
0540	0.0230	0.0121	0.0007
0541	0.0138	0.0066	0.0007
0550	0.0305	0.0132	0.0007
0551	0.0190	0.0078	0.0007))

Base Rates Effective  
January 1, 2010

Class	<u>Accident</u>	<u>Medical Aid</u>	<u>Supplemental</u>
	<u>Fund</u>	<u>Fund</u>	<u>Pension Fund</u>
0540	0.0220	0.0132	0.0008
0541	0.0141	0.0071	0.0008
0550	0.0295	0.0137	0.0008
0551	0.0193	0.0084	0.0008

AMENDATORY SECTION (Amending WSR 08-24-074, filed 12/1/08, effective 1/1/09)

**WAC 296-17-89504 Horse racing industry industrial insurance, medical aid, and supplemental pension by class.**

((Base Rates Effective  
January 1, 2009

Class	<u>Accident</u> <u>Fund</u>	<u>Medical Aid</u> <u>Fund</u>	<u>Supplemental- Pension Fund</u>
6614	46*	48*	+
6615	302*	327*	+
6616	13*	11*	+
6617	103*	91*	+
6618	99*	50*	+
6622	501**	508**	+
6623	101**	83**	+) )

Base Rates Effective  
January 1, 2010

Class	<u>Accident</u> <u>Fund</u>	<u>Medical Aid</u> <u>Fund</u>	<u>Supplemental</u> <u>Pension Fund</u>
6614	59*	65*	1
6615	357*	377*	1
6616	13*	11*	1
6617	111*	98*	1
6618	99*	50*	1
6622	69**	75**	1
6623	22**	17**	1

\* These rates are calculated on a per license basis for parimutuel race tracks and are base rated.

\*\* These rates are calculated on a per ((H2)) horse stall((s)) for parimutuel race tracks and are base rated.

AMENDATORY SECTION (Amending WSR 08-24-074, filed 12/1/08, effective 1/1/09)

**WAC 296-17-90492 Table I.**

((RETROSPECTIVE RATING PLANS A, A1, A2, A3, AND B  
STANDARD PREMIUM SIZE RANGES  
Effective January 1, 2009

Size Group Number	Standard Premium Range	
63	\$4,875	- \$5,888
62	5,889	- 7,072
61	7,073	- 8,415
60	8,416	- 9,955
59	9,956	- 11,719
58	11,720	- 13,699
57	13,700	- 15,959
56	15,960	- 18,359

((RETROSPECTIVE RATING PLANS A, A1, A2, A3, AND B  
STANDARD PREMIUM SIZE RANGES  
Effective January 1, 2009

Size Group Number	Standard Premium Range
55	18,360 - 20,889
54	20,890 - 23,549
53	23,550 - 26,369
52	26,370 - 29,309
51	29,310 - 32,399
50	32,400 - 35,639
49	35,640 - 39,039
48	39,040 - 42,479
47	42,480 - 45,939
46	45,940 - 49,739
45	49,740 - 53,959
44	53,960 - 58,659
43	58,660 - 63,859
42	63,860 - 69,699
41	69,700 - 76,219
40	76,220 - 83,509
39	83,510 - 91,729
38	91,730 - 100,999
37	101,000 - 111,499
36	111,500 - 122,799
35	122,800 - 134,999
34	135,000 - 148,499
33	148,500 - 163,199
32	163,200 - 179,599
31	179,600 - 196,599
30	196,600 - 215,499
29	215,500 - 236,799
28	236,800 - 261,099
27	261,100 - 289,199
26	289,200 - 321,399
25	321,400 - 358,499
24	358,500 - 401,899
23	401,900 - 452,999
22	453,000 - 512,799
21	512,800 - 584,299
20	584,300 - 670,599
19	670,600 - 774,099
18	774,100 - 901,499
17	901,500 - 1,059,999
16	1,060,000 - 1,288,999
15	1,289,000 - 1,604,999
14	1,605,000 - 2,051,999
13	2,052,000 - 2,621,999

((RETROSPECTIVE RATING PLANS A, A1, A2, A3, AND B  
STANDARD PREMIUM SIZE RANGES  
Effective January 1, 2009

Size Group Number	Standard Premium Range
12	2,622,000 - 3,348,999
11	3,349,000 - 4,438,999
10	4,439,000 - 6,147,999
9	6,148,000 - 8,861,999
8	8,862,000 - 12,839,999
7	12,840,000 - 18,909,999
6	18,910,000 - 29,399,999
5	29,400,000 - 46,399,999
4	46,400,000 - 99,999,999))
	& Over

RETROSPECTIVE RATING PLANS A, A1, A2, A3, AND B STAN-  
DARD PREMIUM SIZE RANGES  
Effective January 1, 2010

Size Group Number	Standard Premium Range
63	\$5,175 - \$6,250
62	6,251 - 7,507
61	7,508 - 8,933
60	8,934 - 10,568
59	10,569 - 12,440
58	12,441 - 14,539
57	14,540 - 16,939
56	16,940 - 19,489
55	19,490 - 22,179
54	22,180 - 24,999
53	25,000 - 27,989
52	27,990 - 31,109
51	31,110 - 34,389
50	34,390 - 37,829
49	37,830 - 41,439
48	41,440 - 45,089
47	45,090 - 48,769
46	48,770 - 52,799
45	52,800 - 57,279
44	57,280 - 62,269
43	62,270 - 67,789
42	67,790 - 73,989
41	73,990 - 80,909
40	80,910 - 88,649
39	88,650 - 97,379
38	97,380 - 107,199
37	107,200 - 118,399
36	118,400 - 130,399

RETROSPECTIVE RATING PLANS A, A1, A2, A3, AND B STANDARD PREMIUM SIZE RANGES  
Effective January 1, 2010

<u>Size Group Number</u>	<u>Standard Premium Range</u>	
35	130,400	= 143,299
34	143,300	= 157,599
33	157,600	= 173,199
32	173,200	= 190,699
31	190,700	= 208,699
30	208,700	= 228,799
29	228,800	= 251,399
28	251,400	= 277,199
27	277,200	= 306,999
26	307,000	= 341,199
25	341,200	= 380,599
24	380,600	= 426,599
23	426,600	= 480,899
22	480,900	= 544,399
21	544,400	= 620,299
20	620,300	= 711,899
19	711,900	= 821,699
18	821,700	= 956,999
17	957,000	= 1,124,999
16	1,125,000	= 1,367,999
15	1,368,000	= 1,703,999
14	1,704,000	= 2,177,999
13	2,178,000	= 2,782,999
12	2,783,000	= 3,554,999
11	3,555,000	= 4,711,999
10	4,712,000	= 6,525,999
9	6,526,000	= 9,406,999
8	9,407,000	= 13,629,999
7	13,630,000	= 20,069,999
6	20,070,000	= 31,209,999
5	31,210,000	= 49,259,999
4	49,260,000	= & Over

AMENDATORY SECTION (Amending WSR 08-24-074, filed 12/1/08, effective 1/1/09)

**WAC 296-17-920 Assessment for supplemental pension fund.** The amount of ~~((41.8))~~ 48.5 mils ~~(((\$0.0418)))~~ ~~(\$0.0485)~~ shall be retained by each employer from the earnings of each worker for each hour or fraction thereof of the worker is employed. The amount of money so retained from the employee shall be matched in an equal amount by each employer, except as otherwise provided in these rules, all such moneys shall be remitted to the department on or before the last day of January, April, July and October of each year for the preceding calendar quarter, provided self-insured employers shall remit to the department as provided under

WAC 296-15-060. All such moneys shall be deposited in the supplemental pension fund.

AMENDATORY SECTION (Amending WSR 08-24-074, filed 12/1/08, effective 1/1/09)

**WAC 296-17-875 Table I.**

**Primary Losses for Selected Claim Values**  
**Effective January 1, ~~((2009))~~ 2010**

<u>CLAIM VALUE</u>	<u>PRIMARY LOSS</u>
5,000	5,000
10,000	10,000
15,000	15,000
20,112	20,112
29,834	25,000
44,627	30,000
69,102	35,000
100,000	38,627
117,385	40,000
200,000	43,690
<del>((217,994))</del>	<del>((44,168))</del>
222,588**	44,279

\*\* Maximum claim value

AMENDATORY SECTION (Amending WSR 08-24-074, filed 12/1/08, effective 1/1/09)

**WAC 296-17-880 Table II.**

**PRIMARY AND EXCESS CREDIBILITY VALUES**  
**Effective January 1, ~~((2009))~~ 2010**

Maximum Claim Value = ~~\$(217,994))~~ 222,588  
 Average Death Value = ~~\$(217,994))~~ 222,588

<u>Expected Losses</u>	<u>Primary Credibility</u>	<u>Excess Credibility</u>
(4 - 7,182	12%	7%
7,183 - 7,666	13%	7%
7,667 - 8,157	14%	7%
8,158 - 8,652	15%	7%
8,653 - 9,153	16%	7%
9,154 - 9,662	17%	7%
9,663 - 10,176	18%	7%
10,177 - 10,697	19%	7%
10,698 - 11,225	20%	7%
11,226 - 11,760	21%	7%
11,761 - 12,304	22%	7%
12,305 - 12,854	23%	7%
12,855 - 13,413	24%	7%
13,414 - 13,982	25%	7%
13,983 - 14,558	26%	7%

**PRIMARY AND EXCESS CREDIBILITY VALUES**  
**Effective January 1, ((2009)) 2010**

Maximum Claim Value = \$((217,994)) 222,588  
 Average Death Value = \$((217,994)) 222,588

Expected Losses	Primary Credibility	Excess Credibility
14,559 - 15,143	27%	7%
15,144 - 15,740	28%	7%
15,741 - 16,346	29%	7%
16,347 - 16,964	30%	7%
16,965 - 17,594	31%	7%
17,595 - 18,236	32%	7%
18,237 - 18,891	33%	7%
18,892 - 19,560	34%	7%
19,561 - 20,244	35%	7%
20,245 - 20,944	36%	7%
20,945 - 21,661	37%	7%
21,662 - 22,398	38%	7%
22,399 - 23,153	39%	7%
23,154 - 23,932	40%	7%
23,933 - 24,733	41%	7%
24,734 - 25,561	42%	7%
25,562 - 26,418	43%	7%
26,419 - 27,307	44%	7%
27,308 - 28,232	45%	7%
28,233 - 29,197	46%	7%
29,198 - 30,209	47%	7%
30,210 - 31,276	48%	7%
31,277 - 32,407	49%	7%
32,408 - 33,615	50%	7%
33,616 - 34,918	51%	7%
34,919 - 36,345	52%	7%
36,346 - 37,937	53%	7%
37,938 - 38,099	54%	7%
38,100 - 39,771	54%	8%
39,772 - 42,010	55%	8%
42,011 - 63,580	56%	8%
63,581 - 70,078	57%	8%
70,079 - 100,096	57%	9%
100,097 - 103,097	57%	10%
103,098 - 130,299	58%	10%
130,300 - 142,614	58%	11%
142,615 - 160,691	59%	11%
160,692 - 182,130	59%	12%
182,131 - 191,267	60%	12%
191,268 - 221,648	60%	13%
221,649 - 222,035	61%	13%

**PRIMARY AND EXCESS CREDIBILITY VALUES**  
**Effective January 1, ((2009)) 2010**

Maximum Claim Value = \$((217,994)) 222,588  
 Average Death Value = \$((217,994)) 222,588

Expected Losses	Primary Credibility	Excess Credibility
222,036 - 252,995	61%	14%
252,996 - 261,164	61%	15%
261,165 - 284,149	62%	15%
284,150 - 300,681	62%	16%
300,682 - 315,498	63%	16%
315,499 - 340,198	63%	17%
340,199 - 347,044	64%	17%
347,045 - 378,789	64%	18%
378,790 - 379,714	64%	19%
379,715 - 410,737	65%	19%
410,738 - 419,230	65%	20%
419,231 - 442,886	66%	20%
442,887 - 458,748	66%	21%
458,749 - 475,240	67%	21%
475,241 - 498,265	67%	22%
498,266 - 507,802	68%	22%
507,803 - 537,781	68%	23%
537,782 - 540,571	69%	23%
540,572 - 573,552	69%	24%
573,553 - 577,297	69%	25%
577,298 - 606,745	70%	25%
606,746 - 616,815	70%	26%
616,816 - 640,154	71%	26%
640,155 - 656,332	71%	27%
656,333 - 673,780	72%	27%
673,781 - 695,848	72%	28%
695,849 - 707,625	73%	28%
707,626 - 735,366	73%	29%
735,367 - 741,690	74%	29%
741,691 - 774,882	74%	30%
774,883 - 775,981	75%	30%
775,982 - 810,496	75%	31%
810,497 - 814,399	75%	32%
814,400 - 845,240	76%	32%
845,241 - 853,915	76%	33%
853,916 - 880,213	77%	33%
880,214 - 893,433	77%	34%
893,434 - 915,420	78%	34%
915,421 - 932,949	78%	35%
932,950 - 950,861	79%	35%
950,862 - 972,466	79%	36%

**PRIMARY AND EXCESS CREDIBILITY VALUES**  
**Effective January 1, ((2009)) 2010**

Maximum Claim Value = \$((217,994)) 222,588  
 Average Death Value = \$((217,994)) 222,588

Expected Losses	Primary Credibility	Excess Credibility
972,467 - 986,539	80%	36%
986,540 - 1,011,982	80%	37%
1,011,983 - 1,022,456	81%	37%
1,022,457 - 1,051,499	81%	38%
1,051,500 - 1,058,616	82%	38%
1,058,617 - 1,091,016	82%	39%
1,091,017 - 1,095,021	83%	39%
1,095,022 - 1,130,534	83%	40%
1,130,535 - 1,131,673	84%	40%
1,131,674 - 1,168,573	84%	41%
1,168,574 - 1,170,048	84%	42%
1,170,049 - 1,205,724	85%	42%
1,205,725 - 1,209,566	85%	43%
1,209,567 - 1,243,133	86%	43%
1,243,134 - 1,249,083	86%	44%
1,249,084 - 1,280,796	87%	44%
1,280,797 - 1,288,601	87%	45%
1,288,602 - 1,318,721	88%	45%
1,318,722 - 1,328,116	88%	46%
1,328,117 - 1,356,909	89%	46%
1,356,910 - 1,367,633	89%	47%
1,367,634 - 1,395,361	90%	47%
1,395,362 - 1,407,151	90%	48%
1,407,152 - 1,434,082	91%	48%
1,434,083 - 1,446,666	91%	49%
1,446,667 - 1,473,073	92%	49%
1,473,074 - 1,486,184	92%	50%
1,486,185 - 1,512,339	93%	50%
1,512,340 - 1,525,700	93%	51%
1,525,701 - 1,551,881	94%	51%
1,551,882 - 1,565,217	94%	52%
1,565,218 - 1,591,703	95%	52%
1,591,704 - 1,604,733	95%	53%
1,604,734 - 1,631,807	96%	53%
1,631,808 - 1,644,251	96%	54%
1,644,252 - 1,672,196	97%	54%
1,672,197 - 1,683,767	97%	55%
1,683,768 - 1,712,874	98%	55%
1,712,875 - 1,723,284	98%	56%
1,723,285 - 1,753,845	99%	56%
1,753,846 - 1,762,800	99%	57%

**PRIMARY AND EXCESS CREDIBILITY VALUES**  
**Effective January 1, ((2009)) 2010**

Maximum Claim Value = \$((217,994)) 222,588  
 Average Death Value = \$((217,994)) 222,588

Expected Losses	Primary Credibility	Excess Credibility
1,762,801 - 1,795,111	100%	57%
1,795,112 - 1,836,674	100%	58%
1,836,675 - 1,878,538	100%	59%
1,878,539 - 1,920,708	100%	60%
1,920,709 - 1,963,185	100%	61%
1,963,186 - 2,005,974	100%	62%
2,005,975 - 2,049,077	100%	63%
2,049,078 - 2,092,498	100%	64%
2,092,499 - 2,136,242	100%	65%
2,136,243 - 2,180,312	100%	66%
2,180,313 - 2,224,711	100%	67%
2,224,712 - 2,269,441	100%	68%
2,269,442 - 2,314,509	100%	69%
2,314,510 - 2,359,916	100%	70%
2,359,917 - 2,405,669	100%	71%
2,405,670 - 2,451,770	100%	72%
2,451,771 - 2,498,221	100%	73%
2,498,222 - 2,545,031	100%	74%
2,545,032 - 2,592,199	100%	75%
2,592,200 - 2,639,732	100%	76%
2,639,733 - 2,687,634	100%	77%
2,687,635 - 2,735,910	100%	78%
2,735,911 - 2,784,562	100%	79%
2,784,563 - 2,833,596	100%	80%
2,833,597 - 2,883,018	100%	81%
2,883,019 - 2,932,829	100%	82%
2,932,830 - 2,983,037	100%	83%
2,983,038 - 3,033,644	100%	84%
3,033,645 - 3,084,657	100%	85%
3,084,658 & over	100%	86%))
1 = 7,397	12%	7%
7,398 = 7,896	13%	7%
7,897 = 8,402	14%	7%
8,403 = 8,912	15%	7%
8,913 = 9,428	16%	7%
9,429 = 9,952	17%	7%
9,953 = 10,481	18%	7%
10,482 = 11,018	19%	7%
11,019 = 11,562	20%	7%
11,563 = 12,113	21%	7%
12,114 = 12,673	22%	7%

**PRIMARY AND EXCESS CREDIBILITY VALUES**  
**Effective January 1, (~~2009~~) 2010**

Maximum Claim Value = \$((217,994)) 222,588  
 Average Death Value = \$((217,994)) 222,588

Expected Losses	Primary Credibility	Excess Credibility
<u>12,674</u> = <u>13,240</u>	<u>23%</u>	<u>7%</u>
<u>13,241</u> = <u>13,815</u>	<u>24%</u>	<u>7%</u>
<u>13,816</u> = <u>14,401</u>	<u>25%</u>	<u>7%</u>
<u>14,402</u> = <u>14,995</u>	<u>26%</u>	<u>7%</u>
<u>14,996</u> = <u>15,597</u>	<u>27%</u>	<u>7%</u>
<u>15,598</u> = <u>16,212</u>	<u>28%</u>	<u>7%</u>
<u>16,213</u> = <u>16,836</u>	<u>29%</u>	<u>7%</u>
<u>16,837</u> = <u>17,473</u>	<u>30%</u>	<u>7%</u>
<u>17,474</u> = <u>18,122</u>	<u>31%</u>	<u>7%</u>
<u>18,123</u> = <u>18,783</u>	<u>32%</u>	<u>7%</u>
<u>18,784</u> = <u>19,458</u>	<u>33%</u>	<u>7%</u>
<u>19,459</u> = <u>20,147</u>	<u>34%</u>	<u>7%</u>
<u>20,148</u> = <u>20,851</u>	<u>35%</u>	<u>7%</u>
<u>20,852</u> = <u>21,572</u>	<u>36%</u>	<u>7%</u>
<u>21,573</u> = <u>22,311</u>	<u>37%</u>	<u>7%</u>
<u>22,312</u> = <u>23,070</u>	<u>38%</u>	<u>7%</u>
<u>23,071</u> = <u>23,848</u>	<u>39%</u>	<u>7%</u>
<u>23,849</u> = <u>24,650</u>	<u>40%</u>	<u>7%</u>
<u>24,651</u> = <u>25,475</u>	<u>41%</u>	<u>7%</u>
<u>25,476</u> = <u>26,328</u>	<u>42%</u>	<u>7%</u>
<u>26,329</u> = <u>27,211</u>	<u>43%</u>	<u>7%</u>
<u>27,212</u> = <u>28,126</u>	<u>44%</u>	<u>7%</u>
<u>28,127</u> = <u>29,079</u>	<u>45%</u>	<u>7%</u>
<u>29,080</u> = <u>30,073</u>	<u>46%</u>	<u>7%</u>
<u>30,074</u> = <u>31,115</u>	<u>47%</u>	<u>7%</u>
<u>31,116</u> = <u>32,214</u>	<u>48%</u>	<u>7%</u>
<u>32,215</u> = <u>33,379</u>	<u>49%</u>	<u>7%</u>
<u>33,380</u> = <u>34,623</u>	<u>50%</u>	<u>7%</u>
<u>34,624</u> = <u>35,966</u>	<u>51%</u>	<u>7%</u>
<u>35,967</u> = <u>37,435</u>	<u>52%</u>	<u>7%</u>
<u>37,436</u> = <u>39,075</u>	<u>53%</u>	<u>7%</u>
<u>39,076</u> = <u>39,242</u>	<u>54%</u>	<u>7%</u>
<u>39,243</u> = <u>40,964</u>	<u>54%</u>	<u>8%</u>
<u>40,965</u> = <u>43,270</u>	<u>55%</u>	<u>8%</u>
<u>43,271</u> = <u>65,487</u>	<u>56%</u>	<u>8%</u>
<u>65,488</u> = <u>72,180</u>	<u>57%</u>	<u>8%</u>
<u>72,181</u> = <u>103,099</u>	<u>57%</u>	<u>9%</u>
<u>103,100</u> = <u>106,190</u>	<u>57%</u>	<u>10%</u>
<u>106,191</u> = <u>134,208</u>	<u>58%</u>	<u>10%</u>
<u>134,209</u> = <u>146,892</u>	<u>58%</u>	<u>11%</u>
<u>146,893</u> = <u>165,512</u>	<u>59%</u>	<u>11%</u>

**PRIMARY AND EXCESS CREDIBILITY VALUES**  
**Effective January 1, (~~2009~~) 2010**

Maximum Claim Value = \$((217,994)) 222,588  
 Average Death Value = \$((217,994)) 222,588

Expected Losses	Primary Credibility	Excess Credibility
<u>165,513</u> = <u>187,594</u>	<u>59%</u>	<u>12%</u>
<u>187,595</u> = <u>197,005</u>	<u>60%</u>	<u>12%</u>
<u>197,006</u> = <u>228,297</u>	<u>60%</u>	<u>13%</u>
<u>228,298</u> = <u>228,696</u>	<u>61%</u>	<u>13%</u>
<u>228,697</u> = <u>260,585</u>	<u>61%</u>	<u>14%</u>
<u>260,586</u> = <u>268,999</u>	<u>61%</u>	<u>15%</u>
<u>269,000</u> = <u>292,674</u>	<u>62%</u>	<u>15%</u>
<u>292,675</u> = <u>309,701</u>	<u>62%</u>	<u>16%</u>
<u>309,702</u> = <u>324,963</u>	<u>63%</u>	<u>16%</u>
<u>324,964</u> = <u>350,404</u>	<u>63%</u>	<u>17%</u>
<u>350,405</u> = <u>357,455</u>	<u>64%</u>	<u>17%</u>
<u>357,456</u> = <u>390,153</u>	<u>64%</u>	<u>18%</u>
<u>390,154</u> = <u>391,105</u>	<u>64%</u>	<u>19%</u>
<u>391,106</u> = <u>423,059</u>	<u>65%</u>	<u>19%</u>
<u>423,060</u> = <u>431,807</u>	<u>65%</u>	<u>20%</u>
<u>431,808</u> = <u>456,173</u>	<u>66%</u>	<u>20%</u>
<u>456,174</u> = <u>472,510</u>	<u>66%</u>	<u>21%</u>
<u>472,511</u> = <u>489,497</u>	<u>67%</u>	<u>21%</u>
<u>489,498</u> = <u>513,213</u>	<u>67%</u>	<u>22%</u>
<u>513,214</u> = <u>523,036</u>	<u>68%</u>	<u>22%</u>
<u>523,037</u> = <u>553,914</u>	<u>68%</u>	<u>23%</u>
<u>553,915</u> = <u>556,788</u>	<u>69%</u>	<u>23%</u>
<u>556,789</u> = <u>590,759</u>	<u>69%</u>	<u>24%</u>
<u>590,760</u> = <u>594,616</u>	<u>69%</u>	<u>25%</u>
<u>594,617</u> = <u>624,947</u>	<u>70%</u>	<u>25%</u>
<u>624,948</u> = <u>635,319</u>	<u>70%</u>	<u>26%</u>
<u>635,320</u> = <u>659,359</u>	<u>71%</u>	<u>26%</u>
<u>659,360</u> = <u>676,022</u>	<u>71%</u>	<u>27%</u>
<u>676,023</u> = <u>693,993</u>	<u>72%</u>	<u>27%</u>
<u>693,994</u> = <u>716,723</u>	<u>72%</u>	<u>28%</u>
<u>716,724</u> = <u>728,854</u>	<u>73%</u>	<u>28%</u>
<u>728,855</u> = <u>757,427</u>	<u>73%</u>	<u>29%</u>
<u>757,428</u> = <u>763,941</u>	<u>74%</u>	<u>29%</u>
<u>763,942</u> = <u>798,128</u>	<u>74%</u>	<u>30%</u>
<u>798,129</u> = <u>799,260</u>	<u>75%</u>	<u>30%</u>
<u>799,261</u> = <u>834,811</u>	<u>75%</u>	<u>31%</u>
<u>834,812</u> = <u>838,831</u>	<u>75%</u>	<u>32%</u>
<u>838,832</u> = <u>870,597</u>	<u>76%</u>	<u>32%</u>
<u>870,598</u> = <u>879,532</u>	<u>76%</u>	<u>33%</u>
<u>879,533</u> = <u>906,619</u>	<u>77%</u>	<u>33%</u>
<u>906,620</u> = <u>920,236</u>	<u>77%</u>	<u>34%</u>

**PRIMARY AND EXCESS CREDIBILITY VALUES**  
**Effective January 1, ((2009)) 2010**

Maximum Claim Value = \$((217,994)) 222,588  
 Average Death Value = \$((217,994)) 222,588

Expected Losses	Primary Credibility	Excess Credibility
<u>920,237</u> - <u>942,883</u>	78%	34%
<u>942,884</u> - <u>960,938</u>	78%	35%
<u>960,939</u> - <u>979,387</u>	79%	35%
<u>979,388</u> - <u>1,001,640</u>	79%	36%
<u>1,001,641</u> - <u>1,016,135</u>	80%	36%
<u>1,016,136</u> - <u>1,042,341</u>	80%	37%
<u>1,042,342</u> - <u>1,053,130</u>	81%	37%
<u>1,053,131</u> - <u>1,083,044</u>	81%	38%
<u>1,083,045</u> - <u>1,090,375</u>	82%	38%
<u>1,090,376</u> - <u>1,123,747</u>	82%	39%
<u>1,123,748</u> - <u>1,127,872</u>	83%	39%
<u>1,127,873</u> - <u>1,164,450</u>	83%	40%
<u>1,164,451</u> - <u>1,165,623</u>	84%	40%
<u>1,165,624</u> - <u>1,203,630</u>	84%	41%
<u>1,203,631</u> - <u>1,205,149</u>	84%	42%
<u>1,205,150</u> - <u>1,241,896</u>	85%	42%
<u>1,241,897</u> - <u>1,245,853</u>	85%	43%
<u>1,245,854</u> - <u>1,280,427</u>	86%	43%
<u>1,280,428</u> - <u>1,286,556</u>	86%	44%
<u>1,286,557</u> - <u>1,319,220</u>	87%	44%
<u>1,319,221</u> - <u>1,327,259</u>	87%	45%
<u>1,327,260</u> - <u>1,358,283</u>	88%	45%
<u>1,358,284</u> - <u>1,367,960</u>	88%	46%
<u>1,367,961</u> - <u>1,397,616</u>	89%	46%
<u>1,397,617</u> - <u>1,408,662</u>	89%	47%
<u>1,408,663</u> - <u>1,437,222</u>	90%	47%
<u>1,437,223</u> - <u>1,449,366</u>	90%	48%
<u>1,449,367</u> - <u>1,477,104</u>	91%	48%
<u>1,477,105</u> - <u>1,490,066</u>	91%	49%
<u>1,490,067</u> - <u>1,517,265</u>	92%	49%
<u>1,517,266</u> - <u>1,530,770</u>	92%	50%
<u>1,530,771</u> - <u>1,557,709</u>	93%	50%
<u>1,557,710</u> - <u>1,571,471</u>	93%	51%
<u>1,571,472</u> - <u>1,598,437</u>	94%	51%
<u>1,598,438</u> - <u>1,612,174</u>	94%	52%
<u>1,612,175</u> - <u>1,639,454</u>	95%	52%
<u>1,639,455</u> - <u>1,652,875</u>	95%	53%
<u>1,652,876</u> - <u>1,680,761</u>	96%	53%
<u>1,680,762</u> - <u>1,693,579</u>	96%	54%
<u>1,693,580</u> - <u>1,722,362</u>	97%	54%
<u>1,722,363</u> - <u>1,734,280</u>	97%	55%

**PRIMARY AND EXCESS CREDIBILITY VALUES**  
**Effective January 1, ((2009)) 2010**

Maximum Claim Value = \$((217,994)) 222,588  
 Average Death Value = \$((217,994)) 222,588

Expected Losses	Primary Credibility	Excess Credibility
<u>1,734,281</u> - <u>1,764,260</u>	98%	55%
<u>1,764,261</u> - <u>1,774,983</u>	98%	56%
<u>1,774,984</u> - <u>1,806,460</u>	99%	56%
<u>1,806,461</u> - <u>1,815,684</u>	99%	57%
<u>1,815,685</u> - <u>1,848,964</u>	100%	57%
<u>1,848,965</u> - <u>1,891,774</u>	100%	58%
<u>1,891,775</u> - <u>1,934,894</u>	100%	59%
<u>1,934,895</u> - <u>1,978,329</u>	100%	60%
<u>1,978,330</u> - <u>2,022,081</u>	100%	61%
<u>2,022,082</u> - <u>2,066,153</u>	100%	62%
<u>2,066,154</u> - <u>2,110,549</u>	100%	63%
<u>2,110,550</u> - <u>2,155,273</u>	100%	64%
<u>2,155,274</u> - <u>2,200,329</u>	100%	65%
<u>2,200,330</u> - <u>2,245,721</u>	100%	66%
<u>2,245,722</u> - <u>2,291,452</u>	100%	67%
<u>2,291,453</u> - <u>2,337,524</u>	100%	68%
<u>2,337,525</u> - <u>2,383,944</u>	100%	69%
<u>2,383,945</u> - <u>2,430,714</u>	100%	70%
<u>2,430,715</u> - <u>2,477,839</u>	100%	71%
<u>2,477,840</u> - <u>2,525,323</u>	100%	72%
<u>2,525,324</u> - <u>2,573,168</u>	100%	73%
<u>2,573,169</u> - <u>2,621,382</u>	100%	74%
<u>2,621,383</u> - <u>2,669,965</u>	100%	75%
<u>2,669,966</u> - <u>2,718,924</u>	100%	76%
<u>2,718,925</u> - <u>2,768,263</u>	100%	77%
<u>2,768,264</u> - <u>2,817,987</u>	100%	78%
<u>2,817,988</u> - <u>2,868,099</u>	100%	79%
<u>2,868,100</u> - <u>2,918,604</u>	100%	80%
<u>2,918,605</u> - <u>2,969,509</u>	100%	81%
<u>2,969,510</u> - <u>3,020,814</u>	100%	82%
<u>3,020,815</u> - <u>3,072,528</u>	100%	83%
<u>3,072,529</u> - <u>3,124,653</u>	100%	84%
<u>3,124,654</u> - <u>3,177,197</u>	100%	85%
<u>3,177,198</u> - <u>&amp; over</u>	100%	86%

AMENDATORY SECTION (Amending WSR 08-24-074, filed 12/1/08, effective 1/1/09)

WAC 296-17-885 Table III.

Expected Loss Rates and Primary Ratios for Indicated Fiscal Year

Expected Loss Rates in Dollars Per Worker Hour Effective January 1, ((2009)) 2010

Class	((2005)) 2006	((2006)) 2007	((2007)) 2008	Primary Ratio	Class	((2005)) 2006	((2006)) 2007	((2007)) 2008	Primary Ratio
					1003	0.7274	0.6756	0.6018	0.514
					1004	0.5011	0.4620	0.4058	0.532
					1005	7.6265	7.0229	6.2072	0.475
					1007	0.3261	0.3009	0.2659	0.511
					1101	0.7185	0.6663	0.5881	0.558
					1102	1.2864	1.1866	1.0488	0.496
					1103	1.1438	1.0616	0.9494	0.473
					1104	0.5376	0.5013	0.4454	0.571
					1105	0.7964	0.7373	0.6551	0.499
					1106	0.3284	0.3079	0.2769	0.547
					1108	0.5909	0.5480	0.4853	0.548
					1109	1.4481	1.3457	1.1965	0.527
					1301	0.5816	0.5344	0.4621	0.597
					1303	0.2141	0.1983	0.1740	0.591
					1304	0.0288	0.0268	0.0236	0.565
					1305	0.4386	0.4069	0.3580	0.584
					1401	0.4469	0.4187	0.3798	0.461
					1402	2.7095	2.5024	2.2426	0.418
					1404	0.7793	0.7244	0.6397	0.576
					1405	0.6098	0.5647	0.4936	0.610
					1407	0.4967	0.4642	0.4148	0.549
					1501	0.5680	0.5250	0.4616	0.554
					1507	0.5571	0.5158	0.4552	0.548
					1701	0.8495	0.7869	0.6988	0.503
					1702	1.8111	1.6629	1.4848	0.394
					1703	0.7548	0.6893	0.6055	0.450
					1704	0.8495	0.7869	0.6988	0.503
					1801	0.4614	0.4294	0.3869	0.462
					1802	0.6890	0.6372	0.5627	0.540
					2002	0.7191	0.6692	0.5944	0.550
					2004	0.9173	0.8529	0.7536	0.575
					2007	0.4876	0.4536	0.4032	0.544
					2008	0.3074	0.2862	0.2562	0.511
					2009	0.3874	0.3616	0.3216	0.579
					2101	0.6318	0.5888	0.5258	0.529
					2102	0.5212	0.4862	0.4308	0.588
					2104	0.3335	0.3135	0.2811	0.590
					2105	0.5533	0.5135	0.4518	0.597
					2106	0.4079	0.3802	0.3377	0.569
					2201	0.2389	0.2228	0.1986	0.540
					2202	0.6754	0.6267	0.5551	0.545
					2203	0.4633	0.4318	0.3821	0.584
					2204	0.2389	0.2228	0.1986	0.540
					2401	0.4804	0.4437	0.3876	0.585
					2903	0.6153	0.5734	0.5091	0.570
					2904	0.6711	0.6252	0.5575	0.541
					2905	0.5710	0.5325	0.4719	0.587
					2906	0.3214	0.2992	0.2658	0.566
					2907	0.5212	0.4847	0.4278	0.593
					2908	0.9535	0.8834	0.7846	0.508
					2909	0.3764	0.3511	0.3126	0.563
					3101	0.7551	0.6984	0.6199	0.504
					3102	0.2672	0.2483	0.2204	0.552
					3103	0.5267	0.4894	0.4352	0.524
					3104	0.5776	0.5350	0.4741	0.528
					3105	0.6844	0.6365	0.5667	0.541
					1002	0.9636	0.8943	0.7960	0.509

Class	((2005)) 2006	((2006)) 2007	((2007)) 2008	Primary Ratio	Class	((2005)) 2006	((2006)) 2007	((2007)) 2008	Primary Ratio
3303	0.4308	0.4002	0.3524	0.586	4504	0.1105	0.1037	0.0925	0.630
3304	0.4656	0.4353	0.3868	0.590	4601	0.7222	0.6716	0.5962	0.546
3309	0.3950	0.3675	0.3273	0.534	4802	0.3232	0.3027	0.2724	0.517
3402	0.5099	0.4733	0.4201	0.541	4803	0.3087	0.2906	0.2609	0.588
3403	0.1942	0.1807	0.1614	0.528	4804	0.5167	0.4821	0.4270	0.595
3404	0.4860	0.4519	0.4011	0.557	4805	0.2888	0.2703	0.2405	0.594
3405	0.2888	0.2691	0.2394	0.570	4806	0.0578	0.0541	0.0484	0.552
3406	0.2095	0.1955	0.1732	0.604	4808	0.4734	0.4427	0.3978	0.518
3407	0.7195	0.6653	0.5894	0.510	4809	0.3614	0.3384	0.3015	0.588
3408	0.1870	0.1733	0.1512	0.622	4810	0.1385	0.1302	0.1168	0.587
3409	0.1730	0.1612	0.1411	0.651	4811	0.2846	0.2672	0.2396	0.588
3410	0.2870	0.2679	0.2371	0.597	4812	0.3995	0.3727	0.3304	0.599
3411	0.4574	0.4234	0.3740	0.541	4813	0.1526	0.1432	0.1283	0.576
3412	0.5295	0.4887	0.4330	0.496	4900	0.2284	0.2107	0.1881	0.434
3414	0.5329	0.4938	0.4363	0.547	4901	0.0657	0.0608	0.0541	0.517
3415	0.7533	0.7003	0.6313	0.450	4902	0.1097	0.1017	0.0894	0.581
3501	1.0127	0.9402	0.8336	0.533	4903	0.1616	0.1497	0.1305	0.635
3503	0.2985	0.2810	0.2524	0.586	4904	0.0271	0.0253	0.0225	0.590
3506	0.8906	0.8186	0.7220	0.496	4905	0.3739	0.3510	0.3136	0.590
3509	0.4153	0.3876	0.3421	0.621	4906	0.0949	0.0881	0.0775	0.597
3510	0.3508	0.3265	0.2886	0.593	4907	0.0515	0.0480	0.0429	0.568
3511	0.6453	0.6001	0.5344	0.533	4908	0.0751	0.0709	0.0648	0.571
3512	0.3396	0.3180	0.2846	0.581	4909	0.0368	0.0350	0.0326	0.541
3513	0.4330	0.4067	0.3707	0.464	4910	0.4473	0.4169	0.3724	0.526
3602	0.1265	0.1177	0.1042	0.577	4911	0.0567	0.0528	0.0472	0.529
3603	0.4411	0.4113	0.3665	0.558	5001	5.5327	5.0944	4.5401	0.426
3604	0.7591	0.7122	0.6458	0.506	5002	0.5848	0.5412	0.4751	0.578
3605	0.5074	0.4695	0.4135	0.557	5003	1.9036	1.7553	1.5641	0.438
3701	0.2672	0.2483	0.2204	0.552	5004	0.8179	0.7624	0.6859	0.478
3702	0.4288	0.3982	0.3516	0.579	5005	0.5412	0.5010	0.4474	0.460
3708	0.5698	0.5277	0.4662	0.546	5006	1.3323	1.2287	1.0987	0.417
3802	0.1960	0.1824	0.1612	0.584	5101	0.8723	0.8090	0.7124	0.576
3808	0.4003	0.3705	0.3285	0.512	5103	0.7195	0.6722	0.5982	0.587
3901	0.1713	0.1608	0.1432	0.622	5106	0.7195	0.6722	0.5982	0.587
3902	0.4549	0.4247	0.3790	0.558	5108	0.8745	0.8153	0.7217	0.599
3903	1.0700	1.0036	0.9024	0.545	5109	0.5085	0.4712	0.4172	0.542
3905	0.1539	0.1445	0.1290	0.598	5201	0.3942	0.3658	0.3236	0.559
3906	0.4859	0.4535	0.4028	0.574	5204	0.8403	0.7807	0.6988	0.486
3909	0.2632	0.2462	0.2190	0.603	5206	0.3796	0.3511	0.3109	0.527
4002	1.2877	1.1863	1.0410	0.535	5207	0.1725	0.1620	0.1445	0.613
4101	0.3152	0.2927	0.2596	0.547	5208	0.7596	0.7068	0.6299	0.535
4103	0.4645	0.4337	0.3840	0.612	5209	0.6645	0.6183	0.5530	0.510
4107	0.1570	0.1461	0.1300	0.543	5300	0.1122	0.1041	0.0915	0.598
4108	0.1559	0.1453	0.1290	0.568	5301	0.0361	0.0336	0.0296	0.599
4109	0.1966	0.1831	0.1633	0.538	5302	0.0176	0.0165	0.0146	0.552
4201	0.6706	0.6153	0.5360	0.545	5305	0.0536	0.0501	0.0444	0.630
4301	0.6200	0.5796	0.5157	0.581	5306	0.0627	0.0584	0.0517	0.623
4302	0.6562	0.6092	0.5379	0.569	5307	0.5669	0.5238	0.4590	0.569
4304	0.9406	0.8791	0.7859	0.545	5308	0.0778	0.0724	0.0643	0.575
4305	1.1533	1.0632	0.9289	0.566	6103	0.0821	0.0770	0.0685	0.626
4401	0.3874	0.3624	0.3269	0.511	6104	0.3599	0.3361	0.2984	0.593
4402	0.8352	0.7777	0.6861	0.601	6105	0.3507	0.3250	0.2872	0.552
4404	0.5295	0.4936	0.4385	0.572	6107	0.1384	0.1304	0.1176	0.604
4501	0.1860	0.1741	0.1546	0.630	6108	0.4554	0.4257	0.3781	0.599
4502	0.0384	0.0360	0.0324	0.542	6109	0.0966	0.0897	0.0795	0.563

Class	((2005)) 2006	((2006)) 2007	((2007)) 2008	Primary Ratio	Class	((2005)) 2006	((2006)) 2007	((2007)) 2008	Primary Ratio
6110	0.6119	0.5696	0.5051	0.563	6803	0.7822	0.7206	0.6484	0.376
6120	0.2751	0.2555	0.2263	0.556	6804	0.2990	0.2783	0.2468	0.577
6121	0.3582	0.3325	0.2938	0.561	6809	4.7269	4.4272	3.9629	0.578
6201	0.2834	0.2631	0.2355	0.494	6901	0.0172	0.0175	0.0176	0.709
6202	0.6046	0.5644	0.5053	0.536	6902	0.9048	0.8310	0.7366	0.440
6203	0.1034	0.0974	0.0869	0.666	6903	6.1881	5.7401	5.2448	0.336
6204	0.1201	0.1124	0.1003	0.593	6904	0.4600	0.4218	0.3616	0.635
6205	0.2643	0.2462	0.2182	0.578	6905	0.3958	0.3654	0.3181	0.617
6206	0.2281	0.2127	0.1887	0.582	6906	0.1623	0.1606	0.1526	0.699
6207	1.0525	0.9947	0.9058	0.534	6907	1.2851	1.1955	1.0596	0.558
6208	0.2366	0.2225	0.1996	0.586	6908	0.4423	0.4105	0.3621	0.574
6209	0.3178	0.2973	0.2650	0.584	6909	0.1163	0.1087	0.0965	0.598
6301	0.1238	0.1143	0.1014	0.477	7100	0.0307	0.0286	0.0258	0.503
6302	0.1972	0.1840	0.1634	0.586	7101	0.0221	0.0206	0.0186	0.473
6303	0.0669	0.0621	0.0552	0.553	7102	4.1506	3.9492	3.6001	0.589
6304	0.4084	0.3835	0.3423	0.601	7103	0.6377	0.5888	0.5140	0.584
6305	0.1047	0.0980	0.0873	0.605	7104	0.0315	0.0293	0.0258	0.626
6306	0.3047	0.2833	0.2509	0.569	7105	0.0328	0.0305	0.0269	0.635
6308	0.0668	0.0622	0.0550	0.591	7106	0.2119	0.1981	0.1751	0.620
6309	0.1972	0.1840	0.1634	0.586	7107	0.2226	0.2096	0.1891	0.577
6402	0.2770	0.2585	0.2281	0.627	7108	0.2003	0.1879	0.1677	0.599
6403	0.1789	0.1677	0.1495	0.598	7109	0.1407	0.1316	0.1167	0.618
6404	0.2430	0.2271	0.2022	0.581	7110	0.3188	0.2949	0.2608	0.517
6405	0.5316	0.4928	0.4368	0.540	7111	0.3786	0.3492	0.3086	0.503
6406	0.1219	0.1143	0.1016	0.611	7112	0.6456	0.6027	0.5368	0.572
6407	0.2737	0.2555	0.2267	0.590	7113	0.3756	0.3519	0.3141	0.579
6408	0.3954	0.3674	0.3253	0.572	7114	0.4994	0.4676	0.4141	0.624
6409	0.7155	0.6613	0.5842	0.529	7115	0.6038	0.5652	0.5024	0.600
6410	0.2759	0.2572	0.2292	0.567	7116	0.6727	0.6273	0.5560	0.573
6501	0.1677	0.1562	0.1377	0.611	7117	1.6959	1.5800	1.3943	0.605
6502	0.0351	0.0327	0.0291	0.575	7118	1.3988	1.3064	1.1618	0.575
6503	0.0733	0.0675	0.0592	0.548	7119	1.3365	1.2407	1.0908	0.590
6504	0.3872	0.3636	0.3242	0.619	7120	5.8516	5.4438	4.8438	0.538
6505	0.1045	0.0985	0.0885	0.619	7121	5.4390	5.0611	4.5060	0.537
6506	0.1074	0.1005	0.0894	0.607	7122	0.5372	0.5032	0.4469	0.616
6509	0.3630	0.3398	0.3027	0.590	7200	1.2220	1.1259	0.9824	0.570
6510	0.4305	0.3978	0.3534	0.479	7201	1.4584	1.3430	1.1735	0.550
6511	0.3804	0.3557	0.3159	0.594	7202	0.0307	0.0284	0.0250	0.540
6512	0.1878	0.1750	0.1553	0.550	7203	0.1257	0.1192	0.1084	0.610
6601	0.1901	0.1775	0.1583	0.564	7204	0.0000	0.0000	0.0000	0.500
6602	0.5142	0.4798	0.4270	0.560	7205	0.0000	0.0000	0.0000	0.500
6603	0.3317	0.3080	0.2721	0.569	7301	0.4674	0.4370	0.3929	0.514
6604	0.0854	0.0797	0.0705	0.611	7302	0.9576	0.8954	0.8032	0.525
6605	0.3130	0.2938	0.2628	0.610	7307	0.4681	0.4376	0.3909	0.550
6607	0.1644	0.1534	0.1362	0.570	7308	0.3471	0.3262	0.2919	0.612
6608	0.4807	0.4406	0.3900	0.442	7309	0.2595	0.2438	0.2181	0.596
6620	3.8473	3.5456	3.0606	0.640	7400	1.4584	1.3430	1.1735	0.550))
6704	0.1581	0.1469	0.1292	0.600	<u>0101</u>	<u>1.1114</u>	<u>1.0759</u>	<u>0.9654</u>	<u>0.468</u>
6705	0.7956	0.7499	0.6737	0.600	<u>0103</u>	<u>1.5650</u>	<u>1.5168</u>	<u>1.3645</u>	<u>0.474</u>
6706	0.3031	0.2847	0.2563	0.546	<u>0104</u>	<u>0.8112</u>	<u>0.7861</u>	<u>0.7065</u>	<u>0.475</u>
6707	4.1884	3.9195	3.4488	0.705	<u>0105</u>	<u>1.1603</u>	<u>1.1243</u>	<u>1.0051</u>	<u>0.536</u>
6708	7.9211	7.5419	7.0054	0.462	<u>0107</u>	<u>1.1546</u>	<u>1.1158</u>	<u>1.0008</u>	<u>0.446</u>
6709	0.2830	0.2648	0.2353	0.603	<u>0108</u>	<u>0.8112</u>	<u>0.7861</u>	<u>0.7065</u>	<u>0.475</u>
6801	0.6088	0.5619	0.4916	0.591	<u>0112</u>	<u>0.6183</u>	<u>0.5990</u>	<u>0.5378</u>	<u>0.482</u>
6802	0.5230	0.4859	0.4272	0.604	<u>0201</u>	<u>2.2598</u>	<u>2.1766</u>	<u>1.9445</u>	<u>0.412</u>

Class	<u>(2005)</u> <u>2006</u>	<u>(2006)</u> <u>2007</u>	<u>(2007)</u> <u>2008</u>	Primary Ratio	Class	<u>(2005)</u> <u>2006</u>	<u>(2006)</u> <u>2007</u>	<u>(2007)</u> <u>2008</u>	Primary Ratio
0202	2.7958	2.7091	2.4476	0.414	1401	0.4377	0.4281	0.3936	0.437
0210	1.0213	0.9855	0.8791	0.463	1404	0.7967	0.7724	0.6895	0.569
0212	1.1915	1.1512	1.0296	0.459	1405	0.6202	0.6000	0.5303	0.594
0214	1.2870	1.2420	1.1077	0.474	1407	0.4914	0.4787	0.4326	0.539
0217	0.9020	0.8723	0.7793	0.496	1501	0.5700	0.5511	0.4900	0.547
0219	1.0322	0.9998	0.8957	0.485	1507	0.5658	0.5478	0.4888	0.538
0301	0.6054	0.5875	0.5266	0.547	1701	0.8544	0.8282	0.7430	0.490
0302	1.7359	1.6757	1.4991	0.444	1702	1.7516	1.6925	1.5272	0.383
0303	1.5459	1.4927	1.3366	0.442	1703	0.7723	0.7427	0.6605	0.428
0306	0.8526	0.8237	0.7354	0.480	1704	0.8544	0.8282	0.7430	0.490
0307	0.8169	0.7906	0.7074	0.497	1801	0.4503	0.4386	0.4003	0.440
0308	0.5054	0.4913	0.4415	0.557	1802	0.6916	0.6714	0.6018	0.526
0403	1.5614	1.5117	1.3509	0.512	2002	0.7252	0.7049	0.6347	0.525
0502	1.1718	1.1319	1.0111	0.467	2004	0.8591	0.8341	0.7472	0.553
0504	1.5718	1.5270	1.3810	0.463	2007	0.5045	0.4905	0.4425	0.525
0507	2.6227	2.5479	2.3041	0.466	2008	0.3224	0.3137	0.2842	0.506
0508	1.6478	1.5919	1.4330	0.409	2009	0.3849	0.3748	0.3378	0.556
0509	1.7113	1.6581	1.5026	0.401	2101	0.6444	0.6266	0.5643	0.525
0510	1.5550	1.5088	1.3598	0.476	2102	0.5281	0.5135	0.4615	0.567
0511	1.4156	1.3669	1.2167	0.501	2104	0.3194	0.3126	0.2847	0.582
0512	1.3932	1.3500	1.2204	0.427	2105	0.5351	0.5190	0.4632	0.582
0513	0.6680	0.6462	0.5774	0.497	2106	0.4149	0.4036	0.3630	0.550
0514	1.7000	1.6434	1.4680	0.491	2201	0.2381	0.2317	0.2092	0.524
0516	1.3886	1.3451	1.2089	0.470	2202	0.6912	0.6706	0.6020	0.529
0517	1.8369	1.7838	1.6149	0.448	2203	0.4575	0.4447	0.3993	0.569
0518	1.2678	1.2266	1.1005	0.463	2204	0.2381	0.2317	0.2092	0.524
0519	1.7529	1.6999	1.5351	0.438	2401	0.5015	0.4829	0.4225	0.587
0521	0.5298	0.5129	0.4599	0.485	2903	0.6155	0.5987	0.5391	0.550
0601	0.5481	0.5306	0.4753	0.489	2904	0.6504	0.6327	0.5723	0.515
0602	0.6846	0.6603	0.5867	0.498	2905	0.5846	0.5682	0.5101	0.567
0603	0.9434	0.9131	0.8248	0.415	2906	0.3292	0.3203	0.2890	0.547
0604	0.9762	0.9500	0.8602	0.497	2907	0.5046	0.4898	0.4380	0.572
0606	0.5167	0.5008	0.4471	0.551	2908	0.9817	0.9529	0.8578	0.493
0607	0.5520	0.5339	0.4750	0.550	2909	0.3750	0.3652	0.3299	0.543
0608	0.3178	0.3084	0.2774	0.506	3101	0.7036	0.6819	0.6116	0.505
0701	1.7045	1.6400	1.4710	0.373	3102	0.2601	0.2526	0.2274	0.525
0803	0.4471	0.4335	0.3877	0.553	3103	0.5159	0.5011	0.4512	0.504
0901	1.2678	1.2266	1.1005	0.463	3104	0.5885	0.5706	0.5119	0.520
1002	0.9746	0.9462	0.8534	0.485	3105	0.6947	0.6759	0.6099	0.534
1003	0.7361	0.7150	0.6445	0.499	3303	0.4184	0.4059	0.3630	0.565
1004	0.5123	0.4949	0.4399	0.515	3304	0.4724	0.4602	0.4155	0.573
1005	7.6720	7.4154	6.6182	0.457	3309	0.3774	0.3668	0.3314	0.509
1007	0.3219	0.3110	0.2776	0.489	3402	0.5219	0.5067	0.4553	0.523
1101	0.7326	0.7100	0.6347	0.539	3403	0.1959	0.1905	0.1723	0.512
1102	1.3217	1.2784	1.1454	0.468	3404	0.4852	0.4716	0.4240	0.542
1103	1.1538	1.1196	1.0087	0.468	3405	0.2917	0.2836	0.2548	0.563
1104	0.5619	0.5462	0.4902	0.569	3406	0.2233	0.2170	0.1943	0.593
1105	0.7857	0.7610	0.6826	0.487	3407	0.7775	0.7523	0.6722	0.503
1106	0.3255	0.3181	0.2900	0.530	3408	0.1984	0.1919	0.1691	0.618
1108	0.5995	0.5814	0.5212	0.535	3409	0.1638	0.1587	0.1409	0.634
1109	1.4021	1.3606	1.2236	0.501	3410	0.2700	0.2624	0.2355	0.578
1301	0.5536	0.5328	0.4663	0.578	3411	0.4654	0.4509	0.4038	0.518
1303	0.2020	0.1956	0.1741	0.570	3412	0.5586	0.5404	0.4843	0.475
1304	0.0283	0.0274	0.0245	0.542	3414	0.5338	0.5175	0.4640	0.523
1305	0.4548	0.4407	0.3933	0.565	3415	0.7721	0.7518	0.6859	0.437

Class	<u>(2005)</u> <u>2006</u>	<u>(2006)</u> <u>2007</u>	<u>(2007)</u> <u>2008</u>	Primary Ratio	Class	<u>(2005)</u> <u>2006</u>	<u>(2006)</u> <u>2007</u>	<u>(2007)</u> <u>2008</u>	Primary Ratio
3501	<u>1.0079</u>	<u>0.9780</u>	<u>0.8769</u>	<u>0.515</u>	4903	<u>0.1563</u>	<u>0.1512</u>	<u>0.1335</u>	<u>0.621</u>
3503	<u>0.2927</u>	<u>0.2865</u>	<u>0.2615</u>	<u>0.562</u>	4904	<u>0.0265</u>	<u>0.0259</u>	<u>0.0234</u>	<u>0.565</u>
3506	<u>0.8239</u>	<u>0.7957</u>	<u>0.7097</u>	<u>0.487</u>	4905	<u>0.3723</u>	<u>0.3639</u>	<u>0.3308</u>	<u>0.571</u>
3509	<u>0.4001</u>	<u>0.3888</u>	<u>0.3485</u>	<u>0.604</u>	4906	<u>0.0929</u>	<u>0.0900</u>	<u>0.0801</u>	<u>0.584</u>
3510	<u>0.3349</u>	<u>0.3251</u>	<u>0.2906</u>	<u>0.579</u>	4907	<u>0.0514</u>	<u>0.0502</u>	<u>0.0454</u>	<u>0.554</u>
3511	<u>0.6143</u>	<u>0.5977</u>	<u>0.5406</u>	<u>0.504</u>	4908	<u>0.0773</u>	<u>0.0765</u>	<u>0.0707</u>	<u>0.560</u>
3512	<u>0.3503</u>	<u>0.3416</u>	<u>0.3092</u>	<u>0.568</u>	4909	<u>0.0368</u>	<u>0.0367</u>	<u>0.0346</u>	<u>0.521</u>
3513	<u>0.4661</u>	<u>0.4564</u>	<u>0.4200</u>	<u>0.468</u>	4910	<u>0.4523</u>	<u>0.4398</u>	<u>0.3969</u>	<u>0.515</u>
3602	<u>0.1231</u>	<u>0.1196</u>	<u>0.1073</u>	<u>0.555</u>	4911	<u>0.0564</u>	<u>0.0548</u>	<u>0.0495</u>	<u>0.514</u>
3603	<u>0.4499</u>	<u>0.4377</u>	<u>0.3942</u>	<u>0.553</u>	5001	<u>6.2704</u>	<u>6.0760</u>	<u>5.4982</u>	<u>0.398</u>
3604	<u>0.7561</u>	<u>0.7406</u>	<u>0.6816</u>	<u>0.488</u>	5002	<u>0.5767</u>	<u>0.5580</u>	<u>0.4958</u>	<u>0.562</u>
3605	<u>0.5027</u>	<u>0.4867</u>	<u>0.4337</u>	<u>0.540</u>	5003	<u>1.9816</u>	<u>1.9178</u>	<u>1.7282</u>	<u>0.421</u>
3701	<u>0.2601</u>	<u>0.2526</u>	<u>0.2274</u>	<u>0.525</u>	5004	<u>0.7844</u>	<u>0.7649</u>	<u>0.6982</u>	<u>0.452</u>
3702	<u>0.4195</u>	<u>0.4071</u>	<u>0.3643</u>	<u>0.561</u>	5005	<u>0.5810</u>	<u>0.5634</u>	<u>0.5081</u>	<u>0.437</u>
3708	<u>0.5594</u>	<u>0.5413</u>	<u>0.4820</u>	<u>0.543</u>	5006	<u>1.3366</u>	<u>1.2943</u>	<u>1.1689</u>	<u>0.402</u>
3802	<u>0.1935</u>	<u>0.1881</u>	<u>0.1689</u>	<u>0.560</u>	5101	<u>0.8349</u>	<u>0.8084</u>	<u>0.7205</u>	<u>0.551</u>
3808	<u>0.3972</u>	<u>0.3851</u>	<u>0.3463</u>	<u>0.493</u>	5103	<u>0.7374</u>	<u>0.7183</u>	<u>0.6479</u>	<u>0.575</u>
3901	<u>0.1700</u>	<u>0.1658</u>	<u>0.1496</u>	<u>0.608</u>	5106	<u>0.7374</u>	<u>0.7183</u>	<u>0.6479</u>	<u>0.575</u>
3902	<u>0.4488</u>	<u>0.4372</u>	<u>0.3951</u>	<u>0.551</u>	5108	<u>0.8239</u>	<u>0.8014</u>	<u>0.7207</u>	<u>0.577</u>
3903	<u>1.0714</u>	<u>1.0470</u>	<u>0.9543</u>	<u>0.527</u>	5109	<u>0.4929</u>	<u>0.4778</u>	<u>0.4283</u>	<u>0.520</u>
3905	<u>0.1512</u>	<u>0.1476</u>	<u>0.1339</u>	<u>0.587</u>	5201	<u>0.3848</u>	<u>0.3731</u>	<u>0.3344</u>	<u>0.546</u>
3906	<u>0.4715</u>	<u>0.4588</u>	<u>0.4137</u>	<u>0.548</u>	5204	<u>0.8431</u>	<u>0.8189</u>	<u>0.7406</u>	<u>0.469</u>
3909	<u>0.2641</u>	<u>0.2574</u>	<u>0.2326</u>	<u>0.570</u>	5206	<u>0.3573</u>	<u>0.3467</u>	<u>0.3121</u>	<u>0.498</u>
4002	<u>1.1682</u>	<u>1.1292</u>	<u>1.0078</u>	<u>0.498</u>	5207	<u>0.1604</u>	<u>0.1566</u>	<u>0.1419</u>	<u>0.586</u>
4101	<u>0.3270</u>	<u>0.3175</u>	<u>0.2854</u>	<u>0.533</u>	5208	<u>0.7742</u>	<u>0.7522</u>	<u>0.6752</u>	<u>0.543</u>
4103	<u>0.4931</u>	<u>0.4795</u>	<u>0.4294</u>	<u>0.601</u>	5209	<u>0.6729</u>	<u>0.6542</u>	<u>0.5907</u>	<u>0.500</u>
4107	<u>0.1515</u>	<u>0.1473</u>	<u>0.1328</u>	<u>0.524</u>	5300	<u>0.1170</u>	<u>0.1133</u>	<u>0.1007</u>	<u>0.577</u>
4108	<u>0.1728</u>	<u>0.1677</u>	<u>0.1502</u>	<u>0.568</u>	5301	<u>0.0357</u>	<u>0.0346</u>	<u>0.0312</u>	<u>0.572</u>
4109	<u>0.1949</u>	<u>0.1896</u>	<u>0.1714</u>	<u>0.525</u>	5302	<u>0.0163</u>	<u>0.0159</u>	<u>0.0143</u>	<u>0.538</u>
4201	<u>0.6465</u>	<u>0.6226</u>	<u>0.5498</u>	<u>0.517</u>	5305	<u>0.0541</u>	<u>0.0526</u>	<u>0.0471</u>	<u>0.618</u>
4301	<u>0.6273</u>	<u>0.6113</u>	<u>0.5522</u>	<u>0.554</u>	5306	<u>0.0570</u>	<u>0.0556</u>	<u>0.0499</u>	<u>0.606</u>
4302	<u>0.6517</u>	<u>0.6320</u>	<u>0.5645</u>	<u>0.554</u>	5307	<u>0.5707</u>	<u>0.5513</u>	<u>0.4893</u>	<u>0.545</u>
4304	<u>0.9024</u>	<u>0.8800</u>	<u>0.7982</u>	<u>0.525</u>	5308	<u>0.0876</u>	<u>0.0855</u>	<u>0.0772</u>	<u>0.595</u>
4305	<u>1.1617</u>	<u>1.1197</u>	<u>0.9872</u>	<u>0.552</u>	6103	<u>0.0828</u>	<u>0.0808</u>	<u>0.0729</u>	<u>0.615</u>
4401	<u>0.3994</u>	<u>0.3904</u>	<u>0.3566</u>	<u>0.498</u>	6104	<u>0.3598</u>	<u>0.3498</u>	<u>0.3136</u>	<u>0.583</u>
4402	<u>0.8434</u>	<u>0.8175</u>	<u>0.7291</u>	<u>0.589</u>	6105	<u>0.3635</u>	<u>0.3523</u>	<u>0.3152</u>	<u>0.537</u>
4404	<u>0.5064</u>	<u>0.4929</u>	<u>0.4447</u>	<u>0.536</u>	6107	<u>0.1496</u>	<u>0.1466</u>	<u>0.1339</u>	<u>0.592</u>
4501	<u>0.1824</u>	<u>0.1781</u>	<u>0.1604</u>	<u>0.615</u>	6108	<u>0.4576</u>	<u>0.4459</u>	<u>0.4026</u>	<u>0.572</u>
4502	<u>0.0386</u>	<u>0.0377</u>	<u>0.0342</u>	<u>0.530</u>	6109	<u>0.1015</u>	<u>0.0985</u>	<u>0.0884</u>	<u>0.537</u>
4504	<u>0.1089</u>	<u>0.1064</u>	<u>0.0964</u>	<u>0.615</u>	6110	<u>0.5943</u>	<u>0.5775</u>	<u>0.5194</u>	<u>0.540</u>
4601	<u>0.7463</u>	<u>0.7244</u>	<u>0.6492</u>	<u>0.533</u>	6120	<u>0.2779</u>	<u>0.2695</u>	<u>0.2416</u>	<u>0.538</u>
4802	<u>0.3336</u>	<u>0.3257</u>	<u>0.2966</u>	<u>0.504</u>	6121	<u>0.3451</u>	<u>0.3347</u>	<u>0.3000</u>	<u>0.542</u>
4803	<u>0.3012</u>	<u>0.2944</u>	<u>0.2678</u>	<u>0.576</u>	6201	<u>0.2803</u>	<u>0.2727</u>	<u>0.2476</u>	<u>0.480</u>
4804	<u>0.4924</u>	<u>0.4794</u>	<u>0.4317</u>	<u>0.577</u>	6202	<u>0.5999</u>	<u>0.5844</u>	<u>0.5292</u>	<u>0.523</u>
4805	<u>0.2855</u>	<u>0.2780</u>	<u>0.2507</u>	<u>0.580</u>	6203	<u>0.1063</u>	<u>0.1039</u>	<u>0.0938</u>	<u>0.658</u>
4806	<u>0.0592</u>	<u>0.0577</u>	<u>0.0525</u>	<u>0.538</u>	6204	<u>0.1166</u>	<u>0.1137</u>	<u>0.1029</u>	<u>0.576</u>
4808	<u>0.4690</u>	<u>0.4582</u>	<u>0.4179</u>	<u>0.498</u>	6205	<u>0.2551</u>	<u>0.2480</u>	<u>0.2230</u>	<u>0.550</u>
4809	<u>0.3388</u>	<u>0.3308</u>	<u>0.3003</u>	<u>0.562</u>	6206	<u>0.2319</u>	<u>0.2255</u>	<u>0.2028</u>	<u>0.573</u>
4810	<u>0.1401</u>	<u>0.1370</u>	<u>0.1243</u>	<u>0.577</u>	6207	<u>1.1101</u>	<u>1.0905</u>	<u>1.0059</u>	<u>0.521</u>
4811	<u>0.3016</u>	<u>0.2950</u>	<u>0.2685</u>	<u>0.580</u>	6208	<u>0.2397</u>	<u>0.2342</u>	<u>0.2125</u>	<u>0.574</u>
4812	<u>0.3836</u>	<u>0.3732</u>	<u>0.3360</u>	<u>0.577</u>	6209	<u>0.3021</u>	<u>0.2948</u>	<u>0.2670</u>	<u>0.560</u>
4813	<u>0.1596</u>	<u>0.1558</u>	<u>0.1410</u>	<u>0.572</u>	6301	<u>0.1226</u>	<u>0.1186</u>	<u>0.1065</u>	<u>0.462</u>
4900	<u>0.1898</u>	<u>0.1839</u>	<u>0.1666</u>	<u>0.413</u>	6302	<u>0.2036</u>	<u>0.1980</u>	<u>0.1778</u>	<u>0.576</u>
4901	<u>0.0643</u>	<u>0.0625</u>	<u>0.0562</u>	<u>0.502</u>	6303	<u>0.0670</u>	<u>0.0650</u>	<u>0.0584</u>	<u>0.545</u>
4902	<u>0.1116</u>	<u>0.1081</u>	<u>0.0964</u>	<u>0.561</u>	6304	<u>0.3824</u>	<u>0.3734</u>	<u>0.3385</u>	<u>0.586</u>

Class	<u>((2005)) 2006</u>	<u>((2006)) 2007</u>	<u>((2007)) 2008</u>	Primary Ratio	Class	<u>((2005)) 2006</u>	<u>((2006)) 2007</u>	<u>((2007)) 2008</u>	Primary Ratio
6305	0.1090	0.1062	0.0954	0.604	7104	0.0308	0.0300	0.0269	0.611
6306	0.2787	0.2710	0.2442	0.539	7105	0.0295	0.0287	0.0256	0.608
6308	0.0660	0.0642	0.0577	0.576	7106	0.2298	0.2233	0.1994	0.618
6309	0.2036	0.1980	0.1778	0.576	7107	0.2292	0.2244	0.2048	0.568
6402	0.2694	0.2617	0.2340	0.612	7108	0.2007	0.1957	0.1768	0.582
6403	0.1826	0.1781	0.1607	0.586	7109	0.1441	0.1403	0.1262	0.604
6404	0.2625	0.2558	0.2308	0.572	7110	0.3167	0.3067	0.2747	0.499
6405	0.5125	0.4972	0.4467	0.520	7111	0.3903	0.3776	0.3378	0.483
6406	0.1242	0.1211	0.1092	0.601	7112	0.6446	0.6276	0.5667	0.558
6407	0.2695	0.2623	0.2361	0.570	7113	0.3868	0.3768	0.3403	0.570
6408	0.3954	0.3838	0.3446	0.548	7114	0.4808	0.4686	0.4219	0.609
6409	0.6890	0.6669	0.5959	0.518	7115	0.5581	0.5441	0.4919	0.574
6410	0.2811	0.2736	0.2468	0.559	7116	0.6116	0.5948	0.5352	0.542
6501	0.1605	0.1558	0.1392	0.589	7117	1.6241	1.5771	1.4118	0.587
6502	0.0321	0.0312	0.0280	0.554	7118	1.4104	1.3725	1.2367	0.553
6503	0.0714	0.0691	0.0615	0.529	7119	1.3516	1.3087	1.1634	0.577
6504	0.3715	0.3626	0.3282	0.603	7120	5.8332	5.6693	5.1095	0.520
6505	0.1053	0.1034	0.0945	0.612	7121	5.4396	5.2875	4.7670	0.520
6506	0.1055	0.1029	0.0930	0.588	7122	0.5317	0.5175	0.4649	0.607
6509	0.3741	0.3648	0.3298	0.570	7200	1.2944	1.2467	1.0944	0.569
6510	0.4330	0.4197	0.3771	0.470	7201	1.4446	1.3944	1.2376	0.521
6511	0.3891	0.3787	0.3410	0.570	7202	0.0305	0.0295	0.0263	0.521
6512	0.1693	0.1644	0.1479	0.520	7203	0.1225	0.1207	0.1114	0.591
6601	0.1901	0.1851	0.1671	0.542	7204	0.0000	0.0000	0.0000	0.500
6602	0.5122	0.4986	0.4505	0.540	7205	0.0000	0.0000	0.0000	0.500
6603	0.3289	0.3191	0.2856	0.557	7301	0.4450	0.4341	0.3948	0.505
6604	0.0809	0.0787	0.0706	0.591	7302	0.9260	0.9037	0.8227	0.502
6605	0.3239	0.3165	0.2865	0.602	7307	0.4522	0.4409	0.3992	0.528
6607	0.1651	0.1606	0.1443	0.556	7308	0.3895	0.3803	0.3436	0.601
6608	0.4786	0.4616	0.4139	0.421	7309	0.2574	0.2514	0.2283	0.579
6620	3.1606	3.0426	2.6641	0.605	7400	1.4446	1.3944	1.2376	0.521
6704	0.1452	0.1410	0.1262	0.576					
6705	0.8094	0.7911	0.7181	0.593					
6706	0.2975	0.2909	0.2660	0.525					
6707	4.3172	4.2003	3.7312	0.696					
6708	8.1890	8.1121	7.6401	0.450					
6709	0.2640	0.2576	0.2331	0.577	Class	<u>((2005)) 2006</u>	<u>((2006)) 2007</u>	<u>((2007)) 2008</u>	Primary Ratio
6801	0.6067	0.5856	0.5174	0.573	((0540	0.0185	0.0170	0.0151	0.487
6802	0.5553	0.5382	0.4786	0.593	0541	0.0106	0.0098	0.0087	0.465
6803	0.8073	0.7821	0.7115	0.363	0550	0.0223	0.0205	0.0183	0.400
6804	0.3334	0.3242	0.2915	0.572	0551	0.0137	0.0126	0.0112	0.416))
6809	4.6501	4.5504	4.1372	0.567	0540	0.0173	0.0169	0.0152	0.471
6901	0.0177	0.0187	0.0193	0.706	0541	0.0105	0.0101	0.0091	0.444
6902	0.8990	0.8687	0.7809	0.421	0550	0.0211	0.0205	0.0184	0.394
6903	6.3402	6.1802	5.7143	0.328	0551	0.0136	0.0132	0.0118	0.411
6904	0.4649	0.4461	0.3857	0.622					
6905	0.3917	0.3780	0.3331	0.607					
6906	0.1657	0.1675	0.1635	0.687					
6907	1.2442	1.2076	1.0824	0.544					
6908	0.4209	0.4088	0.3670	0.540					
6909	0.1192	0.1161	0.1044	0.585					
7100	0.0307	0.0300	0.0274	0.485					
7101	0.0219	0.0214	0.0197	0.457					
7102	4.1538	4.0954	3.7945	0.571					
7103	0.6336	0.6108	0.5370	0.586					

**Expected Loss Rates in Dollars Per Sq. Ft.  
of Wallboard Installed**

Class	<u>((2005)) 2006</u>	<u>((2006)) 2007</u>	<u>((2007)) 2008</u>	Primary Ratio
((0540	0.0185	0.0170	0.0151	0.487
0541	0.0106	0.0098	0.0087	0.465
0550	0.0223	0.0205	0.0183	0.400
0551	0.0137	0.0126	0.0112	0.416))
0540	0.0173	0.0169	0.0152	0.471
0541	0.0105	0.0101	0.0091	0.444
0550	0.0211	0.0205	0.0184	0.394
0551	0.0136	0.0132	0.0118	0.411

AMENDATORY SECTION (Amending WSR 08-24-074, filed 12/1/08, effective 1/1/09)

**WAC 296-17-890 Table IV.**

**Maximum experience modifications  
for firms with no compensable accidents:  
Effective ((1/1/2009)) 1/1/2010**

Expected Loss Range	Maximum Experience Modification
0 - 6,503	0.90
6,504 - 7,942	0.89
7,943 - 8,797	0.88
8,798 - 9,589	0.87
9,590 - 10,424	0.86
10,425 - 11,299	0.85
11,300 - 12,070	0.84
12,071 - 12,851	0.83
12,852 - 13,665	0.82
13,666 - 14,512	0.81
14,513 - 15,392	0.80
15,393 - 16,305	0.79
16,306 - 17,254	0.78
17,255 - 18,236	0.77
18,237 - 19,253	0.76
19,254 - 20,305	0.75
20,306 - 21,391	0.74
21,392 - 22,514	0.73
22,515 - 23,673	0.72
23,674 - 24,867	0.71
24,868 - 26,098	0.70
26,099 - 27,366	0.69
27,367 - 28,669	0.68
28,670 - 30,011	0.67
30,012 - 31,386	0.66
31,387 - 32,802	0.65
32,803 - 35,007	0.64
35,008 - 38,006	0.63
38,007 - 41,473	0.62
41,474 - 48,213	0.61
48,214 & Over	0.60))
0 = 6,698	0.90
6,699 = 8,180	0.89
8,181 = 9,061	0.88
9,062 = 9,877	0.87
9,878 = 10,737	0.86
10,738 = 11,638	0.85
11,639 = 12,432	0.84
12,433 = 13,237	0.83

Expected Loss Range	Maximum Experience Modification
13,238 = 14,075	0.82
14,076 = 14,947	0.81
14,948 = 15,854	0.80
15,855 = 16,794	0.79
16,795 = 17,772	0.78
17,773 = 18,783	0.77
18,784 = 19,831	0.76
19,832 = 20,914	0.75
20,915 = 22,033	0.74
22,034 = 23,189	0.73
23,190 = 24,383	0.72
24,384 = 25,613	0.71
25,614 = 26,881	0.70
26,882 = 28,187	0.69
28,188 = 29,529	0.68
29,530 = 30,911	0.67
30,912 = 32,328	0.66
32,329 = 33,786	0.65
33,787 = 36,057	0.64
36,058 = 39,146	0.63
39,147 = 42,717	0.62
42,718 = 49,659	0.61
49,660 & Over	0.60

**WSR 09-24-089  
PERMANENT RULES  
DEPARTMENT OF  
FINANCIAL INSTITUTIONS  
(Consumer Services Division)**

[Filed December 1, 2009, 8:56 a.m., effective January 1, 2010]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Amending the rules in chapter 208-630 WAC to implement the Check Cashers and Sellers Act, chapter 31.45 RCW, as amended by the applicable Laws of 2009, and to generally amend the rules for clarity and consistency.

Citation of Existing Rules Affected by this Order: Repealing twelve sections and amending twenty-six sections. See the accompanying rules for the specific sections.

Statutory Authority for Adoption: RCW 43.320.040.

Other Authority: RCW 31.45.200, chapter 510, Laws of 2009.

Adopted under notice filed as WSR 09-19-117 on September 22, 2009.

Changes Other than Editing from Proposed to Adopted Version: 1. WAC 208-630-110, the definition of ACH was added at the request of several commenters.

2. WAC 208-630-110, the definition of default was amended to add a reference to another applicable WAC.

3. WAC 208-630-110, the definition of gross monthly income is added at the request of commenters.

4. WAC 208-630-110, the definition of paid is amended to include ACH authorizations. This change was made based on comments.

5. WAC 208-630-180, the words "as a result of your actions" was added to the end of the second sentence to clarify that bonds are meant to benefit the state and persons who suffer loss as a result of the licensee's actions.

6. WAC 208-630-260(4), the CR-103 version prohibits a licensee from considering bad debts and certain judgments as assets for the purpose of calculating net worth. The CR-102 version mistakenly allowed a licensee to consider bad debts and certain judgments as assets.

7. WAC 208-630-461, the CR-103 version clarifies that the total loan amount available to a single borrower by all licensees is seven hundred dollars or thirty percent of the borrower's gross monthly income, whichever is lower.

8. WAC 208-630-462, the CR-103 version clarifies that records may be in hardcopy or electronic form. The CR-103 version amends the requirement to independently verify the borrower's gross monthly income to six months (the CR-102 required it every four months). The CR-103 adds an option to obtain a written declaration from the borrower about any change to the borrower's gross monthly income for companies that do not wish to independently verify the borrower's gross monthly income on every loan. These changes are based on comments.

9. WAC 208-630-464, the CR-103 version adds the ability for internet payday lenders to seek approval from the director for an internet based system of identification verification. The CR-102 version held this information in reserve until DFI could see a demonstration of industry practices for such a system. The CR-103 version also clarifies that records of verification can be kept in hardcopy or electronic form. These changes are based on comments.

10. WAC 208-630-501(1), the CR-103 version clarifies how to calculate a small loan's due date based on the law's requirement that if the due date falls within seven days of the borrower's pay date, the due date must be set after the borrower's second pay date. These changes are based on comments.

11. WAC 208-630-501(2), the CR-103 version clarifies that any extension of a borrower's due date must be made by written agreement. These changes are based on comments.

12. WAC 208-630-501(3), the CR-103 version adds a requirement for lenders that if the borrower's due date falls on a date the lender's business is not open, the due date must be extended to the next day the business is open.

13. WAC 208-630-501(4), the CR-130 [CR-103] adds language to include ACH authorizations in the definition of pay date. These changes are based on comments.

14. WAC 208-630-506, the CR-103 changes the word "notify" to "inform," the word used in the statute. These changes are based on comments.

15. WAC 208-630-510, the CR-103 version adds language that allows the borrower and lender to agree upon a time on the loan's due date by which the borrower must contact the lender if the borrower is not able to pay their loan on

time, but does not allow the lender to set the time earlier than three o'clock p.m. These changes are based on comments.

16. WAC 208-630-520(5), the CR-103 is new language allowing the borrower and lender to enter into a written agreement for payment on terms different than the installment plan, but not less favorable to the borrower, and at no cost to the borrower. These changes are based on comments.

17. WAC 208-630-530 (3), (4), the CR-103 added two sections detailing the length of the payment plans based on the loan amount, pursuant to the statute. These changes are based on comments.

18. WAC 208-630-543, the CR-103 version clarifies that the communication limits apply to collection communications initiated by the lender and that lender responses to borrower initiated inquiries are not within the limits. These changes are based on comments.

19. WAC 208-630-547, the CR-103 version includes references to ACH authorizations and provides that when an installment plan is initiated, the initial ACH authorization is void. The lender may obtain another ACH authorization from the borrower for the installment plan payments. These changes are based on comments.

20. WAC 208-630-551, the CR-103 version adds language to include affiliates of lenders being prohibited from charging the borrower a fee to cash a check issued to the borrower as proceeds of a small loan.

21. WAC 208-630-556(1), the CR-103 version clarifies that only loans made on or after January 1, 2010, will be recorded in the database. These changes are based on comments.

22. WAC 208-630-556(2), the CR-103 version provides that the database system will allow direct interface with a lender's system. These changes are based on comments.

23. WAC 208-630-556(3), the CR-103 version clarifies that a computer and internet access is necessary to access the database system.

24. WAC 208-630-556 (12)(a), this section is amended to accommodate ACH authorization transactions. This change is based on comments.

25. WAC 208-630-556 (12)(b) and (c), the CR-103 version details what it means for a loan to be in default, and when a loan in default is considered paid.

26. WAC 208-630-556 (12)(c)(ii), language is added to clarify the requirement.

27. WAC 208-630-570, the CR-103 version is amended to include ACH authorizations. These changes are based on comments.

28. WAC 208-630-601, the CR-103 version includes details for providing the informational content about the law changes to borrowers, including the requirement to provide the information for 2010 and providing the information on internet sites. These changes are based on comments.

29. WAC 208-630-670, the CR-103 version is amended to include ACH authorizations. These changes are based on comments.

30. WAC 208-630-700, the CR-103 version is amended to include details about ACH authorizations. These changes are based on comments.

31. WAC 208-630-740(2), this section was removed.

32. WAC 208-630-8201 (1)(k), the CR-103 version clarifies that it is a prohibited practice for a lender to not provide an installment plan when the borrower has notified the lender they cannot pay the small loan when due and they are eligible for an installment plan. These changes are based on comments.

33. WAC 208-630-830 (3)(b)(vi) and (vii), the CR-103 version clarifies that payment plans will be reported on in the 2010 reporting year and thereafter installment plans will be reported on. These changes are based on comments.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 15, Amended 8, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 9, Amended 18, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 24, Amended 26, Repealed 12; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: December 1, 2009.

Deborah Bortner, Director  
Division of Consumer Services

## Chapter 208-630 WAC

### **REGULATION OF CHECK CASHERS AND SELLERS(~~(—REGULATION OF)) AND SMALL LOANS (PAYDAY LENDERS)~~**

**AMENDATORY SECTION** (Amending WSR 07-23-094, filed 11/20/07, effective 12/21/07)

**WAC 208-630-110 What definitions are required to understand these rules?** The definitions in RCW 31.45.010 and this section apply throughout this chapter unless the context clearly requires otherwise.

"ACH" means automated clearing house, an electronic network for financial transactions that processes credit and debit transactions.

"Act" means chapter 31.45 RCW.

"Affiliate" means any person who directly or indirectly through one or more intermediaries, controls, or is controlled by, or is in common control with another person.

"Agent" for purposes of RCW 31.45.079 means a person who, pursuant to the terms of a written agreement and for compensation, performs small loan agent services on behalf of an exempt entity.

"Annual percentage rate" or "APR" means the cost of credit expressed as a yearly rate, determined in accordance with the federal Truth in Lending Act (15 U.S.C. Sec. 1601 et seq.), and Regulation Z (12 C.F.R. Part 226 et seq.), as amended.

The Office of the Comptroller of the Currency (OCC) has developed an APR calculator (APRWIN) that licensees may download and use without charge. APRWIN is available on the OCC's web site at <http://www.occ.treas.gov/aprwin.htm>.

"Board director" means a director of a corporation or a person occupying a similar status and performing a similar function with respect to an organization, whether incorporated or unincorporated.

"Check" means the same as defined in RCW 62A.3-104(f) and, for purposes of conducting the business of making small loans, includes other electronic forms of payment, including stored value cards, internet transfers, and automated clearing house transactions.

"Check casher" means an individual, partnership, unincorporated association, or corporation that, for compensation, engages, in whole or in part, in the business of cashing checks, drafts, money orders, or other commercial paper serving the same purpose.

"Check seller" means an individual, partnership, unincorporated association, or corporation that, for compensation, engages, in whole or in part, in the business of selling checks, drafts, money orders, or other commercial paper serving the same purpose.

"Close of business" for the purposes of RCW 31.45.86 and these regulations means the actual time a licensee closes for business at the location from which a small loan was originated or 11:59 p.m. Pacific Time, whichever is earlier.

"Default" means:

(1) The borrower's failure to repay a small loan in compliance with the terms contained in the small loan agreement or note; or

(2) Failure to pay any installment plan payment within ten days after the date upon which the installment was scheduled to be paid. See WAC 208-630-556 (12)(b).

"Department" means the department of financial institutions.

"Exempt entity" means a person described in RCW 31.45.020 that is engaged in the business of making small loans.

"Gross monthly income" means an individual's total personal income earned during a month prior to any taxes or deductions.

"Installment plan" is a contract between a licensee and borrower that provides that the loaned amount will be repaid in substantially equal installments scheduled on or after a borrower's pay dates and no less than fourteen days apart.

"Investigation" means an examination undertaken for the purpose of detecting violations of chapter 31.45 RCW or these rules or obtaining information lawfully required under chapter 31.45 RCW or these rules.

"License" means a license issued by the director to engage in the business of check cashing or check selling under the provision of chapter 31.45 RCW.

"Loaned amount" means the outstanding principal balance and any fees authorized under RCW 31.45.073 that have not been paid by the borrower.

"Monetary instrument" means a check, draft, money order or other commercial paper serving the same purpose.

"Paid" means that moment in time when the licensee deposits the borrower's check, accepts cash, or initiates an ACH withdrawal from the borrower's account for the full amount owed on a valid small loan. If the borrower's check is dishonored and returned unpaid by the borrower's bank, the loan is not paid. If an ACH authorization is denied, the loan is not paid.

"Payday advance lender" or "payday lender" means a licensee under this chapter who has obtained a small loan endorsement under RCW 31.45.073.

"Payday advance loan," "payday loan" or "deferred deposit loan" means the same as a small loan.

"Postdated check" means a check delivered prior to its date, generally payable at sight or on presentation on or after the day of its date. "Postdated check" does not include any promise or order made or submitted electronically by a borrower to a licensee.

"RCW" means the *Revised Code of Washington*.

"Small loan" or "loan" means a loan of up to the maximum amount and for a period of time up to the maximum term specified in RCW 31.45.073.

"Small loan agent services" means all or substantially all of the following services:

- (1) Marketing and advertising small loans;
- (2) Taking small loan applications;
- (3) Assisting customers in completing small loan documentation;
- (4) Providing required disclosures;
- (5) Disbursing small loan proceeds;
- (6) Collecting small loans;
- (7) Retaining documents and records; and
- (8) Making reports.

"State" means the state of Washington.

"Unsafe or unsound financial practice" means any action, or lack of action, the likely consequences of which, if continued, would (~~impair~~) materially impair the net worth of a licensee or create an abnormal risk of loss to its customers.

AMENDATORY SECTION (Amending WSR 05-22-009, filed 10/21/05, effective 11/21/05)

**WAC 208-630-120 What does a business have to do to operate as a check casher and seller(§) or to make small loans as a payday lender?** (1) In order to engage in the business of check cashing and selling, a business must apply for and obtain from the department a check cashing or selling license.

(2) In order to make payday loans (small loans), a business must first obtain a license as a check casher or seller (~~must first~~) and then obtain a small loan endorsement to (~~its~~) that license (~~to make small loans in accordance with chapter 31.45 RCW and this chapter~~).

AMENDATORY SECTION (Amending WSR 05-22-009, filed 10/21/05, effective 11/21/05)

**WAC 208-630-180 Is there a bond requirement for (licensees) my license?** (~~A licensee engaged in any business~~) If you sell checks, drafts, or money orders or if you have a small loan endorsement under chapter 31.45 RCW

you must obtain and maintain a bond. The bond must run to the benefit of the state and any person or persons who suffer loss as a result of your actions. (~~The licensee~~) You must file the bond with the director at the beginning of each calendar year. The bond must be issued by a surety ((which) that meets the requirements of chapter 48.28 RCW. The bond form must be acceptable to the director. ((The licensee) You may obtain a copy of an acceptable form from the department.

AMENDATORY SECTION (Amending WSR 05-22-009, filed 10/21/05, effective 11/21/05)

**WAC 208-630-190 What type of bond is necessary and what are the conditions?** The bond (~~shall~~) must be continuous and conditioned upon (~~the licensee faithfully abiding by~~) your compliance with chapter 31.45 RCW and all rules in this chapter. (~~It shall~~) The bond must also be conditioned upon ((the licensee) you paying ((all) to persons who purchase monetary instruments ((from the licensee) the face value of any monetary instrument dishonored by the drawee financial institution due to insufficient funds or by reason of the account having been closed. The surety ((shall) is only ((be) liable for the face value of the dishonored monetary instrument, and ((shall) not ((be liable) for any interest or consequential damages. ((For a licensee with) If you have a small loan endorsement, the bond ((shall) must run to the benefit of the state and any person or persons who suffer loss due to ((the licensee's) your violation of chapter 31.45 RCW or this chapter.

AMENDATORY SECTION (Amending WSR 05-22-009, filed 10/21/05, effective 11/21/05)

**WAC 208-630-230 What must I do if there are claims against the bond?** (~~The licensee~~) You must notify the department of any claim against the bond within ten days ((after) of receiving notice of a claim.

AMENDATORY SECTION (Amending WSR 05-22-009, filed 10/21/05, effective 11/21/05)

**WAC 208-630-260 ((Does a licensee) Do I have any alternative to maintaining a surety bond?** (~~In lieu of the surety bond required in this rule, an applicant or licensee) With the approval of the director, you may substitute one of the following alternatives ((with the approval of the director) for the surety bond required under this chapter. Any alternative to the surety bond ((shall) must secure the same obligations ((as would) the surety bond would. The amount of a bond alternative substituted under subsection (1) or (2) of this section must be equal to or greater than the amount of the required surety bond.~~

(1) **Time deposit.** (~~An assignment~~) You may purchase and maintain a certificate of deposit assigned in favor of the director ((of a certificate of deposit)). The certificate of deposit must be issued by a financial institution in the state and whose deposits or shares are insured by an agency of the government of the United States. The ((depositor is) deposit must be in an amount equal to or greater than the required

surety bond. You are entitled to receive all interest and dividends on the certificate of deposit.

(2) **Demonstration of sufficient net worth.** ~~((A licensee or applicant for a small loan endorsement may))~~ You must demonstrate net worth ~~((in excess))~~ of at least three times the amount of the required bond. ~~((The licensee shall))~~ You must notify the director within ten business days of any date upon which ~~((its))~~ your net worth decreases below the required amount. ~~((A licensee that))~~ If you fail~~((s))~~ to maintain the required level of net worth and continue~~((s))~~ to operate under a small loan endorsement ~~((will be required to))~~, you must immediately obtain a surety bond and maintain it for five years after the date of noncompliance. During this five-year period, the director will not accept a demonstration of net worth in lieu of a surety bond.

(3) **Reports required.** ~~((A licensee that))~~ If you maintain~~((s))~~ net worth in lieu of a surety bond ~~((shall))~~, you must submit ~~((annually))~~ to the director an annual audited financial statement and ~~((within forty-five days after the close of each quarter))~~ a supplementary year-to-date financial statement within forty-five days after the close of each quarter, both prepared in accordance with generally accepted accounting principles. The financial statements must include at a minimum a statement of assets and liabilities and a profit and loss statement. The director may continue to require other documents, agreements or information necessary to properly evaluate and ensure that ~~((the licensee remains in compliance))~~ you comply with this section.

(4) **Bad debts and judgments.** ~~((A licensee that))~~ If you maintain~~((s))~~ net worth in lieu of a surety bond ~~((may))~~ you must not consider bad debts and certain judgments as assets. The director may approve exceptions in writing. ~~((The licensee))~~ You must charge off ~~((its))~~ your books any debt upon which any payment is six months or more past due. ~~((The licensee))~~ You may not count as an asset any unpaid judgment more than two years old ~~((which has not been paid))~~. Time consumed by an appeal from a judgment is not counted in the two-year limit.

(5) **Noncompliance.** ~~((A licensee that does))~~ If you do not comply with this section you must obtain and file with the director a surety bond in the required amount in WAC ~~((208-630-030))~~ 208-630-240 and 208-630-250 by the date specified by the director.

AMENDATORY SECTION (Amending WSR 05-22-009, filed 10/21/05, effective 11/21/05)

**WAC 208-630-360** ~~((Whether a business has a license or not, what should the business know about))~~ When may the director conduct an investigation? The director or designee may conduct investigations at any time, in or outside of the state, to determine whether any person has violated or is about to violate chapter 31.45 RCW, these rules, or any order issued under these laws and rules. This includes a licensee or a business that may be conducting transactions requiring a license. For ~~((that))~~ these purposes the director or designee may conduct inquiries, interviews and examinations of any person relevant to the investigation.

**ANNUAL ASSESSMENTS**  
**((AND REPORTING REQUIREMENTS))**

**SMALL LOAN REQUIREMENTS**  
**((FOR CHECK CASHING AND MAKING SMALL LOANS)) (PAYDAY LENDING)**

NEW SECTION

**WAC 208-630-461 What is the maximum amount that all licensees may lend to a borrower?** The total outstanding principal of all small loans made by all licensees to a single borrower may not exceed seven hundred dollars or thirty percent of the borrower's gross monthly income, whichever is lower.

NEW SECTION

**WAC 208-630-462 What documentation is acceptable as proof of the borrower's gross monthly income?** (1) A record of the borrower's pay stub or payroll receipt;

(2) A record of the borrower's receipt documenting payment of government benefits; or

(3) Other documentation as approved by the director, including, but not limited to, records of bank statements that show regular direct deposits from an identified source and verified to be in favor of the borrower, check cashing history, or an employer's verbal confirmation of the borrower's employment status and current gross income;

(4) You must obtain independent verification of a borrower's gross monthly income every one hundred eighty days;

(5) On loans made without independent verification of the borrower's gross monthly income, you must obtain from the borrower a written declaration of change or no change in their gross monthly income since the last independent verification.

NEW SECTION

**WAC 208-630-463 What is the maximum number of small loans that may be made to a single borrower in any twelve-month period?** The maximum number of loans that all licensees may make to a single borrower in any twelve-month period is eight loans.

NEW SECTION

**WAC 208-630-464 What documentation is acceptable as proof of the borrower's identity?** (1) For small loans made in person you must use one of the following forms of identification which must contain a photograph of the borrower:

(a) Driver's license issued in the United States, Canada, or Mexico;

(b) Any state's state identification card;

(c) Matricula consular;

(d) Tribal identification;

(e) Passport;

(f) Military identification; or

(g) Other forms or methods of verifying identification, as approved by the director, that provide a reliable means of verifying the borrower's identity.

(2) For loans made over the internet you must use a method of verifying identification, as approved by the director, that provides a reliable means of verifying the borrower's identity.

(3) You must keep a record of the identification information you accepted or a record of the results of the method of verifying identification you used as proof of the borrower's identity in the loan file.

#### NEW SECTION

**WAC 208-630-466 What fees can I charge on a small loan?** (1) You may charge interest or fees for small loans not to exceed in the aggregate fifteen percent of the first five hundred dollars of principal.

(2) If the principal exceeds five hundred dollars, you may charge interest or fees not to exceed in the aggregate ten percent of the portion of the principal in excess of five hundred dollars.

(3) If you make more than one loan to a single borrower, and the aggregated principal of all loans made to that borrower exceeds five hundred dollars at any one time, you may charge interest or fees not to exceed in the aggregate ten percent on the portion of the aggregated principal of all loans at any one time that is in excess of five hundred dollars.

#### NEW SECTION

**WAC 208-630-501 How must I determine the due date on the loan?** (1) The earliest due date for repayment is on or after the borrower's next pay date unless the pay date is within seven days of the date of the small loan. If the pay date falls within the seven days, you must set the repayment date on or after the borrower's second pay date after the date of the small loan. With the small loan origination date being day zero, count seven days out to determine the first available due date.

(2) A loan's due date must be forty-five days or fewer from the origination date on the loan unless the term of the loan is extended by written agreement between you and the borrower at no additional cost to the borrower.

(3) If a small loan's due date falls on a date your business is not open, you must automatically extend the due date to your next business day.

(4) For purposes of this section, "pay date" means the borrower's scheduled pay date or the date the borrower's account is credited with any direct deposit or other electronic transfer of funds into their bank account, whichever is later.

AMENDATORY SECTION (Amending WSR 07-23-094, filed 11/20/07, effective 12/21/07)

**WAC 208-630-505 What process must ((a-licensee)) I follow when a borrower pays off a small loan, or makes a payment toward ((a-payment)) an installment plan, with cash? ((A-licensee))** You must prepare a receipt with information that includes, but is not limited to, the date of the payment, the borrower's name, the amount of ((the)) cash

received, an indication that the payment was made in cash, an indication that the payment was made ((either)) on a loan((;)) or towards ((a-payment)) an installment plan, ((the borrower's signature,)) and an authorized signature, stamp, or other authenticating mark ((of the licensee)) confirming ((that the licensee)) you received the payment.

#### NEW SECTION

**WAC 208-630-506 What are my obligations if the borrower notifies me that he or she will be or is unable to pay the small loan on time?** You must inform the borrower that he or she has a right to convert the small loan to an installment plan. See WAC 208-630-520.

AMENDATORY SECTION (Amending WSR 05-22-009, filed 10/21/05, effective 11/21/05)

**WAC 208-630-510 When does a borrower have a right to enter into ((a-statutory-payment)) an installment plan? ((A))** (1) The borrower has ((a)) the right to convert a small loan ((to a statutory payment plan after four successive loans and prior to default on the last loan)) into an installment plan upon request made on or before the small loan's due date. If the request is made on the small loan's due date, it must be made before the close of business, or at another time on the due date as agreed to in the written small loan agreement, but in no event can the agreed upon time be earlier than three o'clock p.m. on the due date.

(2) If you extend a small loan's due date, the borrower's right to request an installment plan on that loan follows the extended date.

(3) If you extend a small loan's due date, you must update the data base with that new date as soon as practicable.

AMENDATORY SECTION (Amending WSR 05-22-009, filed 10/21/05, effective 11/21/05)

**WAC 208-630-520 If a borrower and licensee enter into ((a-statutory-payment)) an installment plan, what ((is)) are the terms of the ((payment)) installment plan? ((A-payment))** An installment plan under ((the provisions of)) RCW 31.45.084 must contain the following terms:

(1) The plan must be in writing;

(2) If the small loan is four hundred dollars or less the term must be for a period of at least ((sixty)) ninety days ((unless a shorter period is agreed to by both the borrower and the licensee));

(3) If the small loan is over four hundred dollars the term must be for a period of at least one hundred eighty days;

(4) The borrower may pay off the total amount due at any time without additional penalty, fee, or charge for prepayment; and

(5) You may enter into a written installment plan with a borrower on terms other than these as long as the terms are not less favorable to the borrower and there is no charge to the borrower.

AMENDATORY SECTION (Amending WSR 05-22-009, filed 10/21/05, effective 11/21/05)

**WAC 208-630-530** ~~If a borrower and licensee enter into ((a statutory payment)) an installment plan, how must the payments be structured? ((A payment)) All installment plans under ((the provisions of)) RCW 31.45.084 must ((provide for at least three separate payments which, unless otherwise requested by the borrower and agreed to in writing by the lender, shall be)):~~

~~(1) Be in writing and acknowledged by both the borrower and licensee; and~~

~~(2) Provide for at least three payments; and~~

~~(3) Provide for an installment plan length of not less than ninety days for a loan amount of up to and including four hundred dollars; or~~

~~(4) Provide for an installment plan length of not less than one hundred eighty days for a loan amount over four hundred dollars; and~~

~~(5) Be equal to the total amount of the ((payment)) installment plan balance divided by the number of payments ((f))subject to reasonable rounding((; and~~

~~(2) Due at substantially equivalent intervals. For example, a sixty day, three hundred fifty dollar payment plan entered into on May 1 providing for payments of one hundred twenty dollars on May 20, one hundred twenty dollars on June 11, and one hundred ten dollars on June 29, complies with this rule)).~~

#### NEW SECTION

**WAC 208-630-531** **May I charge any fees if a borrower decides to convert their loan to an installment plan?** No. You may not charge any fee or interest to the borrower for converting the small loan to an installment plan as provided under RCW 31.45.084.

#### NEW SECTION

**WAC 208-630-532** **May I make a small loan to a borrower who is in default on another small loan?** No. You are prohibited from making a small loan to a borrower who is in default on another small loan originated on or after January 1, 2010. This prohibition expires if the small loan is paid in full or two years have passed from the origination date of the small loan, whichever occurs first.

#### NEW SECTION

**WAC 208-630-533** **May I make a small loan to a borrower who is in an installment plan?** No. You are prohibited from making a small loan to a borrower who is making payments as part of an installment plan with any licensee until after that loan is paid in full or two years have passed from the initiation date of the installment plan, whichever occurs first.

#### NEW SECTION

**WAC 208-630-542** **What fees may I charge or collect when a borrower defaults on a small loan?** If the small

loan is not in an installment plan, you may charge or collect a fee equal to or less than twenty-five dollars for a check returned unpaid by the bank drawn upon. Only one fee may be collected with respect to a particular check even if it has been redeposited and returned more than once. See WAC 208-630-549 for allowable default fees charged on small loans in an installment plan. On any one loan you can only charge the borrower twenty-five dollars. The fee will either be in the form of a returned check fee or an installment plan default fee, or some combination thereof; but in no event can you charge the borrower more than twenty-five dollars over the life of one loan.

#### NEW SECTION

**WAC 208-630-543** **What are the specifications required of the communication log in RCW 31.45.082(4)?** The communication log must contain:

(1) The date, time, and brief description of all telephone communications initiated by the licensee for collection purposes; and

(2) The date, time, and brief description of all written communications initiated by the licensee for collection purposes.

Returning a communication from a borrower is not initiating a communication with the borrower; however, the response must not violate any of the provisions of RCW 31.45.082.

The communication log may be in hard copy or electronic form, and must indicate the borrower's name.

The log must be maintained in a manner that will allow the examiner to review all collection communications covered under RCW 31.45.082 made during a period of time.

#### NEW SECTION

**WAC 208-630-544** **May I allow a borrower to refinance a small loan with another small loan?** No. You may not allow a borrower to use a new small loan to pay off an existing small loan by the same lender or an affiliate of the lender. Licensees may not apply the proceeds from any small loan to any other loan from the same lender or affiliate of the lender.

#### NEW SECTION

**WAC 208-630-545** **May I use a name or place of business other than that named on the license or small loan endorsement?** No. You may not make any loan under authority granted by chapter 31.45 RCW under any name or at any place of business other than that named on the license and small loan endorsement.

#### NEW SECTION

**WAC 208-630-546** **What is the limit on the number of checks I may hold from one borrower?** You may not hold more than one check per small loan unless the loan is in an installment plan.

(1) If you have made multiple loans to a single borrower, you may not hold checks that total more than the lower of:

(a) Seven hundred dollars plus the allowable fees; or  
 (b) Thirty percent of the borrower's gross monthly income plus allowable fees.

(2) For purposes of this section, to "hold a check" does not include a check that has been deposited in your bank and subsequently returned unpaid by the borrower's bank.

#### NEW SECTION

**WAC 208-630-547 May I continue to hold the borrower's original check or ACH authorization once the borrower has converted the loan to an installment plan?**

(1) No. At the initiation of an installment plan, you must either return or, at the borrower's request, destroy any post-dated check securing the original small loan.

(2) The initiation of an installment plan voids your authorization to use the borrower's original ACH authorization. You may accept another ACH authorization or authorizations consistent with the payment terms of the installment plan.

#### NEW SECTION

**WAC 208-630-548 May I hold postdated checks for the installment plan payments?** Yes. You may take post-dated checks at the time the installment plan is originated. The checks may not be written for a value more than the amount of the borrower's installment plan payments. If any of the checks are later dishonored, you may not charge the borrower any fee for the dishonored check or checks. Exception, see WAC 208-630-549.

#### NEW SECTION

**WAC 208-630-549 May I charge the borrower additional fees if the borrower defaults on an installment plan?** Yes. You may charge the borrower a one time default fee of twenty-five dollars. A borrower defaults on an installment plan when the borrower fails to pay any installment plan payment within ten days after the date upon which the installment was scheduled to be paid. On any one loan you can only charge the borrower twenty-five dollars. The fee will either be in the form of a returned check fee or an installment plan default fee, or some combination thereof; but in no event can you charge the borrower more than twenty-five dollars over the life of one loan.

#### NEW SECTION

**WAC 208-630-551 May I charge a fee to cash monetary instruments I issue as proceeds of a small loan?** No. You may not charge a fee to cash a monetary instrument you or your affiliate issue as proceeds of a small loan you or an affiliate make under chapter 31.45 RCW.

#### NEW SECTION

**WAC 208-630-555 What is the purpose of the data base?** The purpose of this data base system is to:

(1) Prevent the practice of refinancing a small loan with another small loan;

(2) Prevent multiple licensees from making simultaneous small loans to an individual borrower so that the loans' total principal balance is the lesser of seven hundred dollars or thirty percent of the borrower's gross monthly income;

(3) Prevent licensees from making more than eight loans to any one borrower in any twelve-month period;

(4) Prevent a licensee from making a loan to a borrower who already has an outstanding small loan principal balance of the lesser of seven hundred dollars or thirty percent of their gross monthly income;

(5) Prevent licensees from making a loan to a borrower who is in default on a small loan or is in an installment plan; and

(6) Ensure that licensees set the small loan due date no earlier than the borrower's next pay date that is more than seven days from the origination date.

#### NEW SECTION

**WAC 208-630-556 How do I use the data base system for small loan transactions?** (1) Beginning January 1, 2010, each small loan transaction must be registered with the data base system and receive a data base system-generated transaction authorization number. The transaction authorization number demonstrates that the transaction has been recorded in the data base prior to you making the small loan to the borrower.

(2) **Do I have to buy any equipment, hardware, or software to use the data base system?** You must have a computer with access to the internet and Microsoft Internet Explorer 6 or higher. Dial-up capacity of at least 56 kps is sufficient. DSL or broadband access will provide faster access and response. It is also possible to interface directly with the data base system; the data base vendor can provide you with information about that process.

(3) **How and when may I access the data base system?**

(a) The data base system is the means by which real-time access to the data is made available to you through your internet connection.

(b) You must use a computer and the internet to access the data base system.

(c) The data base system will be accessible twenty-four hours a day every day of the year, except for routine scheduled system maintenance and upgrades performed by the data base vendor.

(4) **What must I do to maintain confidentiality of the borrower's information provided to the data base?** In order to maintain the confidentiality and security of the borrower's information, you must not transmit information to the data base system using publicly accessible computers, computers that are not under your control, unsecured wireless connections, or other connections that are not secure. Maintaining a secure connection includes, but is not limited to, installing and regularly updating antivirus and antispyware software and a firewall.

(5) **How do I use the data base system to determine a borrower's eligibility for a small loan?** You must:

(a) Access the data base system using the assigned user identification and password provided by the security administrator of your company;

(b) Enter the borrower's Social Security number, individual tax identification number (ITIN), or alien identification number, and the borrower's gross monthly income into the system.

**(6) What information will the data base system give me when an eligibility search is conducted?** The data base system will state a borrower's eligibility or ineligibility for a small loan and will give a reason for the eligibility determination. If the borrower is eligible for a small loan, the data base system will provide the dollar amount the borrower is eligible to receive.

**(7) What must I do once the initial search determines that the borrower is eligible for a small loan?**

(a) If you receive an initial indication from the data base vendor that the borrower is eligible for a small loan, you must then submit all of the required borrower information necessary to register the transaction in the data base, as prescribed by the data base vendor.

(b) When the required information has been submitted to the data base, the data base system will confirm the initial borrower search. If the borrower's eligibility is confirmed, the small loan transaction will be recorded as open and assigned a transaction authorization number evidencing that the transaction has been authorized by the data base system. You must place the transaction authorization number on the small loan agreement.

**(8) What must I do if the borrower is determined to be ineligible for a small loan?** If the borrower is deemed ineligible you will be provided with a printable message with a reason for the determination. The message will also include the name, address, and toll-free support number of the data base vendor. You must provide a copy of the printable message to the borrower.

**(9) If I make a mistake entering data and must void the transaction, what do I do?** Follow the data base vendor's instructions to administratively void the transaction.

**(10) If the data base system is inaccessible via the internet, how do I access the data base?**

(a) You will be given at least twenty-four hours notice for scheduled maintenance or system upgrades. The notice will be by electronic mail to the designated security administrator, or by a broadcast message on the data base vendor's web site.

(b) In the event the data base system is unavailable, you must adhere to the following procedures:

(i) Confirm that the data base system remains unavailable by attempting to access the data base system with every borrower seeking a new small loan transaction. You need not comply with this procedure if you have been notified via electronic mail by the data base vendor of an expected period of time necessary to correct whatever problem is causing the data base system to remain unavailable;

(ii) Contact the data base vendor's toll-free help desk or voice response system to obtain a temporary transaction authorization number directly from the data base vendor; and

(iii) Enter the remaining transactional data into the data base system within twenty-four hours of obtaining the temporary transaction authorization number from the data base vendor.

(c) In the event that either the department of financial institutions or the data base vendor notifies you that the data base system is unavailable and that all alternative methods for registering a transaction and receiving a transaction authorization number are also unavailable:

(i) You are authorized to conduct transactions during the specific period of unavailability, after receiving written authorization, via electronic mail or facsimile from either the department of financial institutions or the data base vendor with the department of financial institutions' consent.

(ii) Copies of the written authorization for any transactions conducted during an unavailability period must be attached to the small loan agreement for those transactions. One copy of the authorization must be provided to the borrower and another copy must be kept as an audit record.

(d) Transactions created during a period of authorized unavailability must be registered with the data base within twenty-four hours of notification that the data base system is available; provided, however, that if the data base system is unavailable for more than twenty-four hours, then the period for registration shall be extended by twenty-four hours for each additional twenty-four-hour period of unavailability.

(e) Once the transaction has been registered with the data base, the transaction number assigned to that transaction must be placed on the licensee's record copy of the small loan agreement signed by the borrower for that transaction. If the borrower requests that transaction number at any time, the licensee must provide it to the borrower.

**(11) Once a loan is made, how can it be canceled or rescinded as authorized under RCW 31.45.086?** A borrower may rescind a small loan agreement before the close of business on the next day of business after the date of the transaction without incurring a transaction fee. If a borrower elects to cancel a small loan agreement you must close the transaction on the data base as soon as practicable after the borrower rescinds the small loan transaction. A loan that has been rescinded does not count toward the eight loan limit; nor will you incur a one dollar transaction fee on that loan.

**(12) When must I update information on the data base system?**

(a) When a borrower's small loan is paid (date of cash received, check deposited, or ACH authorization initiated), you must update open transactions on the data base system as soon as practicable to ensure that all identifying information regarding both the borrower and the transaction are accurate, including any comments on the transaction which you deem relevant. You must input the date and time a transaction closes, as well as the payment method, unless you previously entered the payment method.

(b) When a small loan that was in default is paid, it is considered paid when the loaned amount and default fee is paid.

(c) When a loan is in default, you must mark the loan in the data base as in default as soon as practicable after the default as follow:

(i) A small loan is in default if not paid on the date and by the time indicated in the small loan agreement. If no time is indicated the small loan is in default the first day after the due date.

(ii) A small loan in an installment plan is in default if unpaid on the 11th day after the due date, with the due date being day zero. If the due date for an installment plan payment is January 1st and is not paid, the loan is considered in default and the data base must be updated on January 11th.

(13) **How much will each data base transaction cost me?** The data base vendor's transaction fee is one dollar per loan registered. The data base vendor will assess this fee for each transaction that has been registered on the data base.

(14) **What happens if I do not pay the data base fees to the data base vendor?** The data base vendor will lock you out of the data base system.

(15) **What happens if I do not receive training and become certified in using the data base?** If you or another designated person in the company do not receive training and certification to use the data base, you will not be given an access number for the data base.

AMENDATORY SECTION (Amending WSR 07-23-094, filed 11/20/07, effective 12/21/07)

**WAC 208-630-560 What ~~((types of))~~ disclosures must ~~((a licensee))~~ I make to a borrower?** (1) ~~((A licensee))~~ You must deliver to the borrower at the time ~~((the licensee))~~ you make ~~((s))~~ a small loan, a disclosure that meets the requirements of all applicable laws, including the federal Truth in Lending Act. Compliance with the federal Truth in Lending Act and Regulation Z, 12 C.F.R. Part 226, will be deemed in compliance with this subsection.

(2) ~~((A licensee))~~ You must deliver to the borrower at the time ~~((the licensee))~~ you make ~~((s))~~ the small loan a disclosure of the right to rescind the loan and the right to convert the loan to ~~((a payment))~~ an installment plan. See WAC 208-630-570.

(3) ~~((A licensee who complies with the federal Truth in Lending Act and Regulation Z, 12 C.F.R. Part 226, will be deemed in compliance with this act.))~~ You must include a statement on the front page of the application for a small loan that is in at least twelve point type and is substantially similar to the following: "At the time you repay this loan, you should have sufficient funds to meet your other financial obligations. If you cannot pay other bills because you are paying off this debt, you should enter the installment plan offered in connection with this loan."

AMENDATORY SECTION (Amending WSR 05-22-009, filed 10/21/05, effective 11/21/05)

**WAC 208-630-570 What must be included in the disclosure ~~((s))~~ referred to in WAC 208-630-560(2)?** The disclosure ~~((referred to in WAC 208-630-560(2)))~~ must be substantially in the following form:

**Your right to rescind (cancel) this loan. You have the right to rescind this loan** by returning the amount of the loan in cash, or returning the check given to you by us to our office by the close of business on our next business day following the date of this loan. We may not charge you for canceling the loan and we will return to you, or at your request destroy any postdated check or electronic equivalent authorization you have given to us. If the ACH authorization cannot be destroyed it becomes void if you cancel the loan.

**Your right to ~~((a payment))~~ an installment plan when you are unable to pay your small loan when it is due.**

If ~~((this is your fourth (or greater) successive loan, and if you are not in default))~~ you will be or are unable to pay your loan when it is due, you may convert your loan to ~~((a payment))~~ an installment plan with us by notifying us on or before the loan's due date. ~~(("Successive loans" means loans made to you by us with no more than three business days between the repayment in full of one loan and the beginning date of the next loan.~~

~~A payment))~~ If your loan amount is four hundred dollars or less, you may enter into an installment plan that allows you to pay off your loan in substantially equal payments over ninety days. If your loan amount is more than four hundred dollars, you may enter into an installment plan that allows you to pay off your loan in substantially equal payments over one hundred eighty days.

An installment plan will allow you ~~((, by paying a one time fee equal to the finance charge on your loan,))~~ to pay all that you owe ~~((in at least three payments over a period of at least sixty days.~~

~~**Your right to rescind (cancel) this loan. You have the right to rescind (cancel) this loan**~~ by returning the amount of the loan in cash, or returning the check given to you by us to our office by the close of business on our next business day following the date of this loan. We may not charge you for canceling the loan and we will return to you any postdated check or electronic equivalent you have given to us) without having to pay any additional fees, interest charges or other charge for converting your small loan into an installment plan.

AMENDATORY SECTION (Amending WSR 07-23-094, filed 11/20/07, effective 12/21/07)

**WAC 208-630-580 In addition to providing disclosures to the borrower, ~~((does a licensee have to))~~ must I post any disclosures?** (1) ~~((Licensees that))~~ If you make small loans you must post the following notices conspicuously at each location where small loans are made:

(a) A ~~((conspicuous))~~ notice substantially in the form set forth in WAC 208-630-570; and

(b) A ~~((conspicuous))~~ notice of how consumers may contact the department, substantially in the following form: "If you have questions about your rights and responsibilities when taking out a payday loan, contact the Department of Financial Institutions at 1-800-RINGDFI (1-877-746-4334), or 360-902-8700, or 150 Israel Road S.W., Tumwater, Washington, 98501."

(2) ~~((Licensees that))~~ If you make small loans using the internet you must post the notices required by subsections (1) and (2) of this section in a conspicuous location on ~~((their))~~ your web sites.

(3) ~~((Licensees))~~ You may download a copy of the notice required by subsection (1)(b) of this section from the department's web site or by contacting the department directly.

AMENDATORY SECTION (Amending WSR 05-22-009, filed 10/21/05, effective 11/21/05)

**WAC 208-630-590 How must I format disclosures?**

All disclosures must be presented in a manner and physical format that is clear, conspicuous and designed to call attention to each right and responsibility of the borrower and lender being disclosed. Except for the disclosure that is required on the application (see WAC 208-630-560(3)), such (statements) disclosures may be provided separately or included within the note or loan agreement.

NEW SECTION

**WAC 208-630-601 Must I provide any information about the changes to the law to borrowers?**

Yes. Throughout 2010, when you take a small loan application or use any other form to initiate a small loan, or upon request by a borrower who has not yet made application for a small loan, you must provide to the borrower a written notice with content produced by the department, that describes the changes to the payday lending law due to chapter 510, Laws of 2009 (ESHB 1709). On subsequent loans to the same borrower, during 2010, you must make the information in the notice available to the borrower by providing the information in the lobby area accessible by the borrower in each licensed location or by inquiring whether the borrower would like another copy of the written notice. If you make small loans over the internet, you must make the content provided by the department available on your web site throughout 2010. The department will provide the content of the notice in Spanish to be made available in the same manner described above. If the notice becomes available in other languages the department will notify all licensees and provide guidance as to its use.

**REQUIREMENTS FOR ALL LICENSEES**

AMENDATORY SECTION (Amending WSR 07-23-094, filed 11/20/07, effective 12/21/07)

**WAC 208-630-610 What ~~((are the))~~ accounting and financial records ~~((that a licensee must))~~ must I keep?** ~~((Licensees))~~ You must maintain ~~((as a minimum))~~ the ~~((following))~~ records in this section for at least two years.

(1) A ~~((licensee must maintain a))~~ record of transactions conducted. ~~((Such a))~~ The record may be limited to the following provided a sufficient audit trail is available through records obtainable from ~~((the licensee's))~~ your bank of account:

- (a) Amount of the checks cashed;
- (b) Amount of fees charged for cashing the check;
- (c) Amount of cash deducted from the transaction for the sales of other services or products;
- (d) Amount of each check or monetary instrument sold;
- (e) Amount of fee charged for the monetary instrument;
- (f) Amount of small loan proceeds disbursed;
- (g) Fees charged for small loans;
- (h) Amount of payments on small loans received;
- (i) Origination date of each small loan;
- (j) Termination date of each small loan;
- (k) ~~((Payment))~~ Installment plan payment due dates;

(l) ~~((The))~~ Application information as required ~~((to be maintained for applications in the))~~ by rule;

(m) Records of cash payments made on small loans. The record must include the date of the payment, the borrower's name, the amount of cash received, the identity of the employee who received the cash, and whether the payment was applied to a loan or ~~((payment))~~ installment plan;

(n) Copies of receipts required under WAC 208-630-505.

(2) ~~((Licensees))~~ You must maintain a cash reconciliation summarizing each day's activity and reconciling cash on hand at the opening of business to cash on hand at the close of business. Such reconciliation must separately reflect cash received from the sale of checks, redemption of returned items, bank cash withdrawals, cash disbursed in cashing of checks, cash disbursed in making small loans, cash received in payment of small loans and bank cash deposits.

(3) You must keep records of the disbursement of loan proceeds and the receipts of all payments on the balance of small loans. The receipt must ~~((be kept and must))~~ indicate the date of the transaction, the borrower's name, amount of receipt, and whether the disbursement or payment is on a loan or ~~((payment))~~ installment plan.

AMENDATORY SECTION (Amending WSR 05-22-009, filed 10/21/05, effective 11/21/05)

**WAC 208-630-670 ~~((For licensees with))~~ If I have a small loan endorsement(s) on my license, what information must ~~((the licensee))~~ I keep in every loan file?** ~~((For licensees with))~~

(1) If you have a small loan endorsement(s), each loan file must contain at least a ~~((copy))~~ record of the application, a ~~((copy))~~ record of the note or loan agreement ~~((and))~~, a record of the documentation used to substantiate the borrower's gross income, a record of the borrower's identification verification, a ~~((copy))~~ record of any disclosure statements, a record of an installment plan entered into, and records of the receipts required in WAC 208-630-505. As used in this section, "application" means any information you received ~~((by the licensee))~~ from the borrower for the purposes of making a lending decision, including, but not limited to, personal employment history and credit history;

(2) Records required to be maintained may be in paper form or on any electronic, magnetic, optical or other storage media, or any combination thereof, so long as the licensee maintains the necessary technology to permit access to the records by the department for the period required by law.

AMENDATORY SECTION (Amending WSR 05-22-009, filed 10/21/05, effective 11/21/05)

**WAC 208-630-700 When may ~~((a licensee))~~ I deposit a monetary instrument accepted in the course of making a small loan?** (1) ~~((A licensee with))~~ If you have a small loan endorsement you may not deposit a monetary instrument accepted in the course of making a small loan under the act prior to the ~~((termination))~~ due date ~~((and))~~ of the small loan or any ~~((time))~~ date disclosed on the note or small loan agreement.

(2) If the borrower notifies you that he or she is unable to repay the loan when it is due and an installment plan is initi-

ated, you must return or destroy any postdated check or ACH authorization the borrower has given you prior to entering into the installment plan. If destruction of an ACH authorization is not possible, the initiation of an installment plan voids your authorization to use the original ACH authorization. You may accept another ACH authorization or authorizations from the borrower consistent with the payment terms of the installment plan.

AMENDATORY SECTION (Amending WSR 05-22-009, filed 10/21/05, effective 11/21/05)

**WAC 208-630-740 What obligation (~~does a licensee~~) do I have to assure that employees comply with the laws and rules regarding payday lending and check cashing and selling?** (~~Each licensee shall~~) You must ensure that any employee or person who engages in business on your behalf (~~of the licensee~~) under the authority granted by chapter 31.45 RCW has sufficient understanding of the (~~statutes~~) law and rules (~~applicable to its business~~) to assure compliance (~~with such statutes and rules~~).

AMENDATORY SECTION (Amending WSR 07-23-094, filed 11/20/07, effective 12/21/07)

**WAC 208-630-8201 What business practices are prohibited?** (1) It is a violation of this chapter for any person subject to this chapter to:

(a) Directly or indirectly employ any scheme, device, or artifice to defraud or mislead any borrower, to defraud or mislead any lender, or to defraud or mislead any person;

(b) Directly or indirectly engage in any unfair or deceptive practice toward any person;

(c) Directly or indirectly obtain property by fraud or misrepresentation;

(d) Make a small loan to any person physically located in Washington through use of the internet, facsimile, telephone, kiosk, or other means without first obtaining a small loan endorsement;

(e) Directly or indirectly refer a borrower, or encourage a borrower, to use the services of more than one payday lending business that results in an amount outstanding that exceeds the loan limit in RCW 31.45.073; (~~and~~)

(f) Directly or indirectly structure a loan transaction in order to exceed the loan limit in RCW 31.45.073;

(g) Directly or indirectly pressure a borrower to not enter into an installment plan;

(h) Directly or indirectly pressure an applicant or borrower to borrow more money than they state they want; provided, it is not a violation of this subsection for a licensee to inform a borrower as to his or her maximum loan amount or that he or she is subject to a limit of eight loans per twelve-months period;

(i) Cash a postdated check before the date written on the check except as permitted by RCW 31.45.070(2);

(j) Make a loan without processing it through the data base system except as specifically allowed in law or rule;

(k) Refuse to provide an installment plan to a borrower who has notified you before the due date of the small loan that they cannot pay the small loan; and

(l) Engage in any device or subterfuge to evade the requirements of the act.

(2) In addition to any other penalties, any transaction in violation of (~~this section~~) subsection (1)(d) of this section is uncollectible and unenforceable.

## REPORTING REQUIREMENTS

AMENDATORY SECTION (Amending WSR 08-16-092, filed 8/5/08, effective 9/5/08)

**WAC 208-630-830 What are (~~a licensee's~~) my annual reporting requirements?** On or before April 15<sup>th</sup> of each year, (~~each licensee~~) you must submit (~~financial statements for the calendar year just ended. If the licensee has established a fiscal year different from the calendar year, the financial statements are due not later than one hundred five days after the close of the fiscal year.~~) the following reports:

(1) Annual financial statements. The financial statements must include at least a balance sheet and a statement of income prepared in accordance with generally accepted accounting principles. If you have established a fiscal year different from the calendar year, the financial statements are due not later than one hundred five days after the close of the fiscal year.

(2) Annual assessment report (AAR). (~~Each licensee~~) You must submit an AAR (~~of its~~) on your Washington activities, in a form prescribed by the director. The AAR must contain the following:

(a) The total dollar volume of checks cashed during the period, if applicable; and

(b) The total dollar volume of checks sold during the period, if applicable; and

(c) The total dollar volume of small loans made during the period, if applicable; and

(d) The annual assessment fee calculation. See WAC 208-630-400.

(3) Consolidated annual report (CAR). (~~Each licensee~~) You must submit a CAR (~~of its~~) on your Washington activities, in a form prescribed by the director. The CAR must contain at least the following:

(a) For all licensees, the CAR must contain:

(i) The total number of employees and annual payroll during the period;

(ii) The total number and dollar volume of transactions during the period;

(iii) The total dollar amount of fees collected during the period;

(iv) The total number and dollar amount of undeposited checks taken or held in connection with check cashing and small loan endorsement business at the end of the period;

(v) The total number and dollar amount of returned (NSF) checks taken or held in connection with check cashing and small loan business at the end of the period, and the total dollar amount of fees collected for returned (NSF) checks during the period;

(vi) The total number and dollar amount of charge-offs (losses), net of any recoveries, for the period; and

(vii) The total dollar amount of net income before and after taxes earned under authority of this chapter.

(viii) Such other relevant information as the director may require, in a form prescribed by the director.

(b) For all licensees with a small loan endorsement, the CAR must contain:

(i) The total dollar volume of small loans made during the period, including payment plans made prior to December 31, 2009, and installment plans ((loans)) made after January 1, 2010;

(ii) The total number of loans made for the period;

(iii) The total number of borrowers for the period;

(iv) The number of borrowers whose accounts were referred to collection agencies;

(v) The number of loans rescinded during the period;

(vi) For reporting year 2010, the number of borrowers ((entering)) who entered into a payment plan during 2009;

(vii) The number of installment plans entered into for the period;

~~((vii))~~ (viii) The number of borrowers who defaulted;

(ix) The number of loans made to borrowers to be paid through an ACH (automated clearing house) or other electronic transaction;

~~((viii))~~ (x) The number of loans made to borrowers through other than a physical visit to the licensee's location (e.g., internet, telephone, etc.); and

~~((ix))~~ (xi) The number of active military borrowers during the period.

(c) For all licensees with small loan endorsements and total loan volume of at least ten million dollars in principal for the reporting period, the CAR must contain the following:

(i) The number of loans per borrower for the period;

(ii) The number of loans per military borrower during the period; and

(iii) The number of loans with terms in each of the following categories for the period:

(A) One to seven days;

(B) Eight to fourteen days;

(C) Fifteen to twenty-one days;

(D) Twenty-two to thirty-one days; and

(E) Thirty-two or more days.

AMENDATORY SECTION (Amending WSR 08-16-092, filed 8/5/08, effective 9/5/08)

**WAC 208-630-8301 What happens if ~~((a licensee is))~~ I am late filing the annual reports and paying the annual assessment? If ~~((a licensee does))~~ you do not file the financial statements (if due at that time), assessment report, consolidated annual report, and pay ~~((its))~~ the annual assessment fee by April 15 of each year, the director will send ~~((the licensee))~~ you a notice of suspension and assess a late fee of twenty-five percent of the annual assessment fee. The ~~((licensee's))~~ reports and payment of both the annual assessment fee and any late fee must arrive in the department's offices by 5:00 p.m. on the tenth day after April 15, unless the department is not open for business on that date, then the ~~((licensee's))~~ reports and payment of both the annual assessment fee and any late fee must arrive in the department's offices by 5:00 p.m. on the next day the department is open for business. ~~((If the reports and payment of both the annual assessment fee and any late fee do not arrive prior to such time and date,~~**

~~the expiration of the licensee's license is effective at 5:00 p.m. on the thirtieth day after April 15:))~~

#### NEW SECTION

**WAC 208-630-835 When must I inform the director of significant changes in my business?** (1) You must notify the director in writing within five days of the occurrence of any of the following significant developments:

(a) Your company filing for a chapter 7 or 11 bankruptcy;

(b) Your company receiving notification of a license revocation procedure against it in any state;

(c) You, or a director, officer, partner, member or controlling person of the company being convicted of a crime;

(d) You, or a director, officer, partner, member or controlling person of the company receiving notification of the filing of criminal charges or a criminal indictment or information, in any way related to check cashing, check selling or small loan activities.

(2) You must notify the director in writing at least fifteen days prior to a change of control. In the case of a corporation, control is defined as a change of ownership by a person or group acting in concert to acquire fifty percent of the stock, or the ability of a person or group acting in concert to elect a majority of the board directors or otherwise effect a change in policy of the corporation. The director may require such information as deemed necessary to determine whether a new application is required. In the case of entities other than corporations, change in control means any change in controlling persons of the organization, either active or passive. Change of control investigation fees are billed to the persons or group at the rate billed for applications.

#### NEW SECTION

**WAC 208-630-836 When ceasing business, what information must I file before I close the business?** (1) You must notify the department at least thirty days before ceasing operations. The notice must be in writing, signed by a principal of the small loan licensee, and include the following:

(a) The date you will cease small loan activity;

(b) A list of all open and pending transactions;

(c) Your contact address and e-mail address; and

(d) Your plan for the orderly closure of open loans on the data base system.

(2) For purposes of this section, the term "ceasing operations" means that you have closed the offices to the public or have removed public access to the web site, if such access is the sole means of communication with customers. This provision does not apply if you have given customers a reasonable alternative for communications and payments.

AMENDATORY SECTION (Amending WSR 05-22-009, filed 10/21/05, effective 11/21/05)

**WAC 208-630-880 ~~((What must))~~ As a check seller what must I report when ~~((surrendering))~~ my license is surrendered or ~~((revoking a license))~~ revoked? ~~((A licensee))~~ If you are engaged in the business of selling monetary**

instruments (~~whose license has been surrendered or revoked shall~~) you must submit to the director, at ~~(its)~~ your own expense, a closing annual report containing audited financial statements as of the effective date of the surrender or revocation. The director must receive the closing annual report on or before one hundred five days after the effective date of ~~(such) the surrender or revocation~~ (, a closing annual report containing audited financial statements as of such effective date). ~~(This)~~ The closing annual report ~~(shall)~~ must cover the twelve months ending with ~~(such closure)~~ the surrender or revocation date or for such other time period as the director may specify. If the report, certificate, or opinion of the independent accountant is in any way qualified, the director may require ~~(the licensee)~~ you to take such action as appropriate to permit an independent accountant to remove ~~(such)~~ any qualification from the report, certificate, or opinion. ~~(Such)~~ The report shall include relevant information specified by the director.

AMENDATORY SECTION (Amending WSR 05-22-009, filed 10/21/05, effective 11/21/05)

**WAC 208-630-890** ~~If I am not a check seller what must (a licensee, other than a check seller,) I report when (surrendering or revoking a) my license is surrendered or revoked?~~ ~~(A licensee)~~ If you are not engaged in the business of selling monetary instruments (~~whose license has been surrendered or revoked shall~~) you must submit to the director at ~~(its)~~ your own expense ~~(,)~~ a closing annual report covering the twelve months ending with the surrender or closure date, or for such other time period as the director may specify. The closing annual report must be received by the director on or before one hundred five days after the effective date of ~~(such) surrender or revocation~~ (, a closing annual report covering the twelve months ending with such closure date or for such other period as the director may specify). Financial statements contained in this closing report may be prepared by outside accountants or by ~~(the licensee's)~~ your own accountants.

AMENDATORY SECTION (Amending WSR 05-22-009, filed 10/21/05, effective 11/21/05)

**WAC 208-630-910** May ~~(a licensee)~~ I request an extension of time to comply with the reporting requirements? For good cause and upon written request, the director may extend the time for compliance with reporting requirements if you make the request at least ten days prior to the date the report is due.

AMENDATORY SECTION (Amending WSR 05-22-009, filed 10/21/05, effective 11/21/05)

**WAC 208-630-950** What ~~(are the)~~ trust accounting requirements ~~(that)~~ must a ~~(licensee must)~~ I comply with? (1) At least monthly a licensee in the business of selling checks ~~(shall)~~ must withdraw from the trust account an amount equal to fees earned for the corresponding period from the sale of monetary instruments. The remaining balance of the trust account must be sufficient to cover all mon-

etary instruments that remain outstanding and drawn against the trust account.

(2) A licensee is prohibited from allowing the ~~(bank of)~~ financial institution holding the trust account to charge back checks or drafts deposited to the trust account and subsequently dishonored against ~~(said)~~ the trust account.

(3) A licensee ~~(,)~~ whose license has expired or been suspended ~~(,)~~ or terminated ~~(, or not renewed, shall)~~ must not make withdrawals from the trust account without the director's consent, until a closing report has been received according to these rules.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 208-630-430      When may a licensee expect a fee increase?
- WAC 208-630-440      How will a licensee know about fee increases?
- WAC 208-630-460      When must a licensee inform the director of significant changes in business?
- WAC 208-630-540      Must a licensee comply with the federal Truth in Lending Act when entering into a payment plan?
- WAC 208-630-550      May the licensee and the borrower enter into a payment plan prior to the fourth consecutive loan?
- WAC 208-630-750      What fees may licensees charge to collect a delinquent small loan?
- WAC 208-630-770      May a licensee allow a borrower to refinance or "roll-over" a small loan with another small loan?
- WAC 208-630-780      May a licensee use a name or place of business other than that named on the license or small loan endorsement?
- WAC 208-630-790      What is the limit on the amount of checks a licensee may hold from one borrower?
- WAC 208-630-800      May a licensee holding a borrower's check for a period longer than the statutory limit of forty-five days charge additional fees?
- WAC 208-630-810      May a licensee charge additional fees to cash monetary

WAC 208-630-820	instruments issued as part of a small loan?
	May a licensee charge any fees if a borrower decides to convert their loan to a payment plan?

**WSR 09-24-090**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**FINANCIAL INSTITUTIONS**  
(Consumer Services Division)

[Filed December 1, 2009, 8:57 a.m., effective January 1, 2010]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Amending the rules in chapter 208-620 WAC to implement the Consumer Loan Act, chapter 31.04 RCW, as amended by the applicable Laws of 2009, to amend the rules to be consistent with the federal SAFE act, and to generally amend the rules for clarity and consistency.

Citation of Existing Rules Affected by this Order: Repealing six; and amending thirty one. See the accompanying rules for the specific sections.

Statutory Authority for Adoption: RCW 43.320.040.

Other Authority: RCW 31.04.165, chapters 120 and 149, Laws of 2009.

Adopted under notice filed as WSR 09-19-126 on September 22, 2009.

Changes Other than Editing from Proposed to Adopted Version: 1. WAC 208-620-010, the definition of "individual servicing a mortgage loan" is amended to include language that clarifies that lenders or servicers exempt from licensing fall under the definition as well.

2. WAC 208-620-010, the definition of "license number" is added to clarify the use of the NMLS unique identifier.

3. WAC 208-620-010, the definition of "loan modification" is amended to clarify that the definition applies only to residential mortgage loans. This change is the result of comments during rule making.

4. WAC 208-620-271, the question in this section is amended to clarify that the section applies only to residential mortgage loans. This change is the result of comments during rule making.

5. WAC 208-620-320, the loan origination amounts in the bonding schedule are amended to more closely track with industry practices. This change is the result of comments during rule making.

6. WAC 208-620-325, the minimum bond amount is changed to better reflect the loan origination volume of new companies.

7. WAC 208-620-371, the question in this section is amended to clarify that the section applies only to the Washington operations of the licensee and further clarify the requirements. The first change described above is the result of comments during rule making.

8. WAC 208-620-374, the language is amended to allow a longer period of time for the licensee to report.

9. WAC 208-620-431, the language is amended to clarify that the reporting under the section will not be required until the NMLS has the reporting functionality.

10. WAC 208-620-432, the language is amended to clarify that the reporting requirement of the section is not required until the NMLS has the reporting functionality.

11. WAC 208-620-490, language is added to require notification to the department if a claim is mad [made] against the licensee's bond.

12. WAC 208-620-499, language is added to require the licensee to return any physical license to the department if the licensee closes the business or surrenders their license.

13. WAC 208-620-506, language is added to clarify that if the licensee meets the ability to repay underwriting standards on agency loans, this section is deemed complied with. This change is the result of comments during rule making.

14. WAC 208-620-507, the word "conventional" is added to section question to clarify that the following requirements apply only to conventional residential mortgage loans. This change is the result of comments during rule making.

15. WAC 208-620-510(2), new language is added to further clarify the department's actions; this provides additional guidance to licensees.

16. WAC 208-620-510 (5)(f), language is added to further clarify the requirement of the section.

17. WAC 208-620-511, the section question is amended so that the section applies only to residential mortgage loans. This change is the result of comments during rule making.

18. WAC 208-620-513, this section is stricken based on discussion and comments during the rule making.

19. WAC 208-620-515(4), this section is removed due to a lack of consistency with the statute.

20. WAC 208-620-520 (3)(a), language to [is] added to make the requirements of the section consistent with federal law.

21. WAC 208-620-550(14), language is added to provide guidance to the industry on how to comply with the section. This change is the result of comments during rule making.

22. WAC 208-620-555(5), the section is amended as a result of discussion and comments during the rule making.

23. WAC 208-620-560(2), this section is amended to allow a licensee to collect the amount they are charged for a returned item. The section is also amended to include ACH authorizations and other forms of payment instruments. This change is the result of comments during rule making.

24. WAC 208-620-566, the section question is amended to clarify that the section applies only [to] residential mortgage loan activities. This change is the result of comments during rule making.

25. WAC 208-620-613, the section question is amended to clarify that the section only applies to nonagency loan products if the products are the subject of the federal guidelines. The language is further amended to clarify that the section applies only to residential mortgage loans. These changes are the result of comments during rule making.

26. WAC 208-620-700(2), language is added to clarify the section requirements.

27. WAC 208-620-710 (h)(i), language is added to give the industry a date certain for compliance and the loan origination volumes in the bond chart are amended to better reflect industry practices.

28. WAC 208-620-710 (h)(ii), the bonding tiers are amended.

29. WAC 208-620-710(i), subsection (i) is added as a placeholder for a future requirement.

30. WAC 208-620-810, the section question is amended to include the activity of offering to make a reverse mortgage loan.

31. WAC 208-620-820(10), the requirement for the retention of the counseling certification is amended to be consistent with federal law.

32. WAC 208-620-830, language is added to clarify that the section applies in addition to any federal law requirements the licensee may have.

Number of Sections Adopted in Order to Comply with Federal Statute: New 18, Amended 29, Repealed 0; Federal Rules or Standards: New 1, Amended 1, Repealed 0; or Recently Enacted State Statutes: New 18, Amended 29, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 11, Amended 29, Repealed 60 [6].

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 38, Amended 31, Repealed 6; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: December 1, 2009.

Deborah Bortner, Director  
Division of Consumer Services

**AMENDATORY SECTION** (Amending WSR 09-01-159, filed 12/23/08, effective 1/23/09)

**WAC 208-620-010 Definitions.** The definitions set forth in this section apply throughout this chapter unless the context clearly requires a different meaning.

"Act" means the Consumer Loan Act, chapter 31.04 RCW.

"Affiliate" means any person who controls, is controlled by, or is under common control with another.

"Annual percentage interest rate" means the rate of interest specified in the note.

"Annual percentage rate" has the same meaning as defined in Regulation Z, 12 C.F.R. Section 226 et seq.

"Application" means the submission of a borrower's financial information in anticipation of a credit decision relating to a residential mortgage loan, which includes the borrower's name, monthly income, Social Security number to obtain a credit report, the property address, an estimate of the value of the property, and the mortgage loan amount sought. An application may be submitted in writing or electronically and includes a written record of an oral application. If the submission does not state or identify a specific property, the

submission is an application for a prequalification and not an application for a residential mortgage loan under this part. The subsequent addition of an identified property to the submission converts the submission to an application for a residential mortgage loan.

"Bank Secrecy Act" means the Bank Secrecy Act (BSA), 31 U.S.C. 1051 et seq. and 31 C.F.R. Section 103.

"Bond substitute" means unimpaired capital, surplus and qualified long-term subordinated debt.

"Borrower" means any natural person who consults with or retains a licensee or person subject to this chapter in an effort to obtain or seek information about obtaining a loan, regardless of whether that person actually obtains such a loan.

"Common ownership" exists if an entity or entities possess an ownership or equity interest of five percent or more in another entity.

"Creditor" has the same meaning as in the Truth in Lending Act, 15 U.S.C. 1602(f).

"Department" means the department of financial institutions.

"Depository institution" has the same meaning as in section 3 of the Federal Deposit Insurance Act on the effective date of this section, and includes credit unions.

"Depository Institutions Deregulatory and Monetary Control Act" means the Depository Institutions Deregulatory and Monetary Control Act of 1980 (DIDMCA), 12 U.S.C. § 1735f-7a.

"Director" means the director of the department of financial institutions or his or her designated representative.

"Equal Credit Opportunity Act" means the Equal Credit Opportunity Act (ECOA), 15 U.S.C. section 1691 and Regulation B, 12 C.F.R. Section 202.

"Fair Credit Reporting Act" means the Fair Credit Reporting Act (FCRA), 15 U.S.C. Section 1681 et seq.

"Fair Debt Collection Practices Act" means the Fair Debt Collection Practices Act, 15 U.S.C. section((§) 1692 ((through 1692e)).

"Federal banking agencies" means the Board of Governors of the Federal Reserve System, Comptroller of the Currency, Director of the Office of Thrift Supervision, National Credit Union Administration, and Federal Deposit Insurance Corporation.

"Federal Trade Commission Act" means the Federal Trade Commission Act, 15 U.S.C. section 45(a).

"Filing" means filing, recording, releasing or reconveying mortgages, deeds of trust, security agreements or other documents, or transferring certificates of title to vehicles.

"Gramm-Leach-Bliley Act (GLBA)" means the Financial Modernization Act of 1999, 15 U.S.C. Sec. 6801-6809, and the GLBA-mandated Federal Trade Commission (FTC) privacy rules, at 16 C.F.R. Parts 313-314.

"Home Mortgage Disclosure Act" means the Home Mortgage Disclosure Act (HMDA), 12 U.S.C. sections 2801 through 2810 and 12 C.F.R. Section 203.

"Immediate family member" means a spouse, child, sibling, parent, grandparent, or grandchild. This includes step-parents, stepchildren, stepsiblings, and adoptive relationships.

"Individual servicing a mortgage loan" means a person who on behalf of a lender or servicer licensed by this state, or a lender or servicer exempt from licensing, who collects or receives payments including payments of principal, interest, escrow amounts, and other amounts due, on existing obligations due and owing to the licensed lender or servicer for a residential mortgage loan when the borrower is in default, or in reasonably foreseeable likelihood of default, working with the borrower and the licensed lender or servicer, collects data and makes decisions necessary to modify either temporarily or permanently certain terms of those obligations, or otherwise finalizing collection through the foreclosure process.

For purposes of this definition "on behalf of a lender or servicer" means that the individual person is employed by the lender or servicer and does not receive any compensation or gain directly or indirectly from the borrower for performing the described activities.

"Insurance" means life insurance, disability insurance, property insurance, insurance covering involuntary unemployment and such other insurance as may be authorized by the insurance commissioner in accordance with Title 48 RCW.

"Lender" means any person that extends money to a borrower with the expectation of being repaid.

"License" means a license issued under the authority of this chapter with respect to a single place of business.

"License number" means your NMLSR unique identifier displayed as prescribed by the director.

"Licensee" means a person who holds one or more current licenses.

"Live check" means a loan solicited through the mail in the form of a check, which, when endorsed by the payee, binds the payee to the terms of the loan agreement contained on the check.

"Loan" means a sum of money lent at interest or for a fee or other charges and includes both open-end and closed-end transactions.

"Loan modification" means a change in one or more of the residential mortgage loan conditions and includes forbearances; repayment plans; a change in interest rates; loan term (length); loan type (fixed or adjustable); the capitalization of arrearages; and principal reductions. "Loan modification" does not include services that result in refinancing a residential mortgage loan.

"Loan originator" means the same as ~~((in RCW 19.146-010))~~ mortgage loan originator.

"Loan processor" means an individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a person licensed, or exempt from licensing, under chapter 31.04 RCW.

A loan processor engaged as an independent contractor for a licensee must hold a mortgage loan originator license.

"Long-term subordinated debt" means for the purposes required in RCW 31.04.045 outstanding promissory notes or other evidence of debt with initial maturity of at least seven years and remaining maturity of at least two years.

"Making a loan" means advancing, offering to advance, or making a commitment to advance funds for a loan.

"Material litigation" means proceedings that differ from the ordinary routine litigation incidental to the business. Litigation is ordinary routine litigation if it ordinarily results from the business and does not deviate from the normal business litigation. Litigation involving five percent of the licensee's assets or litigation involving the government would constitute material litigation.

"Mortgage broker" means the same as in RCW 19.146-010 except that for purposes of this chapter, a licensee or person subject to this chapter cannot receive compensation as both a consumer loan licensee making the loan and as a mortgage broker in the same transaction.

"Mortgage loan originator" or "loan originator" means an individual who for compensation or gain (1) takes a residential mortgage loan application; or (2) offers or negotiates terms of a residential mortgage loan.

"Mortgage loan originator" does not include any individual who performs purely administrative or clerical tasks and does not include a person or entity solely involved in extensions of credit relating to timeshare plans, as that term is defined in section 101(53D) of Title 11, United States Code.

For the purposes of this definition, administrative or clerical tasks means the receipt, collection, and distribution of information common for the processing of a loan in the mortgage industry and communication with a consumer to obtain information necessary for the processing of a residential mortgage loan.

"Mortgage loan originator" does not include a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with applicable state law to conduct those activities, unless the person or entity is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such a lender, mortgage broker, or other mortgage loan originator. See the definition of real estate brokerage activity in this subsection.

This definition does not apply to an individual servicing a mortgage loan before July 1, 2011.

"Nationwide Mortgage Licensing System and Registry (NMLSR)" means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of mortgage loan originators.

"Out-of-state licensee" means ~~((any))~~ a licensee that does not maintain a physical presence within the state, or a licensee that maintains headquarters or books and records outside Washington.

"Person" includes individuals, partnerships, associations, trusts, corporations, and all other legal entities.

"Principal" means either (1) any person who controls, directly or indirectly through one or more intermediaries, a ten percent or greater interest in a partnership, company, association or corporation; or (2) the owner of a sole proprietorship.

"Principal amount" means the loan amount advanced to or for the direct benefit of the borrower.

"Principal balance" means the principal amount plus any allowable origination fee.

"RCW" means the *Revised Code of Washington*.

"Real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including (1) acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property; (2) bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property; (3) negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property, other than in connection with providing financing with respect to such a transaction; (4) engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law; and (5) offering to engage in any activity, or act in any capacity, described in (1) through (4) of this definition.

"Real Estate Settlement Procedures Act" means the Real Estate Settlement Procedures Act (RESPA), 12 U.S.C. Sections 2601 et seq., and Regulation X, 24 C.F.R. Sections 3500 et seq.

"Records" mean books, accounts, papers, records and files, no matter in what format they are kept, which are used in conducting business under the act.

"Registered mortgage loan originator" means any individual who (1) meets the definition of mortgage loan originator and is an employee of: A depository institution, a subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency, or an institution regulated by the farm credit administration; and (2) is registered with, and maintains a unique identifier through, the nationwide mortgage licensing system and registry.

"Residential mortgage loan" means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling (as defined in section 103(v) of the Truth in Lending Act) or residential real estate upon which is constructed or intended to be constructed a dwelling.

"S.A.F.E. Act" means the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, Title V of the Housing and Economic Recovery Act of 2008 ("HERA"), Public Law No. 110-289, effective July 30, 2008.

"Senior officer" means an officer of a consumer loan company at the vice-president level or above.

"Simple interest method" means the method of computing interest payable on a loan by applying the annual percentage interest rate or its periodic equivalent to the unpaid balance of the principal amount outstanding for the time outstanding. Each payment (~~shall~~) must first be applied to any unpaid penalties, fees, or charges, then to accumulated interest, and last to the unpaid balance of the principal amount until paid in full. In using such method, interest (~~shall~~) must not be payable in advance or compounded.

"State" means the state of Washington.

"Subsidiary" means a person that is controlled by another.

"Table funding" means a settlement at which a mortgage loan is funded by a contemporaneous advance of loan funds and an assignment of the loan to the person advancing the funds.

"Telemarketing and Consumer Fraud and Abuse Act" means the Telemarketing and Consumer Fraud and Abuse Act, 15 U.S.C. § 6101 to 6108.

"Telephone Sales Rule" means the rules promulgated in 16 C.F.R. Part 310.

"Third-party service provider" means any person other than the licensee who provides goods or services to the licensee in connection with the preparation of the borrower's loan and includes, but is not limited to, credit reporting agencies, title companies, appraisers, structural and pest inspectors, or escrow companies.

"Truth in Lending Act" means the Truth in Lending Act (TILA), 15 U.S.C. Sections 1601 et seq., and Regulation Z, 12 C.F.R. Sections 226 et seq.

"Unique identifier" means a number or other identifier assigned by protocols established by the nationwide mortgage licensing system and registry.

## EXEMPTION FROM LICENSING

### NEW SECTION

**WAC 208-620-104 Who is exempt from licensing as a consumer loan company?** See RCW 31.04.025.

### NEW SECTION

**WAC 208-620-105 Who is exempt from licensing as a mortgage loan originator under this act?** The following are exempt from licensing as a mortgage loan originator:

(1) Registered mortgage loan originators employed by an entity that is exempt from the act;

(2) Any individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual;

(3) Any individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that served as the individual's residence;

(4) A licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator; and

(5) Individuals that do not take residential mortgage loan applications or negotiate the terms of residential mortgage loans for compensation or gain.

## COMPANY LICENSING

AMENDATORY SECTION (Amending WSR 09-01-159, filed 12/23/08, effective 1/23/09)

**WAC 208-620-230 Do I need ~~((to apply for))~~ a consumer loan license if I am lending money in the state of Washington?** If you are in the business of making secured or unsecured loans of money or credit (~~at rates above those allowed under chapter 19.52 RCW, the Usury Act,~~) and you do not qualify for an exception under RCW 31.04.025, you must hold a license (~~to avoid noncompliance with the Usury~~

Act. The current allowable rate under RCW 19.52.020 is twelve percent or less but that rate may change) under this act.

AMENDATORY SECTION (Amending WSR 09-01-159, filed 12/23/08, effective 1/23/09)

**WAC 208-620-235 Is there a maximum rate of interest allowed under the act? Yes.** The note rate of interest ((rates)) may not ((exceeding)) exceed twenty-five percent per annum ((are allowed)).

AMENDATORY SECTION (Amending WSR 06-04-053, filed 1/27/06, effective 2/27/06)

**WAC 208-620-240 Once I am licensed, does the act apply to all loans I make ((or only those above twelve percent))?** Yes. All loans you make ((as a licensee)) to Washington residents and loans secured by Washington residential real estate are subject to the authority and restrictions of the act including the provisions relating to the calculation of the annual ((fee)) assessment.

AMENDATORY SECTION (Amending WSR 06-04-053, filed 1/27/06, effective 2/27/06)

**WAC 208-620-245 Does the Consumer Loan Act allow me to make one or two loans ((subject to the act)) without being licensed? No.** The act ((applies to all loans made by licensees and)) does not provide an exemption for a ((de minimus)) de minimis number of loans. ((If you are not licensed, the act does not apply to your transactions.)) See WAC 208-620-230.

AMENDATORY SECTION (Amending WSR 08-15-125, filed 7/22/08, effective 8/22/08)

**WAC 208-620-260 If I am licensed under the Consumer Loan Act, can I broker loans in the state of Washington?** Yes. You may broker loans under the Consumer Loan Act or Mortgage Broker Practices Act.

(1) If you broker loans under the Consumer Loan Act license, ((those loans are subject to)) you are subject to the act and the loans are subject to the annual assessment under WAC 208-620-240.

(2) If you ((broker loans)) are licensed under the Mortgage Broker Practices Act, chapter 19.146 RCW, you must comply with that act. If you do hold that additional license, the loans you broker are subject to that act and are not subject to the annual assessment under this act.

#### NEW SECTION

**WAC 208-620-271 Do I need a license to assist a borrower with a residential mortgage loan modification?** Yes. Persons providing loan modification services for compensation or gain must be licensed under this chapter, or under chapter 19.146 RCW.

AMENDATORY SECTION (Amending WSR 06-04-053, filed 1/27/06, effective 2/27/06)

**WAC 208-620-280 How do I apply for a consumer loan license? ((1) Application.** An applicant for a consumer loan company license must complete a consumer loan license application form and include all of the following:

(a) In regard to each principal, officer or member of the board of directors:

(i) The names, addresses, occupation and prior employment history including a statement of their experience and qualifications;

(ii) A description of any material litigation in which they are involved;

(iii) A signed authorization for a background investigation on a form provided by the department;

(iv) A complete set of fingerprints taken by an authorized law enforcement officer, if requested; and

(v) An independent credit report obtained from a recognized credit reporting agency, if requested;

(b) A current financial statement as of the most recent quarter end, prepared in accordance with generally accepted accounting principles. The statement does not have to be audited but must include a statement of assets and liabilities and a profit and loss statement;

(c) A current, dated organizational chart for the applicant with names and titles of all officers, managers and supervisory personnel;

(d) A current, dated organizational chart identifying the holding companies, affiliates, and subsidiaries of the applicant and percentage owned or controlled;

(e) A certificate of existence/authorization obtained from the Washington secretary of state;

(f) A valid surety bond in the amount specified in WAC 208-620-320;

(g) For out-of-state licensees, the name, address, phone number, and fax number of its registered agent;

(h) The location of its records;

(i) A description of any current material civil litigation involving the company or any of the officers, directors or owners; and

(j) The fee required under WAC 208-620-290.

(2) **Completion of an application.** An application is not considered to be complete unless:

(a) All documents and other information requested by the department have been submitted in a completed form; and

(b) There are no unresolved complaints filed with the department or other outstanding regulatory or law enforcement issues concerning the applicant and its principals, officers and directors.)) (1) Your application consists of an on-line filing through the NMLSR and Washington specific requirements provided directly to DFI. You must pay an application fee through the NMLSR system.

(2) Upon application and periodically upon license renewal, each officer, director, and owner applicant must provide information concerning:

(a) Identity, including fingerprints for submission to the Washington state patrol, the federal bureau of investigation, the nationwide mortgage licensing system and registry, or any governmental agency or entity authorized to receive this

information for a state and national criminal history background check:

(b) Personal history;

(c) Experience;

(d) Business record; and

(e) Other pertinent facts, as the director may reasonably require.

(3) ~~((Responsible applicants.))~~ Each ~~((of the))~~ principal~~(s)~~, officer~~(s)~~ and director~~(s)~~ of the entity that is applying for a license is deemed responsible for the information submitted as part of the application.

#### NEW SECTION

**WAC 208-620-281 What will happen if my license application is incomplete?** The department will only process complete applications. If your application is incomplete your file will be marked "pending-deficient" in the NMLSR. The department will either identify each deficiency or respond that there are multiple deficiencies and ask you to contact the department. You are responsible for reviewing your record and responding to each issue.

#### NEW SECTION

**WAC 208-620-282 How do I withdraw my application for a license?** You may withdraw the application through the NMLSR. You will not receive a refund of the NMLSR application fee but you may receive a partial refund of your licensing fee if the fee exceeds the department's actual cost to investigate the license application.

#### NEW SECTION

**WAC 208-620-284 What are my rights if the director denies my application for a license?** You have the right to request an administrative hearing pursuant to the Administrative Procedure Act, chapter 34.05 RCW. To request a hearing, you must notify the department within twenty days from the date of the director's notice to you that your license application has been denied. See WAC 208-620-615.

AMENDATORY SECTION (Amending WSR 06-04-053, filed 1/27/06, effective 2/27/06)

**WAC 208-620-290 What fees ~~((will I be charged))~~ must I pay for my application for a consumer loan license?** (1) ~~((Application))~~ **NMLSR fees.** ~~((The director will charge the applicant or licensee))~~ You must pay the NMLSR system fee when you submit your application.

(2) **DFI fees.** You must pay \$95.55 per hour for review and investigation of ~~((its application and attendant investigation for))~~ the following:

(a) New consumer loan company license;

(b) New branch office license;

(c) Notice of change of control; or

(d) Opinions rendered regarding interpretations of statutes and rules.

~~((2))~~ (3) **Licenses.** ~~((The licensee will be charged))~~ You must pay \$106.71 for ~~((the))~~ issuance of the following licenses:

(a) New or replacement main office licenses; or

(b) New or replacement branch licenses.

AMENDATORY SECTION (Amending WSR 06-04-053, filed 1/27/06, effective 2/27/06)

**WAC 208-620-300 If I want to open more than one office, do I have to file an application for each location?** ~~((A licensee must complete a consumer loan license application))~~ Yes. You must submit a branch office application through the NMLSR for each consumer loan company branch office, loan servicing location, or direct solicitation location, and provide evidence of surety bond coverage for ~~((any additional))~~ each branch. ~~((The director may require that all or some of the information provided in the original application be updated.))~~

AMENDATORY SECTION (Amending WSR 09-01-159, filed 12/23/08, effective 1/23/09)

**WAC 208-620-320 What is the amount of the bond required for my consumer loan license?** ~~((1) Loans not secured by real estate. For licensees making loans not secured by real property, the penal sum of the bond is one hundred thousand dollars for each office up to five locations. For each additional branch office over five, the amount of the bond must be increased by ten thousand dollars.~~

~~((2) Loans secured by real estate. For a licensee making loans secured by real property, the penal sum of the bond is four hundred thousand dollars.))~~ The bond amount is based on the annual dollar amount of loans you originate. See the following chart:

1. <u>Zero to twenty million in loans originated:</u>	<u>\$30,000</u>
2. <u>Twenty million to forty million:</u>	<u>\$50,000</u>
3. <u>Forty million to fifty million:</u>	<u>\$100,000</u>
4. <u>Fifty million and above:</u>	<u>\$150,000</u>

#### NEW SECTION

**WAC 208-620-325 What will my bond amount be in the first year of licensing?** Your initial bond amount will be based on either your prior year's loan origination volume in Washington or one hundred thousand dollars. See the bonding chart in WAC 208-620-320.

#### NEW SECTION

**WAC 208-620-327 How often will my bond amount change?** Your bond amount may change annually depending on your volume of loan origination in Washington.

#### NEW SECTION

**WAC 208-620-328 How often must I report my loan origination volume?** You must report your loan origination volume each quarter when filing your call report (see WAC 208-620-431) and each year during the annual assessment period. By March 1st of each year, you must determine your

required bond amount and provide DFI with proof of having an adequate bond.

AMENDATORY SECTION (Amending WSR 06-04-053, filed 1/27/06, effective 2/27/06)

**WAC 208-620-340 Do I have any alternative to maintaining a surety bond?** ~~((Bond substitute.))~~ You may use a bond substitute, as defined in WAC 208-620-010, that meets the following requirements:

(1) The company must be a Washington business corporation. ~~((A licensee that is a Washington business corporation may maintain a bond substitute, as defined in WAC 208-620-010, in lieu of a surety bond.))~~

(2) ~~((Amount of the bond substitute.))~~ The company's ~~((licensee must maintain))~~ unimpaired capital must be maintained in an amount so that the aggregate sum of the ~~((licensee's))~~ company's debt, including outstanding promissory notes or other evidences of debt, does not at any time exceed three times the amount of its bond substitute.

(3) ~~((Long-term subordinated debt.))~~ The company's ~~long-term subordinated debt, as defined in WAC 208-620-010, may be excluded from the~~ ~~((licensee's))~~ company's debt for purposes of calculating the bond substitute only if any claim by the subordinate debtholder on the ~~((licensee's))~~ company's assets is junior to claims by the state or a consumer under the act. The licensee must file with the director a subordination agreement in favor of the state.

(4) ~~((Bad debts and uncollectible judgments. A licensee that maintains a bond substitute))~~ The company may not consider bad debts and uncollectible judgments as assets for purposes of calculating the bond substitute. A bad debt is any debt owed to the licensee upon which any payment is six months or more past due. An uncollectible judgment is any judgment which is more than two years old and which has not been paid.

(5) ~~((Review of requirements.))~~ The director may evaluate the documentation submitted by the licensee or other documentation requested by the director to determine whether the bond substitute meets the requirements of RCW 31.04.045(3).

#### NEW SECTION

**WAC 208-620-341 If my company relies on the bond alternative, must my licensed mortgage loan originators obtain an individual bond?** Yes. They must each obtain individual bonds based on their mortgage loan origination volume. See WAC 208-620-710 (3)(h).

AMENDATORY SECTION (Amending WSR 08-15-125, filed 7/22/08, effective 8/22/08)

**WAC 208-620-360 What if I** ~~((choose the))~~ use a bond substitute ~~((alternative))~~ and my unimpaired capital falls below the minimum? ~~((Failure to maintain sufficient unimpaired capital.))~~ A ~~((licensee))~~ company that does not maintain a sufficient bond substitute ~~((shall))~~ must notify the director within ten days ~~((as required by WAC 208-620-490))~~ of the decrease in unimpaired capital. The ~~((licensee must))~~ department will then direct you to obtain and file

~~((with the director))~~ a surety bond in the amount required by WAC 208-620-320. You must comply within twenty days ~~((after receiving notice from the director)).~~ ~~((A licensee that files))~~ If you obtain a surety bond under this section you must maintain the surety bond for five years after the date of non-compliance. During this five-year period, the director will not accept a bond substitute.

AMENDATORY SECTION (Amending WSR 06-04-053, filed 1/27/06, effective 2/27/06)

**WAC 208-620-370 What are the grounds for denying or conditioning my consumer loan company license application?** The director may deny or condition approval of a license application if the applicant or any principal, officer, or board director of the applicant:

(1) ~~((Failing to pay.))~~ Fails to pay a fee due the department or the NMLSR;

(2) ~~((Failing to demonstrate financial responsibility or fitness.))~~ Fails to demonstrate financial responsibility, experience, character, and general fitness to operate a business honestly, fairly, and efficiently within the purposes of the Consumer Loan Act. The director may find that the person has failed to make the demonstration if, among other things:

(a) The person is or has been subject to an injunction or an administrative action issued pursuant to the Consumer Loan Act, the Consumer Protection Act, the Mortgage Broker Practices Act, the Insurance Code, the Securities Act, or similar laws in this or another state; or

(b) An independent credit report issued by a recognized credit reporting agency indicates that the person has a history of unpaid debts; or

(c) The person is the subject of a criminal felony indictment, or a criminal misdemeanor charge involving dishonesty or financial misconduct; or

(d) The person is insolvent in the sense that the value of the applicant's or licensee's liabilities exceeds its assets or in the sense that the applicant or licensee cannot meet its obligations as they mature;

(3) ~~((Misrepresentations or omissions.))~~ Has misrepresented, omitted or concealed a material fact from the department or has misrepresented a material fact to the department;

(4) ~~((Prior business conduct.))~~ Has been found to have committed an act of misrepresentation or fraud in any aspect of the conduct of the lending or brokering business or profession;

(5) ~~((Failure to complete the application.))~~ Has failed to complete its application as defined in WAC 208-620-280, within a reasonable time after being notified that the department considers the file abandoned for failure to provide requested information or documentation.

#### NEW SECTION

**WAC 208-620-371 May I employ someone to work with Washington residents or Washington property who has been convicted of a felony, or who has had a lending-related license revoked or suspended?** No. Pursuant to RCW 31.04.093(6), the director may prohibit any officer, principal, or employee from participating in the affairs of any

licensee if that officer, principal, or employee has been convicted of or pled guilty or nolo contendere to a felony in a domestic, foreign, or military court:

(1) During the seven-year period preceding the date of the proposed employment; or

(2) At any time preceding the date of the proposed employment, if the felony involved an act of fraud, dishonesty, breach of trust, or money laundering.

(3) For purposes of this section, "participation in the affairs of any licensee" means an officer, principal, or employee who will or does originate loans, supervise loan originators, or manage the loan production activities of the licensee. Additionally, the director may prohibit participation in the affairs of the licensee by any officer, principal, or employee who has had a license to engage in lending, or performance of a settlement service related to lending, revoked or suspended in this state or any state. The department considers it to be a deceptive practice in violation of RCW 31.04.027(2) for any licensee to employ an officer, principal, or employee to originate loans, supervise loan originators or manage the loan production activities of the licensee without first conducting a background check.

#### NEW SECTION

**WAC 208-620-372 Am I responsible for the actions of my employees and independent contractors?** Yes. You are responsible for any conduct violating the act or these rules by any person you employ, or engage as an independent contractor, to work in the business covered by your license.

#### NEW SECTION

**WAC 208-620-373 What happens to loans in the pipeline if a mortgage loan originator leaves my company?** Existing loan applications must be processed by another licensed loan originator in the company. At the borrower's written request, the loan must be transferred to another licensed entity.

#### NEW SECTION

**WAC 208-620-374 What action must I take in the NMLSR if I fire a loan originator or if the loan originator quits?** You must file a relationship termination through the NMLSR within ten days of firing someone or the person quitting.

AMENDATORY SECTION (Amending WSR 06-04-053, filed 1/27/06, effective 2/27/06)

**WAC 208-620-380 Are there any additional requirements for out-of-state licensees?** (1) **All locations must be licensed.** Any person that conducts business under the act with Washington residents or Washington residential real estate must obtain a license for all locations from which such business is conducted, including out-of-state locations, with the exception of those office locations providing only underwriting and back office services under WAC 208-620-310.

(2) **Keeping records out-of-state.** The director may approve the maintenance of a licensee's records at an out-of-

state location. The licensee must request approval in writing and must agree to provide the director access to the records and pay the hourly rate plus travel costs pursuant to WAC 208-620-590. ~~((Agreement to allow access to the records is a condition of licensing of an out-of-state location.))~~

(3) **Service on out-of-state licensee.** An out-of-state licensee's registered agent in Washington is the licensee's agent for service of process, notice, or demand.

AMENDATORY SECTION (Amending WSR 08-15-125, filed 7/22/08, effective 8/22/08)

**WAC 208-620-430 What are my annual filing requirements as a consumer loan licensee?** Each year you are required to file a consolidated annual report on a form provided by the department. You must also pay a fee (assessment) based on your loan portfolio ~~((from))~~ balance at the end of the prior calendar year ((end)), plus the loan activity conducted during the reporting year.

(1) **Annual report and assessment due March 1st.** You must provide the completed consolidated annual report, through the NMLSR by March 1st of each year. The worksheet((-)) and annual fee must be provided directly to the department by March 1st of each year.

(2) **Late penalties.** A licensee that fails to submit the required annual report, worksheet, and assessment by March 1st is subject to a penalty of fifty dollars per report for each day of delay. For example, if the department receives the consolidated annual report and worksheet on March 4th, the licensee would have to pay an additional three hundred dollars as a late penalty. The maximum late penalty that will be assessed is five thousand dollars per year.

(3) **Failure to file.** If a licensee fails to pay its annual assessment and file a worksheet by April 1st the director may file a claim against the licensee's surety bond for failing to faithfully conform to and abide by the Consumer Loan Act. The department may make a claim on the licensee's surety bond for the late penalties under subsection (2) of this section and the greater of:

- (a) The assessment paid the previous year;
- (b) The average annual assessment paid in the previous two years; or
- (c) Fifteen hundred dollars.

#### NEW SECTION

**WAC 208-620-431 What are my quarterly call report filing requirements if I make residential mortgage loans?** When the NMLSR develops the call report functionality you will be required to file quarterly call reports on the dates and in a form prescribed by NMLSR.

#### NEW SECTION

**WAC 208-620-432 Will the filing of the fourth quarter call report satisfy the consolidated annual report (CAR) requirement of WAC 208-620-430?** Reserved.

AMENDATORY SECTION (Amending WSR 08-15-125, filed 7/22/08, effective 8/22/08)

**WAC 208-620-440 How do I calculate my annual assessment for activity in Washington? (1) Calculation of the annual assessment.** The annual assessment is based on the "adjusted total loan value" as defined in subsection (2) of this section. The amount of the annual assessment is determined by multiplying the adjusted total loan value of the loans in the year being assessed by .000180271.

(2) **All loans counted in assessment calculation.** The "adjusted total loan value" is the sum of:

(a) The principal loan balance on Washington loans in your loan portfolio on December 31 of the prior year; plus

(b) The total principal loan amount of all first and junior lien Washington loans both under and over twelve percent interest, you made, brokered, or purchased during the assessment year.

(3) **Reverse mortgages.** Each reporting year, you will report and be assessed on:

(a) The dollar amount of advances made; and

(b) The dollar amount of accrued interest.

AMENDATORY SECTION (Amending WSR 06-04-053, filed 1/27/06, effective 2/27/06)

**WAC 208-620-490 What are my reporting responsibilities when something of significance happens to my business? (1) Prior notification required.** ((A licensee)) You must ((notify the director in writing)) amend your NMLSR record at least ten days prior to a change of ((the licensee's)) your:

(a) Principal place of business or any of ((its)) branch offices;

(b) Name or legal status (e.g., from sole proprietor to corporation, etc.);

(c) Name and mailing address of ((the out-of-state licensee's)) your registered agent if you are located outside the state;

(d) Legal or trade name; or

(e) A change of ownership control of ten percent or more; or

(f) A closure or surrender of the license. See WAC 208-620-499.

(2) **Post notification within ten days.** ((A licensee)) You must ((notify the director in writing)) amend your NMLSR record within ten days after an occurrence of any of the following:

(a) Change in mailing address, telephone number, fax number, or e-mail address;

(b) Cancellation or expiration of ((its)) your Washington state master business license;

(c) Change in ((its)) standing with the state of Washington secretary of state, including the resignation or change of the registered agent;

(d) Failure to maintain the appropriate unimpaired capital under WAC 208-620-340. See WAC 208-620-360; ((or))

(e) Receipt of notification of cancellation of ((the licensee's)) your surety bond;

(f) Termination of sponsorship of loan originator; or

(g) Receipt of notification of a claim against your bond.

(3) **Post notification within twenty days.** ((A licensee)) You must ((notify the director in writing)) amend your NMLSR record within twenty days after the occurrence of any of the following developments:

(a) Receipt of notification of ((the institution of)) license revocation procedures against your license in any state ((against the licensee));

(b) The filing of a felony indictment or information related to lending or brokering activities ((of the licensee;)) against you or any officer, board director, or principal ((of the licensee)) or an indictment or information involving dishonesty ((of the licensee;)) against you or any officer, board director, or principal ((of the licensee));

(c) ((The licensee;)) Conviction of you or any officer, director, or principal ((of the licensee is convicted of)) for a felony, or a gross misdemeanor involving lending, brokering or financial misconduct; or

(d) The filing of any material litigation against the ((licensee)) company.

(4) See WAC 208-620-499 for the requirements when you close your business.

#### NEW SECTION

**WAC 208-620-499 What are my reporting requirements if I want to close my company or surrender my license?** If you cease doing business in Washington you must do the following:

(1) Submit a surrender request through the NMLSR within ten days of closing the company or surrendering the license;

(2) File the final closure form, annual report, worksheet, and submit any fees owed as required in WAC 208-620-430. Failure to file these reports within thirty days of closure will trigger the bond claim process as described in WAC 208-620-430(3), or other action; and

(3) Return you license to the department.

Any Washington loans in your portfolio and CLA activity remain subject to the director's authority including investigation and examination, and the fees associated with those activities.

AMENDATORY SECTION (Amending WSR 08-15-125, filed 7/22/08, effective 8/22/08)

**WAC 208-620-500 What are my reporting requirements if I want to close one or more of my branch offices?** If you close a branch office, you must ((immediately notify the department using the Consumer Loan Office Closure Form. You must also return the original license)) submit a surrender request through the NMLSR at least ten days prior to the branch closing.

AMENDATORY SECTION (Amending WSR 06-04-053, filed 1/27/06, effective 2/27/06)

**WAC 208-620-505 In addition to the Consumer Loan Act, what other laws do I have to comply with?** You must ensure you are in compliance with all federal and state laws and regulations that apply to lending or brokering loans when applicable to the transaction including, but not limited to, the

Truth in Lending Act, the Equal Credit Opportunity Act, the Home Mortgage Disclosure Act, the Bank Secrecy Act, the Real Estate Settlement Procedures Act, the Gramm-Leach-Bliley Act, the Fair Debt Collection Practices Act, the Fair Credit Reporting Act, the Federal Trade Commission Act, the Telemarketing and Consumer Fraud and Abuse Act, the Washington State Fair Housing Act, the S.A.F.E. Act, and the Federal Trade Commission Telephone Sales Rule, 16 C.F.R. Part 310.

#### NEW SECTION

**WAC 208-620-506 Must my underwriting analysis of a borrower's residential mortgage loan application include a determination of the borrower's ability to repay the loan?** Yes. To ensure that underwriting standards are consistent with prudent lending practices, the underwriting standards should include, at a minimum, an analysis of the borrower's ability to repay the obligation. The analysis of a borrower's repayment capacity must include the debt to income ratio; the assets, net worth, or equity; and any prepayment penalty clauses. If the residential mortgage loan is underwritten to the guidelines of Fannie Mae, Freddie Mac, FHA, VA, or USDA and you have met the underwriting standards of an ability to repay analysis for those loans types, you are in compliance with this section.

#### NEW SECTION

**WAC 208-620-507 What elements of an ability to repay analysis must be part of my underwriting policy of a conventional residential mortgage loan?** (1) Your underwriting policy must include:

- A procedure for evaluating and documenting a borrower's ability to repay.
- Standards used to evaluate the borrower's ability to repay by final maturity at the fully indexed rate.
- A policy that provides the assumption of a fully amortizing repayment schedule in determining the borrower's ability to repay.
- An evaluation of any negative amortization on a borrower's ability to repay.
- Standards for verifying the borrower's income, current employment and reasonably expected future income.
- Standards for verifying the borrower's assets, net worth or equity in the subject property.
- Standards for an acceptable range for the borrower's debt to income ratio based on the loan type (conventional, reduced documentation, stated income).
- Demonstration that the debt to income ratio includes all of the borrower's contractual obligations, or that an allowance has been made within the ratio to take into account ancillary borrower contractual obligations (utility, cell phone contracts, etc.).
- Standards for counseling borrowers on the impact of their decision to accept a mortgage with an adjustable rate, balloon payment, or other alternative product or feature.
- Standards on the substitution of a credit score in place of income, assets, or net worth.
- Standards for due diligence of third-party originators including preresult review, verifications of borrower

information, responsibility for initial RESPA compliance, responsibility for adverse action notice compliance, and post-closing reviews.

- Procedures for notifying borrowers about prepayment penalties.

(2) You must demonstrate consistent and uniform application of the elements in subsection (1) of this section in your in-house compliance and audit departments.

AMENDATORY SECTION (Amending WSR 06-04-053, filed 1/27/06, effective 2/27/06)

**WAC 208-620-510 What are my disclosure obligations to consumers ((under the Consumer Loan Act))?** (1) **Content requirements.** In addition to complying with the applicable disclosure requirements in the federal and state statutes referred to in WAC 208-620-505 if the loan will be secured by a lien on real property, you must also provide the borrower or potential borrower an estimate of the annual percentage rate on the loan and a disclosure of whether or not the loan contains a prepayment penalty within three days of receipt of a loan application.

(2) **Proof of delivery.** The licensee must be able to prove that the disclosures under subsection (1) of this section were provided within the required time frames. For purposes of determining the timeliness of the required early disclosures, the department may use the date of the credit report or may use the date of an application received from a broker. In most cases, proof of mailing is sufficient evidence of delivery. If the licensee has an established system of disclosure tracking that includes a disclosure and correspondence log, checklists, and a reasonable system for determining if a borrower did receive the documents, the licensee will be presumed to be in compliance.

(3) **Rate locks.** Within three days, including Saturdays, of receipt of a loan application you must provide the borrower with the following disclosure about the interest rate:

(a) If a lock-in agreement has not been entered into, you must disclose to the borrower that the disclosed interest rate and terms are subject to change.

(b) If a lock-in agreement has been entered into whether the lock-in agreement is guaranteed and whether and under what conditions any lock-in fees are refundable to the borrower.

(c) If the borrower wants to lock the rate after the initial disclosure, you must provide a rate lock disclosure within three days of the lock-in date that includes the following:

(i) The length of the lock-in period;

(ii) The expiration date of the lock-in rate;

(iii) The lock-in interest rate;

(iv) If applicable, the index and a brief explanation of the type of index used, the margin, the maximum interest rate, and the date of the first interest rate adjustment; and

(v) Any other terms of the lock-in agreement.

**(4) Brokered loans.**

(a) Within three business days following receipt of a loan application you must provide to each borrower a good faith estimate that conforms with RESPA 24 C.F.R. 3500.

(b) Within three business days following receipt of a loan application you must provide to each borrower a truth in

lending disclosure that conforms with Regulation Z, 12 C.F.R. Section 226.

(c) Whether a lock-in agreement has been entered into with the borrower.

(d) If a lock-in agreement has been entered into whether the lock-in agreement is guaranteed and whether and under what conditions any lock-in fees are refundable to the borrower.

(e) If the borrower wants to lock the rate after the initial disclosure, you must provide a rate lock disclosure within three days of the lock-in date that includes the following:

(i) The length of the lock-in period;

(ii) The expiration date of the lock-in rate;

(iii) The lock-in interest rate;

(iv) If applicable, the index and a brief explanation of the type of index used, the margin, the maximum interest rate, and the date of the first interest rate adjustment; and

(v) Any other terms of the lock-in agreement.

(5) **Shared appreciation mortgages (SAM) or mortgages with shared appreciation provisions.** Within three business days following receipt of a loan application for a shared appreciation mortgage, or a mortgage with a shared appreciation provision, you must provide each borrower with a written disclosure containing at a minimum the following:

(a) The percentage of shared equity or shared appreciation you will receive (or a formula for determining it);

(b) The value the borrower will receive for sharing his or her equity or appreciation;

(c) The conditions that will trigger the borrower's duty to pay;

(d) The conditions that may cause the lender to terminate the mortgage or shared appreciation provision early;

(e) The procedure for including qualifying major home improvements in the home's basis (if any);

(f) Whether a prepayment penalty applies or other conditions applicable, if a borrower wishes to repay the loan early, including but not limited to, any date certain after which the borrower can repay the loan by paying back the lender's funds plus accrued equity; and

(g) The date on which the SAM terminates and the equity or appreciation becomes payable if no triggering event occurs.

(6) Each licensee ((shall)) must maintain in its files sufficient information to show compliance with state and federal law.

AMENDATORY SECTION (Amending WSR 09-01-159, filed 12/23/08, effective 1/23/09)

**WAC 208-620-511 What is the disclosure required under RCW 19.144.020 for residential mortgage loans?**

((See)) (1) You must provide the borrower with a clear, brief one page summary to help borrowers understand their loan terms. The disclosure summary must be provided on one page separate from any other documents and must use clear, simple, plain language terms that are reasonably understandable to the average person.

(2) You must provide the initial disclosure summary to the borrower within three business days following your receipt of a complete loan application.

(3) You must redisclose material loan terms within three days of a significant change, or at least three days before closing, whichever is earlier.

(4) You may provide the disclosure summary in electronic form, in a manner consistent with the procedure for delivery of electronic disclosure under Regulation Z of the Truth in Lending Act, 12 C.F.R. Part 226, currently in effect, which implements the E-Sign Act of 2000, 15 U.S.C. Sec. 7001 et seq.

(5) The department has developed model forms that comply with this provision. See the department's web site. See also RCW 19.144.020 and WAC 208-600-200.

AMENDATORY SECTION (Amending WSR 08-15-125, filed 7/22/08, effective 8/22/08)

**WAC 208-620-515 What authority do I have as a licensee? ((+))** As a licensee you may:

((a)) (1) Lend money ((at a)) with a note rate that does not exceed twenty-five percent per annum as determined by the simple interest method of calculating interest owed((;

(b) In connection with the making of a loan, charge the borrower a nonrefundable, prepaid, loan origination fee not to exceed four percent of the first twenty thousand dollars and two percent thereafter of the principal amount of the loan advanced to or for the direct benefit of the borrower, which fee may be included in the principal balance of the loan;

(c) In connection with the making of a loan secured by real estate, when the borrower actually obtains a loan, agree with the borrower to pay a fee to a mortgage broker that is not owned by the licensee or under common ownership with the licensee and that performed services in connection with the origination of the loan. A licensee may not receive compensation as a mortgage broker in connection with any loan made by the licensee;

(d) The powers listed in (a) and (b) of this subsection apply only to junior lien mortgage loans, and to lenders that are not "creditors" under the Depository Institutions Deregulatory and Monetary Control Act when making first lien mortgage loans and nonmortgage loans.

(2) Agree with the borrower for the payment of fees to third parties other than the licensee who provide goods or services to the licensee in connection with the preparation of the borrower's loan, including, but not limited to, credit reporting agencies, title companies, appraisers, structural and pest inspectors, and escrow companies, when such fees are actually paid by the licensee to a third party for such services or purposes and may include such fees in the amount of the loan. However, no charge may be collected unless a loan is made, except for reasonable fees actually and properly incurred in connection with the appraisal of property by a qualified, independent, professional, third party appraiser selected by the borrower and approved by the lender or in the absence of borrower selection, selected by the lender.

(3) Charge and collect a penalty of not more than ten percent of any installment payment delinquent ten days or more.

(4) Collect from the debtor reasonable attorneys' fees, actual expenses, and costs incurred in connection with the collection of a delinquent debt, a repossession, or a foreclo-

sure when a debt is referred for collection to an attorney who is not a salaried employee of the licensee:

(5) Make open-end loans as provided in the act.

(6) In accordance with Title 48 RCW, sell insurance covering real and personal property, covering the life or disability or both of the borrower, and covering the involuntary unemployment of the borrower). This applies only to non-mortgage loans, junior lien mortgage loans, and to lenders that are not "creditors" under the Depository Institutions Deregulatory and Monetary Control Act when making first lien mortgage loans. The requirement for the simple interest method of calculating interest does not apply to reverse mortgages.

(2) Make open-end loans as provided in RCW 31.04-.115.

(3) In accordance with Title 48 RCW, sell insurance covering real and personal property, covering the life or disability or both of the borrower, covering the involuntary unemployment of the borrower, or other insurance products approved by the Washington state office of the insurance commissioner.

AMENDATORY SECTION (Amending WSR 06-04-053, filed 1/27/06, effective 2/27/06)

**WAC 208-620-520 How long do I have to maintain my records under the Consumer Loan Act? What are the records I must maintain?**

(1) **General records.** Each licensee must preserve the books, accounts, records, papers, documents, files, and other information relevant to a loan for a minimum of twenty-five months after making the final entry on that loan at a location approved by the director. Mortgage transaction documents have a different retention period; see subsection (3)(a) of this section.

(2) **Advertising records.** ~~((A licensee must maintain a copy of all advertising for a period of twenty-five months at a location approved by the director. Such copies shall include))~~ These records include newspaper and print advertising, scripts of radio and television advertising, telemarketing scripts, all direct mail advertising, and any advertising distributed directly by delivery, facsimile or computer network.

(3) **Specific records.** The records required under subsection (1) of this section include, but are not limited to:

(a) **Mortgage transaction documents.** These documents must be retained for three years or the period of time required by federal law, whichever is longer;

(b) All forms of loan applications, written or electronic (the Fannie Mae 1003 is an example);

(c) The initial rate sheet or other supporting rate information;

(d) The last rate sheet, or other supporting rate information, if there was a change in rates, terms, or conditions prior to settlement;

(e) Rate lock agreements and the supporting rate sheets or other rate supporting document;

(f) All written disclosures required by the act and federal laws and regulations. Some examples of federal law disclosures include, but are not limited to: The good faith estimate, truth in lending disclosures, Equal Credit Opportunity Act

disclosures, affiliated business arrangement disclosures, and RESPA servicing disclosure statement;

(g) Documents and records of compensation paid to employees and independent contractors;

(h) An accounting of all funds received in connection with loans with supporting data;

(i) Settlement statements (the final HUD-1 or HUD-1A);

(j) Broker loan document requests (may also be known as loan document request or demand statements) that include any prepayment penalties, terms, fees, rates, yield spread premium, loan type and terms;

(k) Records of any fees refunded to applicants for loans that did not close;

(l) All file correspondence and logs;

(m) All mortgage broker contracts with lenders and all other correspondence with the lenders; and

(n) All documents used to support the underwriting approval.

AMENDATORY SECTION (Amending WSR 08-15-125, filed 7/22/08, effective 8/22/08)

**WAC 208-620-550 What business practices are prohibited?** Under RCW 31.04.027, the following constitute an "unfair or deceptive" act or practice:

(1) ~~((Disclosure of payoff amount.))~~ Failure to provide the exact pay-off amount as of a certain date within five business days after being requested in writing to do so by a borrower of record or their authorized representative;

(2) ~~((Recognition of payment delivery.))~~ Failure to record a borrower's payment as received on the day it is delivered to any of the licensee's locations during its regular working hours;

(3) ~~((Charging a fee for best efforts.))~~ Soliciting or entering into a contract with a borrower that provides in substance that the licensee may earn a fee or commission through its "best efforts" to obtain a loan even though no loan is actually obtained for the borrower;

(4) ~~((False advertising of rates and fees. Soliciting, advertising, or entering into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time.))~~ **Engaging in unfair or deceptive advertising practices.** Unfair advertising may include advertising that offends public policy, or causes substantial injury to consumers or to competition in the marketplace. See also WAC 208-620-630;

(5) ~~((False filing.))~~ Negligently making any false statement or willfully making any omission of material fact in connection with any application or any information filed by a licensee in connection with any application, examination or investigation conducted by the department;

(6) ~~((Influencing appraisers.))~~ Making any payment, directly or indirectly, or withholding or threatening to withhold any payment, to any appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property;

(7) ~~((Documents with blanks.))~~ Leaving blanks on a document that is signed by the borrower or providing the borrower with documents with blanks;

~~(8) ((False advertising. Soliciting business using advertising that includes:~~

~~(a) An envelope or stationery that contains an official-looking emblem, such as an eagle or a crest, or that is otherwise designed to resemble an official government mailing, such as a mailing from the Internal Revenue Service or the U.S. Department of the Treasury;~~

~~(b) An envelope or stationery containing warnings or notices citing codes or form numbers made to appear like government codes or form numbers that are not required to be shown on the mailing by the U.S. Postal Service;~~

~~(c) Any suggestion or representation that the licensee is, or is affiliated with, a state or federal agency, municipality, bank, savings bank, trust company, savings and loan association, building and loan association, credit union, or other entity that it does not actually represent;~~

~~(d) Any suggestion or representation that the solicitation is from an entity other than the licensee;~~

~~(e) Any suggestion or representation that the information about a consumer's current loan was provided by any source other than the source disclosed pursuant to WAC 208-620-630;~~

~~(9) Inclusion of taxes and insurance.)) Failing to clearly disclose to a borrower whether the payment advertised or offered for a real estate loan includes amounts for taxes, insurance or other products sold to the borrower;~~

~~((10) Forec placed insurance.)) (9) Purchasing insurance on an asset secured by a loan without first attempting to contact the borrower by mailing one or more notices to the last known address of the borrower, unless mail has been previously returned as undeliverable from the address, in order to verify that the asset is not otherwise insured;~~

~~((11) Filing an inappropriate lien.)) (10) Willfully filing a lien on property without a legal basis to do so;~~

~~((12) Threats and coercion.)) (11) Coercing, intimidating, or threatening borrowers in any way with the intent of forcing them to complete a loan transaction;~~

~~((13) Failure)) (12) Failing to reconvey title to collateral, if any, within thirty business days when the loan is paid in full unless conditions exist that make compliance unreasonable;~~

~~(13) Intentionally delaying the closing of a residential mortgage loan for the sole purpose of increasing interest, costs, fees, or charges payable by the borrower;~~

~~(14) Steering a borrower to a residential mortgage loan with less favorable terms than they qualify for in order to increase the compensation paid to the company or mortgage loan originator. An example is counseling, or directing a borrower to accept a residential mortgage loan product with a risk grade less favorable than the risk grade the borrower would qualify for based on the licensee or other regulated person's then current underwriting guidelines, prudently applied, considering the information available to the licensee or other regulated person, including the information provided by the borrower;~~

~~(15) Failing to indicate on all residential mortgage loan applications the company's unique identifier, the loan originator's unique identifier, and the date the application was taken.~~

## NEW SECTION

**WAC 208-620-555 What fees are allowed under the Consumer Loan Act?** (1) Origination fees. On first lien mortgage loans, licensees that are not "creditors" under Depository Institutions Deregulatory and Monetary Control Act may charge a nonrefundable, prepaid, loan origination fee not to exceed four percent of the first twenty thousand dollars and two percent thereafter of the principal amount of the loan advanced to or for the direct benefit of the borrower, which fee may be included in the principal balance of the loan.

(2) On nonmortgage loans and junior lien mortgage loans, all licensees may charge a nonrefundable, prepaid, loan origination fee not to exceed four percent of the first twenty thousand dollars and two percent thereafter of the principal amount of the loan advanced to or for the direct benefit of the borrower, which fee may be included in the principal balance of the loan.

(3) Mortgage broker fee. When agreed to in writing by the borrower, a fee to a mortgage broker that is not owned by the licensee or under common ownership with the licensee and that performed services in connection with the origination of the loan. A licensee may not receive compensation as a mortgage broker in connection with any loan made by the licensee.

(4) Third-party fees.

(a) When agreed to in writing by the borrower, the payment of fees to third parties other than the licensee who provide goods or services to the licensee in connection with the preparation of the borrower's loan, including, but not limited to, credit reporting agencies, title companies, appraisers, structural and pest inspectors, and escrow companies, when such fees are actually paid by the licensee to a third party for such services or purposes and may include such fees in the amount of the loan.

(b) However, no charge may be collected unless a loan is made, except for reasonable fees actually and properly incurred in connection with the appraisal of property by a qualified, independent, professional, third-party appraiser selected by the borrower and approved by the lender or in the absence of borrower selection, selected by the lender.

(c) You must not charge or collect any fee to be paid to a third-party service provider, as defined in WAC 208-620-010, in excess of the actual costs paid or to be paid. You may charge the borrower for costs of allowable third-party services as provided by RCW 31.04.105(3) at the time of application for the loan or at any time thereafter except as prohibited.

(5) Rate lock fee. When agreed to in writing by the borrower, a nonrefundable rate lock fee. The fee may be retained if the borrower breaks the rate lock agreement and you are making the loan, if you have paid a third party for the interest rate lock, or if you have otherwise made a financial commitment to protect the rate during the lock period. The fee may not be retained if the borrower rescinds the loan under Regulation Z, or if the borrower does not qualify for a loan.

(6) Underwriting. On first lien mortgages made by licensees that are not "creditors" under the Depository Institu-

tions Deregulatory and Monetary Control Act, an underwriting fee.

(7) Penalties. Not more than ten percent of any installment payment delinquent ten days or more.

(8) Attorneys' fees. Reasonable attorneys' fees, actual expenses, and costs incurred in connection with the collection of a delinquent debt, a repossession, or a foreclosure when a debt is referred for collection to an attorney who is not a salaried employee of the licensee.

(9) The fees allowed in subsections (5) and (6) of this section must be included in the loan origination fee calculations described in subsections (1) and (2) of this section.

AMENDATORY SECTION (Amending WSR 09-01-159, filed 12/23/08, effective 1/23/09)

**WAC 208-620-560** ~~What ((restrictions are there for charging fees on junior lien loans other than the loan origination fee when acting as a lender or correspondent lender)) fees are not allowed under the Consumer Loan Act?~~ (1) ~~Filing fees.~~ ((A licensee cannot)) You must not charge or collect any funds from the borrower for the cost of filing, as defined in WAC 208-620-010, or for any other fees paid or to be paid to public officials, unless such charges are paid or are to be paid within one hundred eighty days by the licensee to public officials or other third parties for such filing. Any fee ((a licensee)) you collect for releasing or reconveying the security for the obligation must be paid to an unrelated third party unless you can demonstrate activities you conducted to facilitate the reconveyance.

(2) ~~Dishonored check fees.~~ ((A licensee may)) You must not charge or collect a fee in excess of ((twenty-five dollars)) the actual amount charged by the financial institution for a check, draft, ACH, or other transfer if returned unpaid or denied by the ((bank)) financial institution drawn upon. Only one fee may be collected with respect to a particular check, draft, ACH, or other transfer even if it has been ((redeposited and)) returned or denied more than once.

(3) ~~(Fees for third-party services. A licensee may not charge or collect any fee to be paid to a third-party service provider, as defined in WAC 208-620-010, in excess of the actual costs paid or to be paid. A licensee may charge the borrower for costs of allowable third-party services as provided by RCW 31.04.105(3) at the time of application for the loan or at any time thereafter except as prohibited.~~

(4) ~~Credit and noncredit insurance.~~

(a) Except for the transaction described in (b) of this subsection, ((a licensee)) you may include the premiums for credit and noncredit insurance in the principal amount of the loan, provided that purchase of the insurance is not required to obtain a loan and that this fact is disclosed to the borrower in writing and the borrower's confirmation is obtained by signature on the disclosure form.

(b) ((A licensee may)) You must not sell single premium credit insurance to a borrower at the inception of coverage unless the sale is in compliance with chapter 48.18 RCW.

((5)) (4) ~~Fees on existing loans.~~ Unless otherwise preempted under the Depository Institutions Deregulatory and Monetary Control Act, if ((a licensee)) you make((s)) a new loan or increases a credit line within one hundred twenty days

after originating a previous loan or credit line to the same borrower, the origination fee on the new loan or increased credit line ((shall)) must be limited as follows:

(a) ((The licensee may)) You must only charge an origination fee ((only)) on that part of the new loan not used to pay the amount due on the previous loan;

(b) ((The licensee may)) You must only charge an origination fee ((only)) on the difference between the amount of the existing credit line and the increased credit line;

(c) The limits in (a) and (b) of this subsection do not apply if ((the licensee)) you refund((s)) the origination fee on the existing loan or credit line((-));

((6)) (d) The limits in (a) and (b) of this subsection do not apply if you can demonstrate a net tangible benefit to the borrower for the new loan or credit line increase. For purposes of this subsection a net tangible benefit may be demonstrated by a lower monthly payment, or a decrease in the interest rate. Any net tangible benefit analysis must include the fees or charges for the new loan or credit line increase.

(5) ~~Discount points.~~ ((A licensee may))

(a) You must not collect a fee from the borrower for lowering the interest rate unless the interest rate is actually reduced.

((7)) (b) Any applicable program add-on fees must be disclosed as part of the discount points.

(6) ~~Administrative fees.~~ ((A licensee may)) On non-mortgages, junior lien and first lien mortgages by licensees who are not "creditors" under the Depository Institutions Deregulatory and Monetary Control Act, you must not collect a document preparation fee, a processing fee, an administrative fee, an application fee, or a courier fee unless paid to an unrelated third party and agreed to in writing in advance by the borrower.

((8)) (7) ~~Underwriting fees.~~ On nonmortgage and junior lien mortgage loans you must not collect an underwriting fee.

(8) ~~Prepayment penalty.~~ ((A licensee may)) You must not collect a prepayment penalty on the following loans:

(a) Any nonmortgage loan ((made at rates authorized by the act)); ((or))

(b) Any adjustable rate residential mortgage loan, except as allowed by RCW 19.144.040; ((or))

(c) Any junior lien mortgage loan ((made at rates authorized by the act)); or

(d) Any loan ((made by a licensee that is)) you made if you are not a "creditor" under DIDMCA.

#### NEW SECTION

**WAC 208-620-561** ~~What fees can I collect on VA loans?~~ Reserved.

AMENDATORY SECTION (Amending WSR 09-01-159, filed 12/23/08, effective 1/23/09)

**WAC 208-620-565** ~~What fees am I allowed ((and not allowed)) to charge or receive when acting as a broker under the act?~~ (1) ~~((When acting as a broker under the act, you are allowed to:~~

(a) ~~Charge and collect a broker's fee pursuant to WAC 208-620-515 (1)(b).~~

~~(b) Receive~~) A broker's fee not to exceed four percent of the first twenty thousand dollars and two percent thereafter of the principal amount of the loan advanced to or for the direct benefit of the borrower, which fee may be included in the principal balance of the loan.

~~(2) A yield spread premium (YSP) if available. You must disclose the YSP as a dollar amount ((or dollar amount range)) credited to the borrower on the good faith estimate(7) and as ((a dollar amount)) applicable on the settlement statement.~~

~~((c) Charge)~~ (3) A processing fee when paid to an independent third-party processor.

~~((2) When acting as a broker under the act, you are NOT allowed to:~~

- ~~(a) Charge or receive fees on discount points;~~
- ~~(b) Charge or receive a loan origination fee in addition to a broker's fee; or~~
- ~~(c) Charge or receive an underwriting fee.)~~

#### NEW SECTION

**WAC 208-620-566 What fees am I not allowed to charge or receive when brokering residential mortgage loans under the act?** (1) Fees for discount points;

(2) An underwriting fee; or

(3) Applicable fees in WAC 208-620-560(6).

AMENDATORY SECTION (Amending WSR 06-04-053, filed 1/27/06, effective 2/27/06)

**WAC 208-620-570 What are the grounds for suspending or revoking a consumer loan company license?** The director may suspend or revoke a license if the licensee, or any principal, officer, or board director of the licensee:

(1) **Failing to pay.** Fails to pay a fee due the department;

(2) **Injunction or administrative action.** Is or has been subject to an injunction or a civil or administrative action issued pursuant to the Consumer Loan Act, the Consumer Protection Act, the Mortgage Broker Practices Act or similar laws of this state or another state;

(3) **Substantial unpaid debt.** Has accumulated substantial unpaid debt;

(4) **Violation of lending laws.** Has been found in violation of another state's lending laws, securities laws, real estate laws or insurance laws resulting in substantial license limitations or significant fines;

(5) **Criminal charges.** The person is the subject of a criminal felony charge, or a criminal misdemeanor charge involving dishonesty or financial misconduct;

(6) **Bond canceled.** Has had its surety bond canceled or revoked for cause;

(7) **Deterioration of business.** Has allowed the licensed consumer loan business to deteriorate into a condition which would result in denial of a new application for a license;

(8) **Aiding unlicensed practice.** Has aided or abetted an unlicensed person to practice in violation of the Consumer Loan Act or the Mortgage Broker Practices Act;

(9) **Incompetence resulting in injury.** Has demonstrated incompetence or negligence that results in financial harm to a person or that creates an unreasonable risk that a person may be harmed;

(10) **Insolvency.** Is insolvent in the sense that the value of the licensee's liabilities exceeds its assets or in the sense that the applicant or licensee cannot meet its obligations as they mature;

(11) **Failure to comply.** Has failed to comply with an order, directive, subpoena, or requirement of the director, or his or her designee, or with an assurance of discontinuance entered into with the director, or his or her designee;

(12) **Misrepresentation or fraud.** Has performed an act of misrepresentation or fraud in any aspect of the conduct of the lending or brokering business or profession;

(13) **Failure to cooperate.** Has failed to cooperate with the director, or his or her designee, including without limitation by:

(a) Not furnishing ~~((any))~~ records requested by the director for purposes of conducting a lawful investigation for disciplinary actions or denial, suspension, or revocation of a license; or

(b) Not furnishing ~~((any))~~ records requested by the director for purposes of conducting a lawful investigation into a complaint against the licensee filed with the department, or providing a full and complete written explanation of the circumstances of the complaint upon request by the director;

(14) **Interference with investigation.** Has interfered with a lawful investigation or disciplinary proceeding by willful misrepresentation of facts before the director or the director's designee, or by the use of threats or harassment against a client, witness, employee of the licensee, or representative of the director for the purpose of preventing them from discovering evidence for, or providing evidence in, any disciplinary proceeding or other legal action.

#### NEW SECTION

**WAC 208-620-601 What assistance may the department seek in conducting an investigation or examination of my business?** In order to carry out the purposes of RCW 31.04.145, the director may:

(1) Retain attorneys, accountants, or other professionals and specialists as examiners, auditors, or investigators to conduct or assist in the conduct of examinations or investigations;

(2) Enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce regulatory burden by sharing resources, standardized or uniform methods or procedures, and documents, records, information, or evidence obtained under this section;

(3) Use, hire, contract, or employ public or privately available analytical systems, methods, or software to examine or investigate the licensee, individual, or person subject to this act;

(4) Accept and rely on examination or investigation reports made by other government officials, within or without this state;

(5) Accept audit reports made by an independent certified public accountant for the licensee, individual, or person subject to this act in the course of that part of the examination covering the same general subject matter as the audit and may

incorporate the audit report in the report of the examination, report of investigation, or other writing of the director; or

(6) Assess the licensee, individual, or person subject to this act the cost of the services in this subsection.

AMENDATORY SECTION (Amending WSR 09-01-159, filed 12/23/08, effective 1/23/09)

**WAC 208-620-613 When I develop policies and procedures to implement the federal guidelines on applicable conventional residential mortgage loans, what topics must be included?** ((+)) The policies and procedures must include, at a minimum, underwriting standards, risk management, consumer protection, and control systems. If you only broker residential mortgage loans under your CLA license, your policies and procedures must comply with WAC ((208-660-XXX)) 208-660-500. For purposes of this section, the definition of "subprime" and "subprime loans" is taken from the *2001 Interagency Expanded Guidance for Subprime Lending Programs* (an attachment to SR 01-4 (GEN), January 31, 2001, by the Board of Governors of the Federal Reserve System, Division of Banking, Supervision and Regulation).

((+)) (1) Underwriting standards. To ensure that underwriting standards are consistent with prudent lending practices, the underwriting standards should include, at a minimum, an analysis of borrower characteristics, loan product attributes, and the borrower's ability to repay the obligation.

((+)) (a) Analysis of borrower characteristics. The analysis must include tolerances for combining borrowers with certain characteristics with certain nontraditional loan products.

The criteria or range of reasonable tolerances should consider the characteristics listed in the *2001 Interagency Expanded Guidance for Subprime Lending Programs*.

((+)) (b) Loan product attributes. Products with the following attributes, when combined with the borrower characteristics above result in higher risk. The risks are increased if borrowers are not adequately informed of the product features and risks.

- Low initial payments based on a fixed introductory rate that expires after a short time and then adjusts to a variable index rate plus a margin. Because initial and subsequent monthly payments are based on these low introductory rates, a wide initial spread means that borrowers are more likely to experience negative amortization, severe payment shock, and an earlier than scheduled recasting of monthly payments. Loans made to subprime borrowers must not contain any provisions that may lead to negative amortization.

- Very high or no limits on how much the payment amount or the interest rate may increase.

- Limited or no documentation of the borrower's income. Stated income is only acceptable if there are mitigating factors that clearly minimize the need for direct verification of repayment capacity. Licensees generally must be able to readily document income using recent W-2 statements, pay stubs, or tax returns. An exception to this is when the loan product underwriting itself contemplates reduced documentation (for example, FHA loans).

- Substantial prepayment penalties or prepayment penalties that extend beyond sixty days prior to the date the interest rate will reset.

- Simultaneous second lien loans. When features are layered, mitigating factors should be present to support the underwriting decision and the borrower's repayment capacity.

((+)) (c) Ability to repay. For all nontraditional mortgage loan products, the analysis of a borrower's repayment capacity must include an evaluation of their ability to repay the debt by final maturity at the fully indexed rate, assuming a fully amortizing repayment schedule. In addition, for prime borrowers qualifying for loan products that permit negative amortization, the repayment analysis must be based on the initial loan amount plus any balance increase that may accrue from the negative amortization provision. The analysis should avoid over reliance on credit scores as a substitute for income verification. The higher a loan's credit risk, either from borrower characteristics or loan features, the more important it is to verify the borrower's income, assets, and outstanding liabilities.

((+)) (2) Risk management. The scope of the risk management activities should be determined by the volume of nontraditional mortgages originated or used as investment. Licensees that target subprime borrowers through tailored marketing, underwriting standards, and risk selection must ensure that such programs do not feature terms that could become predatory or abusive. Policy topics should include, at a minimum:

((+)) (a) Acceptable product attributes;

((+)) (b) Production, sales and securitization practices;

((+)) (c) Limits on risk layering. When features are layered, licensees should demonstrate that mitigating factors support the underwriting decision and the borrower's repayment capacity. Mitigating factors could include higher credit scores, lower LTV and DTI ratios, significant liquid assets, mortgage insurance, or other credit enhancements;

((+)) (d) Growth and volume limits by loan type;

((+)) (e) Performance measures. Incentive programs should not produce high concentrations of nontraditional products. Design performance measures and reporting systems that provide early warning for increased risk;

((+)) (f) Management reporting and quality control. Focus on the high risk lending activities. Monitor and document compliance with underwriting standards. Quality control should include regular audits of nontraditional loan products. Perform due diligence in establishing and maintaining relationships with third party originators. Third party originations must meet the underwriting standards. Document and respond in writing to all complaints. Take immediate remedial action which could include more thorough application reviews, more frequent reunderwriting, or terminating the third party originator;

((+)) (g) Secondary market activity. The risk management practices should be commensurate with the nature and volume of activity and should include contingency planning for response to reduced demand in the secondary market. Establish a policy on repurchase practices.

~~((e))~~ (3) Consumer protection.

Communication with borrowers. Providers must focus on information important to consumer decision making; highlight key information so that it will be noticed; employ a user-friendly and readily navigable format for presenting the information; and use plain language, with concrete and realistic examples. Comparative tables and information describing key features of available loan products, including reduced documentation programs, also may be useful for consumers. Specifically:

- Promotional materials and other product descriptions must provide information about the costs, terms, features, and risks of nontraditional mortgages that can assist consumers in their product selection decisions.
- Licensees must apprise borrowers of potential increases in payment obligations. The information should describe when structural payment changes will occur and what the new payment would be or how it was calculated.
- If negative amortization is possible under the terms of a nontraditional mortgage product, borrowers must be advised of the potential for increasing principal balances and decreasing home equity as a consequence of the borrower making minimum payments.
- Borrowers must be alerted to the fact that the loan has a prepayment penalty and the amount of the penalty.
- Borrowers must be made aware of any pricing premium based on reduced documentation.
- Monthly statements must provide information that enables borrowers to make informed payment choices, including an explanation of each payment option available and the impact of that choice on loan balances. For example, the monthly payment statement must contain an explanation, if applicable, next to the minimum payment amount that making this payment would result in an increase to the borrower's principal loan balance.

~~((d))~~ (4) Control standards.

~~((i))~~ (a) Actual practices must be consistent with the written policies and procedures. Employees must be trained in the policies and procedures and performance monitored for compliance. Incentive programs should not produce high concentrations of nontraditional products. Performance measures and reporting systems should be designed to provide early warning of increased risk.

~~((i))~~ (b) Reporting to DFI. In a separate written document, as prescribed by the director and submitted with the consolidated annual report, every licensee must submit information regarding the offering of nontraditional mortgage loan products as prescribed by rule.

NEW SECTION

**WAC 208-620-614 What Washington law protects my rights when my license is suspended or revoked?** The Administrative Procedure Act, chapter 34.05 RCW, governs the proceedings for license application denials, cease and desist orders, license suspension or revocation, the imposition of civil penalties or other remedies ordered by the department, and any appeals or reviews of those actions.

NEW SECTION

**WAC 208-620-615 Application of the Administrative Procedure Act.** (1) What are my rights when the department begins an administrative enforcement action against me? Under the Administrative Procedure Act (APA), chapter 34.05 RCW, you have the right to request a hearing on the agency's action. Hearings are conducted as either formal adjudicative proceedings or may, under certain circumstances, be handled as a brief adjudicative proceeding (BAP).

(2) What must I do when I want to request a hearing? When you are notified of administrative charges filed against you, you are also notified of your right to request a hearing. At that time, the department will also notify you as to whether the hearing will be conducted as a brief adjudicative proceeding. You are required to notify the department, in writing, within twenty days from the date of the director's notice to you notifying you of the enforcement action against you. This notice must be received by the department by the 20th day following service of the charges on you.

(3) What is a brief adjudicative proceeding? Under the APA, a brief adjudicative proceeding is a hearing that is less formal in nature and typically resolves the charges quickly. The department provides a BAP for violations of the act in which the facts are undisputed and under circumstances where the parties may present their case without the need for witnesses. Typical matters to be heard in a BAP include, but are not limited to, license denials or revocations based on certain undisputed facts, including criminal convictions or misrepresentations on an application.

(4) May I request a brief adjudicative proceeding in response to an administrative enforcement action? Yes, but only if the matter has been designated by the department as one for which a BAP is available. The director adopts RCW 34.05.482 through 34.05.494 for the administration of brief adjudicative proceedings. Brief adjudicative proceedings may be limited to a determination of one or more of the following issues:

(a) Whether an applicant for a loan originator license meets the requirements of RCW 31.04.247;

(b) Whether an applicant for a consumer loan company license meets the requirements of RCW 31.04.045; and

(c) Whether a consumer loan company has failed to maintain the bond required by RCW 31.04.045(6).

(5) In a matter not listed in subsection (4) of this section, a brief adjudicative proceeding may be conducted at the discretion of the presiding officer when it appears that protection of the public interest does not require that the department provide notice and an opportunity to participate to persons other than the parties, and:

(a) Only legal issues exist; or

(b) Both parties have agreed to a brief proceeding. As used in this section, "persons other than the parties" does not include an attorney or representative for a party, or a witness for a party.

(6) How does the BAP work? Brief adjudicative proceedings are controlled by the provisions of RCW 34.05.482 through 34.05.494. The department will use the following procedure:

(a) Presiding officer. The director designates a presiding officer to conduct the brief adjudicative proceedings. The

presiding officer must have department expertise in the subject matter, but must not have personally participated in the department's licensing application denial, or work in the department's division of consumer services, or such other division within the department delegated by the director to oversee implementation of the act and these rules.

(b) Preliminary records. The preliminary record for the brief adjudicative proceeding consists of the application and all associated documents including all documents relied upon by the department to deny the application and all correspondence between the applicant and the department regarding the application.

(c) Notice of hearing. The presiding officer will set the date, time, and place of the hearing, giving at least seven business days notice to the applicant.

(d) Written documents. The department's staff or representative and the applicant or their representative may present written documentation for consideration by the presiding officer. The presiding officer will designate the date and number of pages allowed for submission of written documents, including supporting exhibits.

(e) Oral argument. The presiding officer may exercise discretion on whether to allow oral argument.

(f) Witnesses. Live witness testimony will not be allowed. Witnesses providing testimony by sworn declaration or affidavit will be allowed at the discretion of the presiding officer.

(g) If, at the time of the hearing, the presiding officer determines that the alleged violations or evidence concerning the violations is such that a formal adjudicative proceeding is necessary, the presiding officer may immediately adjourn the hearing and direct that the matter be scheduled as a formal adjudicative proceeding.

(h) Initial order. The presiding officer must make a written initial order within ten business days of the final date for submission of materials, or oral argument, if any, to include a written statement describing the decision, the reasons for the decision, and describing the right to request review of the decision by the director. The initial order will become final twenty-one days after service on the applicant unless the applicant requests an administrative review or the department decides to review the matter.

AMENDATORY SECTION (Amending WSR 06-04-053, filed 1/27/06, effective 2/27/06)

**WAC 208-620-620 How do I have to identify my business when I advertise?** You must either identify the business using your Washington consumer loan license number or use the ~~((whole))~~ name on your Washington main office consumer loan license.

AMENDATORY SECTION (Amending WSR 09-01-159, filed 12/23/08, effective 1/23/09)

**WAC 208-620-630 What are the advertising restrictions(~~(, and what are some examples of those restrictions))~~?** (1) Licensees are prohibited from advertising with envelopes or stationery that contain an official-looking emblem designed to resemble a government mailing or that suggest an affiliation that does not exist. (~~What~~

~~are~~) Some examples of emblems or government-like names, language, or nonexistent affiliations that will violate the state and federal advertising laws(~~(? Some examples))~~ include, but are not limited to:

(a) Characterizing products as "government loan programs," "government-supported loans," or other words that may mislead a consumer into believing that the government is guaranteeing, endorsing, or supporting the advertised loan product. Using the words "FHA loan," "VA loan," or words for other products that are in fact endorsed or sponsored by a federal, state, or local government entity is allowed.

(b) An official-looking emblem such as an eagle, the Statue of Liberty, or a crest or seal that resembles one used by any state or federal government agency.

(c) Envelopes designed to resemble official government mailings, such as IRS or U.S. Treasury envelopes, or other government mailers.

(d) Warnings or notices citing government codes or form numbers not required by the U.S. Postmaster to be shown on the mailing.

(e) The use of the term "official business," or similar language implying official or government business, without also including the name of the sender.

(f) Any suggestion or representation that the ~~((solicitor is affiliated with any agency, bank))~~ licensee is, or is affiliated with, a state or federal agency, municipality, bank, savings bank, trust company, savings and loan association, building and loan association, credit union, or other entity that it does not actually represent.

(2) **When I am advertising interest rates, the act requires me to conspicuously disclose the annual percentage rate (APR) implied by the rate of interest. What does it mean to "conspicuously" disclose the APR?** The required disclosures in your advertisement must be reasonably understandable. Consumers must be able to see, read, or hear, and understand the information. Many factors, including the size, duration, and location of the required disclosures, and the background or other information in the advertisement, can affect whether the information is clear and conspicuous. This requirement applies to all mandatory disclosures. The disclosure of the APR must be at least equivalent to any other rates disclosed in the advertisement.

(3) **The act prohibits me from advertising an interest rate unless that rate is actually available at the time of the advertisement. How may I establish that an advertised interest rate was "actually available" at the time it was advertised?** Whenever a specific interest rate is advertised, the licensee must retain a copy of supporting rate information, and the APR calculation for the advertised interest rate.

(4) **Must I quote the annual percentage rate when discussing rates with a borrower?** Yes. You must quote the annual percentage rate and other terms of the loan if you give an oral quote of an interest rate to the borrower. TILA's Regulation Z, 12 C.F.R., part 226.26 provides guidance for using the annual percentage rate in oral disclosures.

(5) **May a licensee advertise rates or fees as the "lowest" or "best"?** No. Rates described as "lowest," "best," or other similar words cannot be proven to be actually available at the time they are advertised. Therefore, they are a false or

deceptive statement or representation prohibited by RCW 19.146.0201(7).

**(6) May I solicit using advertising that suggests or represents that I am affiliated with a state or federal agency, municipality, federally insured financial institution, trust company, building and loan association, when I am not; or that I am an entity other than who I am?** No. It is an unfair and deceptive act or practice and a violation of the act for you to suggest or represent that you are affiliated with a state or federal agency, municipality, federally insured financial institution, trust company, building and loan association, or other entity you do not actually represent; or to suggest or represent that you are any entity other than who you are.

**(7) If I advertise using a borrower's current loan information, what must I disclose about that information?** When an advertisement includes information about a borrower's current loan that you did not obtain from a solicitation, application, or loan, you must provide the borrower with the name of the source of the information.

**(8) Is it a violation to advertise that third-party services are "free" when the licensee has paid for the services?** Yes. Advertising using the term "free," or any other similar term or phrase that implies there is no cost to the applicant is deceptive because you can recover the cost of the purportedly "free" item through the negotiation process. This is a violation of RCW ((19.146.0201)) 31.04.027 (2), (7), and ((11)) (10). See the Federal Trade Commission's *Guide Concerning Use of the Word "Free" and Similar Representations*, available at <http://www.ftc.gov/bcp/guides/free.htm>, 16 C.F.R. § 251.1(g) (2003).

AMENDATORY SECTION (Amending WSR 08-15-125, filed 7/22/08, effective 8/22/08)

**WAC 208-620-640 What are some of the federal laws I must comply with when I advertise any loan subject to the Consumer Loan Act?** You must comply with all the applicable advertising requirements under the federal statutes and regulations including, but not limited to, the Truth in Lending Act, the Real Estate Settlement Procedures Act, the Federal Trade Commission Act, the Telemarketing and Consumer Fraud and Abuse Act, and the Equal Credit Opportunity Act.

### MORTGAGE LOAN ORIGINATOR LICENSING

#### NEW SECTION

**WAC 208-620-700 Loan originator—General. (1) May I work from any location when I am a licensed loan originator?** No. You can only work from a licensed location. The licensed location can be the main office, or any licensed branch.

**(2) May I transfer loan files to another licensed entity?** No. Loan files are the property and responsibility of the company named on the loan application. Only the borrower may submit a written request to the company to transmit the borrower's selected information to another entity. The company must transmit the information within five business days after receiving the borrower's written request.

**(3) May I act as a loan originator and a real estate agent in the same transaction or for the same borrower in different transactions?** Yes, you may be both the loan originator and real estate broker or salesperson in the same transaction, or for the same borrower in different transactions. When either of these occur, you must provide to the borrower the following written disclosure:

"THIS IS TO GIVE YOU NOTICE THAT I OR ONE OF MY ASSOCIATES HAVE/HAS ACTED AS A REAL ESTATE BROKER OR SALESPERSON REPRESENTING THE BUYER/SELLER IN THE SALE OF THIS PROPERTY TO YOU. I AM ALSO A LOAN ORIGINATOR AND WOULD LIKE TO PROVIDE MORTGAGE SERVICES TO YOU IN CONNECTION WITH YOUR LOAN TO PURCHASE THE PROPERTY.

YOU ARE NOT REQUIRED TO USE ME AS A LOAN ORIGINATOR IN CONNECTION WITH THIS TRANSACTION. YOU ARE FREE TO COMPARISON SHOP AND TO SELECT ANY MORTGAGE BROKER OR LENDER OF YOUR CHOOSING."

**(4) As a loan originator, may I be paid directly by the borrower for my services?** No. You may not be paid any compensation or fees directly by the borrower.

**(5) May I charge the borrower a fee, commission, or other compensation for preparing, negotiating, or brokering a loan for the borrower?** No. You may not charge the borrower a fee, commission, or compensation of any kind in connection with the preparation, negotiation, or brokering of a residential mortgage loan.

**(6) May I bring a lawsuit against a borrower for the collection of compensation?** No. Only the company may bring collection actions against borrowers to collect compensation.

**(7) May I work as a licensed loan originator for a consumer loan company located out of the state?** Yes. You may originate loans for any company you are sponsored by who is licensed or exempt from licensing under Washington law.

**(8) May I hire employees or independent contractors to assist me?** No. Only the consumer loan company can have employees or independent contractors. This prohibition against loan originators hiring employees or independent contractors includes clerical or administrative personnel and loan processors whose work is related to the consumer loan company's activities.

**(9) Do loan processors have to be licensed as loan originators?** W-2 employee loan processors are not required to have a loan originator license provided they work under the supervision and instruction of a licensed or exempt consumer loan company and do not hold themselves out as able to conduct the activities of a loan originator.

#### NEW SECTION

**WAC 208-620-710 Loan originator—Licensing. (1) Must I have a license to act as a mortgage loan originator for a consumer loan company?** Yes. You must not engage in the business of a mortgage loan originator without first obtaining and maintaining annually a license under this act. You must register with and maintain a valid unique identifier

issued by the nationwide mortgage licensing system and registry (NMLSR).

(2) **How do I apply for a loan originator license?** Your application consists of filing an on-line application through the NMLSR and providing Washington specific requirements directly to DFI. You must pay an application fee and filing fee through the NMLSR system.

(3) **What are the eligibility requirements to become a licensed loan originator?**

(a) Be eighteen years or older.

(b) Have a high school diploma, an equivalent to a high school diploma, or three years work experience in the industry.

(i) The work experience must be in one or more of the following, within the last five years:

(A) As a mortgage broker or designated broker of a mortgage broker for a minimum of two years; or

(B) As a mortgage banker, responsible individual, or manager of a mortgage banking business; or

(C) As a loan originator with responsibility primarily for originating loans secured by a lien on residential real estate; or

(D) As a branch manager of a lender with responsibility primarily for loans secured by a lien on residential real estate; or

(E) As a manager or supervisor of mortgage loan originators; or

(F) As a mortgage processor, underwriter, or quality control professional; or

(G) As a regulator, examiner, investigator, compliance expert, or auditor, whose primary function is the review of mortgage companies and their compliance processes, and the department determines your background is sufficient.

(ii) The work experience must be evidenced by a detailed work history and:

(A) W-2 Federal Income Tax Reporting Forms in the designated broker appointee's name; or

(B) 1099 Federal Income Tax Reporting Forms in the designated broker appointee's name; or

(C) Corporate tax returns signed by the designated broker appointee or corporate officer for a licensed or exempt residential mortgage company.

(iii) In addition to supplying the application information, both you and the company intending to sponsor you must be in good standing with the department.

(c) **Demonstrate financial responsibility.** For the purposes of this section, an applicant has not demonstrated financial responsibility when the applicant shows disregard in the management of his or her financial condition. A determination that an individual has shown disregard in the management of his or her financial condition may include, but is not limited to, an assessment of: Current outstanding judgments, except judgments solely as a result of medical expenses; current outstanding tax liens or other government liens and filings; foreclosures within the last three years; or a pattern of seriously delinquent accounts within the past three years.

(d) Complete twenty hours of prelicensing education from an NMLSR approved provider. See WAC 208-620-720.

(e) **Pass a licensing test.** You must take and pass the NMLSR tests that assess your knowledge of the mortgage business and related regulations at the federal and state level. See WAC 208-620-725.

(f) **Submit an application.** You must complete an application through the NMLSR and provide information directly to DFI. You must pay application and filing fees to the NMLSR.

(g) **Prove your identity.** You must provide information to prove your identity.

(h) **Provide a bond.**

(i) If you are employed by a company that is exempt from licensing, or uses a bond substitute, you must obtain and maintain an individual bond based on the volume of your mortgage loan origination activity. By March 1st of each year, you must determine your required bond amount and provide DFI with proof of having an adequate bond. The bond must be in the following amount:

1. Zero to twenty million in loans originated:	\$20,000
2. Twenty million to thirty million:	\$30,000
3. Thirty million to forty million:	\$40,000
4. Forty million and above:	\$50,000

(ii) If you are employed by a company that is exempt and is a nonprofit housing organization making loans under housing programs that are funded in whole or in part by federal or state programs with the primary purpose of assisting low-income borrowers with purchasing or repairing housing or for the development of housing for low-income Washington state residents, the bond must be in the following amounts:

1. Zero to fifty million in loans originated:	\$10,000
2. Fifty +:	\$20,000

(i) File a quarterly call report. Reserved.

(4) **In addition to reviewing my application, what else will the department consider to determine if I qualify for a loan originator license?**

(a) **General fitness and prior compliance actions.** The department will investigate your background to see that you demonstrate the experience, character, and general fitness that commands the confidence of the community and creates a belief that you will conduct business honestly and fairly within the purposes of the act. This investigation may include a review of the number and severity of complaints filed against you, or any person you were responsible for, and a review of any investigation or enforcement activity taken against you, or any person you were responsible for, in this state, or any jurisdiction.

(b) **License suspensions or revocations.** You are not eligible for a loan originator license if you have been found to be in violation of the act or the rules, or have had a license issued under the act or any similar state statute suspended or revoked.

(c) **Criminal history.** You are not eligible for a loan originator license if you have been convicted of, or pled

guilty or nolo contendere to a felony in a domestic, foreign, or military court:

(i) During the seven-year period preceding the date of the application for licensing and registration; or

(ii) At any time preceding the date of application, if the felony involved an act of fraud, dishonesty, breach of trust, or money laundering.

**(5) What will happen if my loan originator license application is incomplete?** After submitting your on-line application through the NMLSR and filing the required information and documentation with the department, the department will notify you of any application deficiencies.

**(6) How do I withdraw my application for a loan originator license?**

(a) Once you have submitted the on-line application through NMLSR you may withdraw the application through NMLSR. You will not receive a refund of the NMLSR filing fee or the amount the department uses to investigate your license application.

(b) The withdrawal of your license application will not affect any license suspension or revocation proceedings in progress at the time you withdraw your application through the NMLSR.

**(7) When will the department consider my loan originator license application to be abandoned?** If you do not respond within fifteen days and as directed by the department, your loan originator license application is considered abandoned and you forfeit all fees paid. Failure to provide the requested information will not affect new applications filed after the abandonment. You may reapply by submitting a new application package and new application fee.

**(8) What happens if the department denies my application for a loan originator license, and what are my rights if the license is denied?** See WAC 208-620-615.

**(9) May I transfer, sell, trade, assign, loan, share, or give my loan originator license to someone else?** No. A loan originator license authorizes only the individual named on the license to conduct the business at the location listed on the license.

**(10) How do I change information on my loan originator license?** You must submit an amendment to your license through the NMLSR. You may be charged a fee.

**(11) What is an inactive loan originator license?** When a licensed loan originator is not sponsored by a licensed or exempt entity, the license is inactive. When a person holds an inactive license, they may not conduct any of the activities of a loan originator, or hold themselves out as a licensed loan originator.

**(12) When my loan originator license is inactive, am I subject to the director's enforcement authority?** Yes. Your license is granted under specific authority of the director and under certain situations you may be subject to the director's authority even if you are not doing any activity covered by the act.

**(13) When my loan originator license is inactive, must I continue to pay annual fees, and complete continuing education for that year?** Yes. You must comply with all the annual licensing requirements or you will be unable to renew your inactive loan originator license.

**(14) May I originate loans from a web site when my license is inactive?** No. You may not originate loans, or engage in any activity that requires a license under the act, while your license is inactive.

**(15) How do I activate my loan originator license?** The sponsoring company must submit a sponsorship request for your license through the NMLSR. The department will notify you and the sponsoring company if approved.

**(16) When may the department issue interim loan originator licenses?** To prevent an undue delay, the director may issue interim loan originator licenses with a fixed expiration date. The license applicant must have substantially met the initial licensing requirements, as determined by the director, to receive an interim license.

One example of having substantially met the initial licensing requirements is: Submitting a complete application, paying all application fees, and the department having received and reviewed the results of the applicant's background check.

**(17) When does my loan originator license expire?** The loan originator license expires annually on December 31st. If the license is an interim license, it may expire in less than one year.

**(18) How do I renew my loan originator license?**

(a) Before the license expiration date you must renew your license through the NMLSR. Renewal consists of:

(i) Paying the annual assessment fee; and

(ii) Meeting the continuing education requirement.

(b) The renewed license is valid until it expires, or is surrendered, suspended or revoked.

**(19) If I let my loan originator license expire, must I apply to get a new license?** If you complete all the requirements for renewal before March 1st, you may renew an existing license. However, if you renew your license during this two-month period, in addition to paying the annual assessment on your license, you must pay an additional fifty percent of your annual assessment. See subsection (17) of this section for the license renewal requirements.

During this two-month period, your license is expired and you must not conduct any business under the act that requires a license.

Any renewal requirements received by the department must be evidenced by either a United States Postal Service postmark or department "date received" stamp by March 1st. If you fail to comply with the renewal request requirements you must apply for a new license.

**(20) If I let my loan originator license expire and then apply for a new loan originator license within one year of the expiration, must I comply with the continuing education requirements from the prior license period?** Yes. Before the department will consider your new loan originator application complete, you must provide proof of satisfying the continuing education requirements from the prior license period.

**(21) May I still originate loans if my loan originator license has expired?** No. Once your license has expired you may no longer conduct the business of a loan originator, or hold yourself out as a licensed loan originator, as defined in the act and these rules.

**(22) May I surrender my loan originator's license?**

Yes. Only you may surrender your license before the license expires through the NMLSR.

Surrendering your loan originator license does not change your civil or criminal liability, or your liability for any administrative actions arising from acts or omissions occurring before the license surrender.

**(23) Must I display my loan originator license where I work as a loan originator?** No. Neither you nor the company is required to display your loan originator license. However, evidence that you are licensed as a loan originator must be made available to anyone who requests it.

**(24) If I operate as a loan originator on the internet, must I display my license number on my web site?** Yes. You must display your license number, and the license number and name as it appears on the license of the company you represent, on the web site.

**(25) Must I include my loan originator license number on any documents?** You must include your license number immediately following your name on solicitations, correspondence, business cards, advertisements, and residential mortgage loan applications.

**(26) When must I disclose my loan originator license number?** In the following situations you must disclose your loan originator license number and the name and license number of the company you are associated with:

(a) When asked by any party to a loan transaction, including third-party providers;

(b) When asked by any person you have solicited for business, even if the solicitation is not directly related to a mortgage transaction;

(c) When asked by any person who contacts you about a residential mortgage loan;

(d) When taking a residential mortgage loan application.

**(27) May I conduct business under a name other than the name on my loan originator license?** No. You must only use the name on your license when conducting business. If you use a nickname for your first name, you must use your name like this: "FirstName "Nickname" LastName."

NEW SECTION

**WAC 208-620-720 Loan originator—Prelicensing education. Must I complete prelicensing education in order to receive a loan originator license?** Yes.

(1) You must complete at least twenty hours of prelicensing education approved by the NMLSR. The prelicensing education must include:

(a) Three hours of federal law and regulations;

(b) Three hours of ethics, which includes instruction on fraud, consumer protection, and fair lending issues;

(c) Two hours of training related to lending standards for the nontraditional mortgage product marketplace; and

(d) At least two hours of training specifically related to Washington law.

(2) You will receive credit for having completed the prelicensing education for every state once you have successfully completed the prelicensing education requirements approved by the nationwide mortgage licensing system and registry for any state.

NEW SECTION

**WAC 208-620-725 Loan originator—Testing. Must I pass a test prior to becoming a loan originator?** Yes.

(1) You must take and pass the NMLSR sponsored loan originator test. The test has two parts; one on federal law and regulation, and one on Washington specific law and regulation. You must receive a score of seventy-five percent or higher to pass the test.

(2) **Where may I find information about the loan originator test?** The NMLSR web site will publish the names and contact information of approved testing providers.

(3) **How much does the loan originator test cost?** Testing costs are set by the test provider and the NMLSR and may be modified from time to time. The NMLSR web site will publish the current testing fee with the testing provider contact information.

(4) **How do I register to take the loan originator test?** Register through the NMLSR web site.

(5) **What topics may be covered in the loan originator test?** At a minimum, the test topics will include ethics, federal and state law and regulation pertaining to mortgage origination, federal and state law and regulation on fraud, consumer protection, nontraditional mortgage products, and fair lending.

(6) **After passing the NMLSR loan originator test, will I have to take it again?** If you fail to maintain a valid license for a period of five years or longer you must retake the test, not taking into account any time during which you were a registered mortgage loan originator.

(7) **How soon after failing the loan originator test may I take it again?** After taking and failing the test you must wait thirty days before taking it again. After failing three consecutive times, you must then wait at least six months before taking the test again.

NEW SECTION

**WAC 208-620-730 Loan originator—Continuing education. (1) How many clock hours of loan originator continuing education must I have each year?** You must complete a minimum of eight hours of continuing education approved by the nationwide mortgage licensing system and registry which must include at least three hours of federal law and regulations; two hours of ethics (which must include instruction on fraud, consumer protection, and fair lending issues); and two hours of training related to lending standards for the nontraditional mortgage product marketplace. Additionally, the director may require at least one hour of continuing education on Washington law provided by and administered through an approved provider.

(2) **As a loan originator, may I take the same approved course multiple times to meet my annual continuing education requirement?** No. You may not take the same approved course in the same or successive years to meet the annual requirements for continuing education.

(3) **If I teach an approved continuing education course may I use my course as credit toward my annual loan originator continuing education requirement?** Yes. As an instructor of an approved continuing education course, you may receive credit for your annually required loan origi-

nator continuing education courses from the course(s) you teach. You will receive credit at the rate of one course taught equaling two continuing education course credits.

(4) **If I accumulate more than the required loan originator continuing education course credits during a year, may I carry-over the excess credit to the next year?** No. Continuing education credits only apply to the year in which they are taken.

(5) **If I fail to complete the required continuing education, what happens to my loan originator license?** When your license expires, the department will not renew it, and you cannot continue conducting any business under the act. See WAC 208-620-XXX to renew your license if you miss the December 31st renewal deadline.

(6) **How will I know which courses and providers satisfy the continuing education requirement?** NMLSR will publish information about approved continuing education providers on their web site.

(7) **How do I provide the department with proof of the continuing education courses I have completed?**

(a) For SAFE required courses, the course provider will report your continuing education to the NMLSR and DFI will have access to that information.

(b) For Washington specific courses, you must provide the department with proof of your satisfactory completion of the course, in a form prescribed by the department.

## PROPRIETARY REVERSE MORTGAGE PRODUCTS

### NEW SECTION

**WAC 208-620-800 What definitions are applicable to this section?** (1) Advance. A payment from the lender to the borrower.

(2) "FHA-approved reverse mortgage" means a "home equity conversion mortgage" or other reverse mortgage product guaranteed or insured by the federal department of Housing and Urban Development.

(3) "Owner-occupied residence" is the borrower's residence and includes a life estate property the legal title for which is held in the name of the borrower in a reverse mortgage transaction or in the name of a trust, provided the occupant of the property is the beneficiary of that trust.

(4) "Proprietary reverse mortgage loan" is any reverse mortgage loan product that is not a home equity conversion mortgage loan or other federally guaranteed or insured loan.

(5) "Reverse mortgage broker or lender" means a licensee under the Washington state Consumer Loan Act, chapter 31.04 RCW, or a person exempt from licensing pursuant to federal law.

(6) "Reverse mortgage loan" means a nonrecourse consumer credit obligation in which:

(a) A mortgage, deed of trust, or equivalent consensual security interest is created in the borrower's dwelling securing one or more advances;

(b) Any principal, interest, or shared appreciation or equity is due and payable, other than in the case of default, only after:

(i) The consumer dies;

(ii) The dwelling is transferred; or

(iii) The consumer ceases to occupy the dwelling as a dwelling; and

(c) The broker or lender is licensed under Washington state law or exempt from licensing under federal law.

### NEW SECTION

**WAC 208-620-805 Does this section apply to the FHA approved home equity conversion mortgage (HECM) product?** No. This section does not apply to the HECM product or to any federally administered reverse mortgage product.

### NEW SECTION

**WAC 208-620-810 What requirements must I meet before offering or making proprietary reverse mortgages to Washington residents?** You must meet the following requirements before offering proprietary reverse mortgage loans to Washington residents:

(1) Obtain and maintain an irrevocable standby letter of credit in your favor in an amount necessary to fund all reverse mortgage loan requirements anticipated over the next twelve months for loans on your books plus those expected to be made over the next twelve months, or three million dollars, whichever is greater. The initial term of the letter of credit must be at least two years. The letter of credit must be from a financial institution approved by the director.

(a) The financial institution that provides the letter of credit required in subsection (1) of this section may not be affiliated with you.

(b) If you have had a rating of either 4A1 or 5A1 from Dun & Bradstreet credit services for three consecutive years you are exempt from the requirements in subsection (1) of this section.

(2) Maintain a minimum capital of ten million dollars.

You may rely on the capital of your parent to satisfy this requirement. However, for any year in which you rely on your parent's capital, you must provide to the director a certified financial statement of the parent showing a net worth of at least one hundred million dollars as of the close of its most recent fiscal year and a binding written commitment from the parent to you making a minimum of ten million dollars available to you as a capital contribution in connection with your reverse mortgage lending program.

(3) Subsections (1) and (2) of this section do not apply to you if you:

(a) Only originate proprietary reverse mortgage loans with full disbursement of the proceeds; or

(b) Only originate proprietary reverse mortgage loans that are sold into the secondary market to an investor with either a 4A1 or 5A1 rating from Dun & Bradstreet credit services. You must obtain a written commitment to purchase from the investor prior to the loan closing and must arrange for the delivery of the loans to the investor within ten days of the loan closing.

### NEW SECTION

**WAC 208-620-820 What specific loan terms and conditions are allowed or required in the proprietary reverse**

**mortgages I make to Washington residents?** (1) Loan prepayment.

(a) Prepayment, in whole or in part, or the refinancing of a reverse mortgage loan, must be permitted without penalty at any time during the term of the reverse mortgage loan. For the purposes of this subsection, penalty does not include any fees, payments, or other charges, not including interest, that would have otherwise been due upon the reverse mortgage being due and payable. However, when a reverse mortgage lender has paid or waived all of the usual fees or costs associated with a reverse mortgage loan, a prepayment penalty may be imposed, provided the penalty does not exceed the total amount of the usual fees or costs that were initially absorbed or waived by the reverse mortgage lender.

(b) You may not impose a prepayment penalty under this subsection if the prepayment is caused by the occurrence of the death of the borrower.

(c) If a prepayment penalty is imposed under the circumstances described in (a) of this subsection you must disclose the prepayment penalty to the borrower.

(2) Interest rate. A reverse mortgage loan may provide for a fixed or adjustable interest rate or combination thereof, including compound interest, and may also provide for interest that is contingent on the value of the property upon execution of the loan or at maturity, or on changes in value between closing and maturity.

(3) Late advances. A late advance is a scheduled monthly advance that you do not mail or electronically transfer to the borrower on or before the first business day of the month, or within five business days of the date you receive the borrower's request, or such other regularly scheduled contractual date.

(a) If you make a late advance you must pay a late charge of ten percent of the entire amount that should have been advanced to the borrower.

(b) For each additional day you fail to make the advance, you must pay interest on the late advance at the interest rate stated in the loan documents. If the loan documents provide for an adjustable interest rate, the rate in effect when the late charge first accrues is used. You must pay late charges from your funds and they may not be added to the unpaid principal balance of the borrower's loan or in any other way collected from the borrower.

(c) You forfeit the right to interest and monthly servicing fees for any months you fail to make a timely advance.

(4) Loan acceleration. The reverse mortgage loan may become due and payable upon the occurrence of any one of the following events:

(a) The home securing the loan is sold or title to the home is otherwise transferred;

(b) All borrowers cease occupying the home as a principal residence, except as provided in subsection (5) of this section; or

(c) A defaulting event occurs which is specified in the loan documents.

(5) Repayment. Repayment of the reverse mortgage loan is subject to the following additional conditions:

(a) Temporary absences from the home not exceeding one hundred eighty consecutive days do not cause the mortgage to become due and payable;

(b) Extended absences from the home exceeding one hundred eighty consecutive days, but less than one year, do not cause the mortgage to become due and payable if the borrower has taken prior action that secures and protects the home in a satisfactory manner, as specified in the loan documents;

(c) Your right to collect reverse mortgage loan proceeds is subject to the applicable statute of limitations for written loan contracts. Notwithstanding any other provision of law, the statute of limitations commences on the date that the reverse mortgage loan becomes due and payable as provided in the loan agreement;

(d) If the borrower mortgaged one hundred percent of the full value of the house, the amount owed will be the lesser amount of:

(i) The fair market value of the house, minus the sale costs; or

(ii) The outstanding balance of the loan.

(e) If the borrower mortgaged less than one hundred percent of the full value of the house, the amount owed by the borrower must not be greater than the outstanding balance of the loan or the percentage of the fair market value (minus sale costs, as provided in the contract), whichever amount is less;

(f) The lender must enforce the debt only through the sale of the property and must not obtain a deficiency judgment against the borrower.

(6) Fee disclosure. Using conspicuous, bold sixteen-point or larger type, you must disclose in the loan agreement any interest rate or other fees to be charged during the period that commences on the date that the reverse mortgage loan becomes due and payable, and that ends when repayment in full is made.

(7) Deed of trust disclosure. The first page of any deed of trust securing a reverse mortgage loan must contain the following statement in sixteen-point boldface type: "This deed of trust secures a reverse mortgage loan."

(8) Ancillary products. You or any other party that participates in the origination of a reverse mortgage loan must not require an applicant for a reverse mortgage to purchase an annuity, insurance, or other financial product as a condition of obtaining a reverse mortgage loan. You or the broker of a reverse mortgage loan must not:

(a) Offer an annuity, insurance, or other financial product to the borrower prior to the closing of the reverse mortgage or before the expiration of the borrower's right to rescind the reverse mortgage agreement;

(b) Refer the borrower to anyone for the purchase of an annuity, insurance, or other financial product prior to the closing of the reverse mortgage or before the expiration of the borrower's right to rescind the reverse mortgage agreement;

(c) Provide marketing information or sales leads to anyone regarding the prospective borrower or receive any compensation for such an annuity, insurance, or other financial product sale or referral; or

(d) You or any other party that participates in the origination of a reverse mortgage loan must maintain safeguards, acceptable to the department of financial institutions, to ensure that you do not provide reverse mortgage borrowers with any other financial or insurance products and that individuals participating in the origination of a reverse mortgage

loan have no ability or incentive to provide the borrower with any other financial or insurance product.

(9) Borrower counseling. Prior to accepting a final and complete application for a reverse mortgage loan or assessing any fees, you must refer the prospective borrower to an independent housing counseling agency approved by the federal department of Housing and Urban Development for counseling. The counseling must meet the standards and requirements established by the federal department of Housing and Urban Development for reverse mortgage counseling. You must provide the borrower with a list of at least five independent housing counseling agencies approved by the federal department of Housing and Urban Development, including at least two agencies that can provide counseling by telephone. Telephone counseling will only be used for counseling at the borrower's request. You must create and maintain a form that includes the borrower's signature for telephone counseling requests.

(10) Counseling certification. You must not accept a final and complete application for a reverse mortgage loan from a prospective applicant or assess any fees upon a prospective applicant without first receiving a certification from the applicant or the applicant's authorized representative that the applicant has received counseling from an agency as described in subsection (9) of this section. The certification must be signed by the borrower and the agency counselor, and must include the date of the counseling and the names, addresses, and telephone numbers of both the counselor and the borrower. Electronic facsimile copy of the housing counseling certification satisfies the requirements of this subsection. You must maintain the certification in an accurate, reproducible, and accessible format for the term of the reverse mortgage plus three years.

(11) Minimum age. You may not make a reverse mortgage loan to any Washington state resident unless that resident is a minimum of sixty years of age as of the date of execution of the loan.

(12) Advances. Except for the initial disbursement of moneys to the closing agent, you must issue advances directly to the borrower, or his or her legal representative, and not to an intermediary or third party.

(13) Rescission rights. The borrower in a proprietary reverse mortgage transaction has the same right to rescind the transaction as provided in the Truth in Lending Act, Regulation Z, 12 C.F.R. Sec. 226.

(14) Property appraisals. Prior to execution of the loan and at the end of the loan term, you must obtain an independent appraisal of the property value, or use the current year's tax assessment valuation of the property. You must provide copies of these appraisals to the borrower within five days of the borrower's written request, provided the borrower has paid for the appraisal.

#### NEW SECTION

**WAC 208-620-825 What reverse mortgage program information must I submit to the director for approval before offering or making proprietary reverse mortgages?** (1) A description of all proprietary reverse mortgage products available to borrowers.

(2) A copy of each proprietary loan product contract.

(3) A copy of all disclosures provided to borrowers for all proprietary reverse mortgage products.

(4) A copy of the projected total cost of credit disclosure provided to borrowers. The projected total cost of credit disclosure must reflect at a minimum the following factors, as applicable:

(a) All costs and charges to the consumer;

(b) All advances to and for the benefit of the consumer;

(c) Any shared appreciation or equity in the dwelling that you are entitled to receive under the contract to receive;

(d) Any limitation on the consumer's liability (such as nonrecourse limits and equity conservation agreements);

(e) Each of the assumed annual appreciation rates for the dwelling:

(i) Zero percent;

(ii) Four percent;

(iii) Eight percent;

(f) Each of the following assumed loan periods:

(i) Two years;

(ii) The actuarial life expectancy of the consumer to become obligated on the reverse mortgage transaction (as of the consumer's most recent birthday). If there is more than one consumer, the period must be the actuarial life expectancy of the youngest consumer as of that consumer's most recent birthday;

(g) Reserved.

(5) Your complaint processing policies and procedures.

(6) A copy of all notes and mortgages used in proprietary reverse mortgage loan transactions.

(7) If third party originators are used, copies of all due diligence policies and procedures for their use and copies of all compensation and incentive policies and procedures.

(8) A copy of your underwriting policies.

(9) A description of your title search methods.

(10) A copy of your policy for paying subsequent liens.

(11) A copy of your appraisal practices.

#### NEW SECTION

**WAC 208-660-830 What disclosures or statements must I provide to a borrower?** In addition to any disclosures required by federal law, you must provide, at a minimum, the following:

(1) Counseling disclosure. You must provide the following plain language statement in conspicuous bold sixteen-point type or larger, prior to receiving a complete and final loan application: "Important notice to reverse mortgage loan applicant: A reverse mortgage is a complex financial transaction that provides a means of using the equity you have built up in your home, or the value of your home, as a way to access home equity. If you decide to obtain a reverse mortgage loan, you will sign binding legal documents that will have important legal, tax, and financial implications for you and your estate. It is very important for you to understand the terms of the reverse mortgage and its effect. Before entering into this transaction, you are required by law to consult with an independent loan counselor. A list of approved counselors will be provided to you by the lender or broker. You may

also want to discuss your decision with family members or others on whom you rely for financial advice."

(2) Loan statements. You or the loan servicer must provide an annual, or more frequent, disclosure statement to the borrower, providing details of the loan advances, balance, other terms, and the name and telephone number of the lender's employee or agent who has been specifically designated to respond to inquiries concerning reverse mortgage loans.

#### NEW SECTION

**WAC 208-620-850 What is the process I must follow to obtain the department's approval of my proprietary reverse mortgage product?** Reserved.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 208-620-270	Can I make a loan subject to the act without first getting a license?
WAC 208-620-285	If my application is incomplete when I file it with the department, what will happen?
WAC 208-620-410	May I sell other types of products from my licensed location?
WAC 208-620-470	Do I need to notify the department if I move the location of my office?
WAC 208-620-475	Must I notify the department if I cease doing business in this state if I am doing business in other states?
WAC 208-620-512	If I pull a credit report on a consumer who has identified a specific property on a purchase and sales agreement or contract, or is refinancing a specific property, is that enough to trigger the required disclosures under RESPA and TILA?

**WSR 09-24-091**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**FINANCIAL INSTITUTIONS**  
 (Consumer Services Division)

[Filed December 1, 2009, 8:58 a.m., effective January 1, 2010]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Amending the rules in chapter 208-660 WAC to implement the Mortgage Broker Practices Act, chapter 19.146 RCW, as amended by the applicable Laws of 2009, to amend the rules for consistency with the federal SAFE act, and to generally amend the rules for clarity and consistency.

Citation of Existing Rules Affected by this Order: Amending, see the accompanying chapter 208-660 WAC.

Statutory Authority for Adoption: RCW 43.320.040.

Other Authority: RCW 19.146.223, chapter 528, Laws of 2009.

Adopted under notice filed as WSR 09-19-130 on September 22, 2009.

Changes Other than Editing from Proposed to Adopted Version: 1. WAC 208-660-006, the definition of annual loan volume is amended to (i) clarify the volume is origination volume; (ii) remove the references to the mortgage broker annual report and call reports as these are not necessary elements of the definition. Change (i) was made as a result of comments received during rule making.

2. WAC 208-660-006, the definition of license number is added as guidance to the industry in using the NMLS unique identifier. Several references to "unique identifier number" are changed to "license number" consistent with the new definition.

3. WAC 208-660-006, the definition of loan modification is added to guide the industry in providing these services under their license.

4. WAC 208-660-006, the definition of material litigation is added as a result of comments received during rule making and provides additional guidance to industry.

5. WAC 208-660-007 (1)(b), the reference to a call report is stricken due to that functionality not being available in the NMLS (and therefore not required under the SAFE act) until 2011.

6. WAC 208-660-155(13), the prohibition on certain loan originator compensation models is further clarified.

7. WAC 208-660-163 (15)(a)(i), the reference to a call report is stricken due to that functionality not being available in the NMLS (and therefore not required under the SAFE act) until 2011.

8. WAC 208-660-175 (1)(c) and (e). The bonding tiers are adjusted based on comments received during rule making.

9. WAC 208-660-180(6), the reference to another WAC is changed due to a change in numbering of the reporting section.

10. WAC 208-660-260(4), the location of an informational web site to [is] changed.

11. WAC 208-660-270(2), this section is amended for clarity of a requirement and consistency with the SAFE act.

12. WAC 208-660-270(5), this section is amended to conform to the SAFE act.

13. WAC 208-660-300(8), the last sentence is stricken as it causes confusion and inconsistency with another section.

14. WAC 208-660-350 (2)(b)(1)[(i)], the last clause is stricken for consistency with the SAFE act.

15. WAC 208-660-350(27), this language is added as a placeholder for a future requirement.

16. WAC 208-660-355(3), the language is amended to be consistent with the SAFE act.

17. WAC 208-660-370(9), this language is added for consistency with other education requirements.

18. WAC 208-660-400 (1)(c), the reference to a call report is stricken due to that functionality not being available in the NMLS (and therefore not required under the SAFE act) until 2011.

19. WAC 208-660-400 (4)(a), the language is amended to clarify the licensee's responsibility.

20. WAC 208-660-400 (5) and (6), this language is added as a placeholder for a future requirement.

21. WAC 208-660-430(5), the language is amended to be consistent with federal law.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 1, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 17, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 14, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 2, Amended 25, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: December 1, 2009.

Deborah Bortner, Director  
Division of Consumer Services

**AMENDATORY SECTION** (Amending WSR 06-23-137, filed 11/21/06, effective 1/1/07)

**WAC 208-660-005 Purpose, scope and coverage. (1) What is the purpose of the Mortgage Broker Practices Act?** The purpose of the Mortgage Broker Practices Act is to establish a state system of licensure and rules of practice and conduct for mortgage brokers and loan originators, to promote honesty and fair dealing with citizens, and to preserve public confidence in the lending and real estate community.

**(2) What is the purpose of the Mortgage Broker Practices Act rules?** The purpose of these rules is to administer and interpret the Mortgage Broker Practices Act in order to govern the activities of licensed mortgage brokers, loan originators, and other persons subject to the act.

**(3) What is the scope and coverage of the Mortgage Broker Practices Act and these rules?** There are four criteria to determine the scope and coverage of the Mortgage Broker Practices Act and these rules. All of the criteria must be met in order for a person or entity to fall under the scope and coverage of the act and these rules. The criteria are:

- (a) The persons or entities conducting business;
- (b) The type of transactions performed when conducting the business;
- (c) The identification of residential real estate; and
- (d) The location of the mortgage broker, loan originator, potential borrower, and residential real estate.

**(4) What persons or entities are covered?** The Mortgage Broker Practices Act and these rules apply to all persons or entities defined as mortgage brokers or loan originators under RCW 19.146.010(~~((12), or loan originators under RCW 19.146.010(10))~~). However, certain mortgage brokers and loan originators may be exempt from all or part of the act under RCW 19.146.020 as discussed in WAC 208-660-008.

**(5) What types of transactions are covered?** The Mortgage Broker Practices Act and these rules cover the ~~((making or))~~ assisting ~~((in obtaining of))~~ to obtain any "residential mortgage loan" defined in RCW 19.146.010(~~((15))~~) and WAC 208-660-006. ~~((The terms "making" and "assisting" are defined under "mortgage broker" in WAC 208-660-006.))~~ Violations of RCW 19.146.0201, however, are not limited to residential mortgage loan transactions.

**(6) What is residential real estate?** Residential real estate is real property upon which is constructed or intended to be constructed, a single family dwelling, or multiple family dwelling of four or less units. See examples in WAC 208-660-006, "residential real estate."

**(7) Does the location of the mortgage broker, loan originator, potential borrower, and residential real estate affect whether the transaction is covered under the Mortgage Broker Practices Act?** If the mortgage broker, loan originator, potential borrower, or residential real estate is located in Washington, the transaction is covered by the Mortgage Broker Practices Act and these rules. However, the director may choose to defer to other jurisdictions where doing so would, in the director's sole discretion, achieve the purposes of the Mortgage Broker Practices Act.

**(8) What are some examples of transactions falling under the scope and coverage of the Mortgage Broker Practices Act and these rules?**

(a) A loan originator employed with Mortgage Broker, Inc. with a physical office in Redmond, Washington takes a loan application from a Kirkland, Washington resident for the purchase of a home located in Bellevue, Washington. Mortgage Broker, Inc. is not exempt from the Mortgage Broker Practices Act under RCW 19.146.020 (~~((1)(a)(ii))~~). The home located in Bellevue meets the definition of residential real estate and the purchaser intends to reside in the home.

(b) A loan originator with a physical office in Spokane, Washington takes a loan application from a Yakima, Washington resident for the purchase of a home located in Oregon. The mortgage broker is not exempt from the Mortgage Broker Practices Act under RCW 19.146.020 (~~((1)(a)(ii))~~). The home located in Oregon meets the definition of residential real estate and the purchaser intends to reside in the home.

(c) A loan originator with a physical office in Reno, Nevada working for a Nevada mortgage broker takes a loan application from a Nevada resident for the purchase of a home located in Olympia, Washington. The mortgage broker is not exempt from the Mortgage Broker Practices Act under RCW 19.146.020 (~~((1)(a)(ii))~~). The home located in Washington meets the definition of residential real estate and the purchaser intends to reside in the home.

AMENDATORY SECTION (Amending WSR 09-01-156, filed 12/23/08, effective 1/23/09)

**WAC 208-660-006 Definitions. What definitions are applicable to these rules?** Unless the context clearly requires otherwise, the definitions in this section apply throughout these rules.

"Act" means the Mortgage Broker Practices Act, chapter 19.146 RCW.

"Advertising material" means any form of sales or promotional materials used in connection with the mortgage broker business. Advertising material includes, but is not limited to, newspapers, magazines, leaflets, flyers, direct mail, indoor or outdoor signs or displays, point-of-sale literature or educational materials, other printed materials; radio, television, public address system, or other audio broadcasts; or internet pages.

"Affiliate" means any person who directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with another person.

"Annual loan origination volume" means the aggregate of the principal loan amounts brokered by the licensee.

"Application" means the submission of a borrower's financial information in anticipation of a credit decision relating to a residential mortgage loan, which ~~((shall))~~ includes the borrower's name, monthly income, Social Security number to obtain a credit report, the property address, an estimate of the value of the property, and the mortgage loan amount sought~~((, and any other information deemed necessary by the loan originator))~~. An application may be in writing or electronically submitted, including a written record of an oral application. If the submission does not state or identify a specific property, the submission is an application for a prequalification and not an application for a residential mortgage loan under this part. The subsequent addition of an identified property to the submission converts the submission to an application for a residential mortgage loan.

"Appraisal" means the act or process of developing an opinion of value, the act pertaining to an appraisal-related function, or any verbal or written opinion of value offered by an appraiser. The opinion of value by the appraiser includes any communication that is offered as a single point, a value range, a possible value range, exclusion of a value, or a minimum value.

"Borrower" means any person who consults with or retains a mortgage broker or loan originator in an effort to obtain or seek advice or information on obtaining or applying to obtain a residential mortgage loan for himself, herself, or persons including himself or herself, regardless of whether the person actually obtains such a loan.

"Branch office" means a fixed physical location such as an office, separate from the principal place of business of the licensee, where the licensee holds itself out as a mortgage broker.

"Branch office license" means a branch office license issued by the director allowing the licensee to conduct a mortgage broker business at the location indicated on the license.

"Business day" means Monday through Friday excluding federally recognized bank holidays.

"Certificate of passing an approved examination" means a certificate signed by the testing administrator verifying that the individual performed with a satisfactory score or higher.

"Certificate of satisfactory completion of an approved continuing education course" means a certificate signed by the course provider verifying that the individual has attended an approved continuing education course.

"Compensation or gain" means remuneration, benefits, or an increase in something having monetary value, including, but not limited to, moneys, things, discounts, salaries, commissions, fees, duplicate payments of a charge, stock, dividends, distributions of partnership profits, franchise royalties, credits representing moneys that may be paid at a future date, the opportunity to participate in a money-making program, retained or increased earnings, increased equity in a parent or subsidiary entity, special or unusual bank or financing terms, services of all types at special or free rates, sales or rentals at special prices or rates, lease or rental payments based in whole or in part on the amount of business referred, trips and payments of another person's expenses, or reduction in credit against an existing obligation. "Compensation or gain" is not evaluated solely on a loan by loan basis.

For example, a realtor advertising that buyers using their services will receive free loan origination assistance is doing so in the anticipation of "compensation or gain" through increased real estate business.

"Computer loan information systems" or "CLI system" means a real estate mortgage financing information system that facilitates the provision of information to consumers by a mortgage broker, loan originator, lender, real estate agent, or other person regarding interest rates and other loan terms available from different lenders.

For purposes of this definition, the CLI system includes computer hardware or software, an internet-based system, or any combination of these, which provides information to consumers about residential mortgage interest rates and other loan terms which are available from another person.

"Computer loan information system provider" or "CLI provider" is any person who provides a computer loan information service, either directly, or as an owner-operator of a CLI system, or both.

"Consumer Protection Act" means chapter 19.86 RCW.

"Control" including the terms "controls," "is controlled by," or "is under common control" means the power, directly or indirectly, to direct or cause the direction of the management or policies of a person, whether through ownership of the business, by contract, or otherwise. A person is presumed to control another person if such person is:

- A general partner, officer, director, or employer of another person;
- Directly or indirectly or acting in concert with others, or through one or more subsidiaries, owns, holds with power to vote, or holds proxies representing, more than twenty percent of the voting interests of another person; or
- Has similar status or function in the business as a person in this definition.

"Convicted of a crime," irrespective of the pronouncement or suspension of sentence, means a person:

- Has been convicted of the crime in any jurisdiction;

- Has been convicted of a crime which, if committed within this state would constitute a crime under the laws of this state;

- Has plead guilty or no contest or nolo contendere or stipulated to facts that are sufficient to justify a finding of guilt to such a charge before a court or federal magistrate; or

- Has been found guilty of a crime by the decision or judgment of a state or federal judge or magistrate, or by the verdict of a jury.

"Department" means the department of financial institutions.

"Depository institution" has the same meaning as in section 3 of the Federal Deposit Insurance Act on the effective date of this section, and includes credit unions.

"Designated broker" means a natural person designated as the person responsible for activities of the licensed mortgage broker in conducting the business of a mortgage broker under this chapter and who meets the experience and examination requirements set forth in RCW 19.146.210 (1)(e).

"Director" means the director of financial institutions.

"Discount points" or "points" mean a fee paid by a borrower to a lender to reduce the interest rate of a residential mortgage loan. Pursuant to Regulation X, discount points are to be reflected on ~~((line 802 of))~~ the good faith estimate and settlement statement as a ~~((percentage of the loan))~~ dollar amount.

"Division of consumer services" means the division of consumer services within the department of financial institutions, or such other division within the department delegated by the director to oversee implementation of the act and these rules.

"Employee" means an individual who has an employment relationship with a mortgage broker, and the individual is treated as an employee by the mortgage broker for purposes of compliance with federal income tax laws.

"Examination" or "compliance examination" means the examination performed by the division of consumer services, or such other division within the department delegated by the director to oversee implementation of the act and these rules to determine whether the licensee is in compliance with applicable laws and regulations.

"Federal banking agencies" means the Board of Governors of the Federal Reserve System, Comptroller of the Currency, Director of the Office of Thrift Supervision, National Credit Union Administration, and Federal Deposit Insurance Corporation.

Federal statutes and regulations used in these rules are:

- "Alternative Mortgage Transaction Parity Act" means the Alternative Mortgage Transaction Parity Act (AMTPA), 12 U.S.C. Sec. 3801 et seq.

- "Equal Credit Opportunity Act" means the Equal Credit Opportunity Act (ECOA), 15 U.S.C. Sec. 1691 et seq., Regulation B, 12 CFR Part 202.

- "Fair Credit Reporting Act" means the Fair Credit Reporting Act (FCRA), 15 U.S.C. Sec. 1681 et seq.

- "Federal Trade Commission Act" means the Federal Trade Commission Act, 15 U.S.C. Sec. 45(a).

- "Gramm-Leach-Bliley Act (GLBA)" means the Financial Modernization Act of 1999, 15 U.S.C. Sec. 6801-6809,

and the GLBA-mandated Federal Trade Commission (FTC) privacy rules, at 16 CFR Parts 313-314.

- "Home Equity Loan Consumer Protection Act" means the Home Equity Loan Consumer Protection Act, 15 U.S.C. Sec. 1637 and 1647.

- "Home Mortgage Disclosure Act" means the Home Mortgage Disclosure Act (HMDA), 12 U.S.C. Sec. 2801-2810, Regulation C, 12 CFR Part 203.

- "Home Ownership and Equity Protection Act" means the Home Ownership and Equity Protection Act (HOEPA), 15 U.S.C. Sec. 1639.

- "Homeowners Protection Act" means the Homeowners Protection Act of 1998 (HPA), 12 U.S.C. Sec. 4901 et seq.

- "Real Estate Settlement Procedures Act" means the Real Estate Settlement Procedures Act (RESPA), 12 U.S.C. Sec. 2601 et seq., Regulation X, 24 CFR Part 3500 et seq.

"S\_A\_F\_E\_" means the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, Title V of the Housing and Economic Recovery Act of 2008 (~~((("HERA"), Public Law No.))~~) (HERA), P.L. 110-289, effective July 30, 2008.

- "Telemarketing and Consumer Fraud and Abuse Prevention Act" means the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. Sec. 6101-6108, Telephone Sales Rule, 16 CFR Part 310.

- "Truth in Lending Act" means the Truth in Lending Act (TILA), 15 U.S.C. Sec. 1601 et seq., Regulation Z, 12 CFR Part 226 et seq.

"Federally insured financial institution" means a savings bank, savings and loan association, or credit union, whether state or federally chartered, or a federally insured bank, authorized to conduct business in this state.

"Financial misconduct," for the purposes of the act, means a criminal conviction for any of the following:

- Any conduct prohibited by the act;
- Any conduct prohibited by statutes governing mortgage brokers in other states, or the United States, if such conduct would constitute a violation of the act;

- Any conduct prohibited by statutes governing other segments of the financial services industry, including but not limited to the Consumer Protection Act, statutes governing the conduct of securities broker dealers, financial advisers, escrow officers, title insurance companies, limited practice officers, trust companies, and other licensed or chartered financial service providers; or

- Any conduct commonly known as white collar crime, including, but not limited to, embezzlement, identity theft, mail or wire fraud, insider trading, money laundering, check fraud, or similar crimes.

"Independent contractor" means any person that expressly or impliedly contracts to perform mortgage brokering services for another and that with respect to its manner or means of performing the services is not subject to the other's right of control, and that is not treated as an employee by the other for purposes of compliance with federal income tax laws.

The following factors may be considered to determine if a person is an independent contractor:

Is the person instructed about when, where and how to work?

Is the person guaranteed a regular wage?

Is the person reimbursed for business expenses?

Does the person maintain a separate business?

Is the person exposed to potential profits and losses?

Is the person provided employee benefits such as insurance, a pension plan, or vacation or sick pay?

"License number" means the NMLS unique identifier displayed as prescribed by the director.

"Licensee" means:

- A mortgage broker licensed by the director; or
- The principal(s) or designated broker of a mortgage broker; or
- A loan originator licensed by the director; or
- Any person subject to licensing under RCW 19.146.200; or
- Any person acting as a mortgage broker or loan originator subject to any provisions of the act.

~~("License application fee" means immediately available funds paid to the department for each mortgage broker, loan originator, or mortgage broker branch office license application.~~

~~"Loan application" means the same as "application," in this section.)~~ "Loan modification" means a change in one or more residential mortgage loan terms or conditions and includes forbearances, repayment plans, a change in interest rates, loan term (length), loan type (fixed or adjustable), the capitalization of arrearages, and principal reductions. "Loan modification" does not include services that result in refinancing a residential mortgage loan.

"Loan originator" means a natural person who for direct or indirect compensation or gain, or in the expectation of direct or indirect compensation or gain:

- Takes a residential mortgage loan application for a mortgage broker; or
- Offers or negotiates terms of a mortgage loan ~~(for direct or indirect compensation or gain, or in the expectation of direct or indirect compensation or gain).~~

"Loan originator" also includes a person who holds themselves out to the public as able to perform any of these activities. "Loan originator" does not mean persons performing purely administrative or clerical tasks for a mortgage broker. For the purposes of this subsection, "administrative or clerical tasks" means the receipt, collection, and distribution of information common for the processing of a loan in the mortgage industry and communication with a borrower to obtain information necessary for the processing of a loan. A person who holds himself or herself out to the public as able to obtain a loan is not performing administrative or clerical tasks.

"Loan originator" does not include a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with applicable state law, unless the person or entity is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such a lender, mortgage broker, or other mortgage loan originator. For purposes of this chapter, the term "real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including:

(a) Acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property;

(b) Bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;

(c) Negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property, other than in connection with providing financing with respect to any such transaction;

(d) Engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law; and

(e) Offering to engage in any activity, or act in any capacity, described in (a) through (d) of this subsection.

"Loan originator" does not include a person or entity solely involved in extensions of credit relating to timeshare plans, as that term is defined in section 101(53D) of Title 11, United States Code.

For purposes of further defining "loan originator," "taking a residential mortgage loan application" includes soliciting, accepting, or offering to accept an application for a residential mortgage loan or assisting a borrower or offering to assist a borrower in the preparation of a residential mortgage loan application.

For purposes of this definition, a person "holds themselves out" by advertising or otherwise informing the public that the person engages in any of the activities of a mortgage broker or loan originator, including the use of business cards, stationery, brochures, rate lists or other promotional items.

"Loan originator licensee" means a natural person who is licensed as a loan originator or is subject to licensing under RCW 19.146.200 or who is acting as a loan originator subject to any provisions of the act.

~~"Loan processor" means ((a natural person)) an individual~~ "Loan processor" means ((a natural person)) an individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a person licensed, or exempt ((mortgage broker)) from licensing, under chapter 19.146 RCW. The job responsibilities may include the receipt, collection and distribution of information common for the processing of a loan. The loan processor may also communicate with a borrower to obtain the information necessary for the processing of a loan, provided that such communication does not include offering or negotiating loan rates or terms, or counseling borrowers about loan rates or terms.

"Lock-in agreement" means an agreement with a borrower made by a mortgage broker or loan originator, in which the mortgage broker or loan originator agrees that, for a period of time, a specific interest rate or other financing terms will be the rate or terms at which it will make a loan available to that borrower.

"Material litigation" means any litigation that would be relevant to the director's ruling on an application for a license including, but not limited to, criminal or civil action involving dishonesty or financial misconduct.

"Mortgage broker" means any person who for compensation or gain, or in the expectation of compensation or gain (a) assists a person in obtaining or applying to obtain a residential mortgage loan or (b) holds himself or herself out as being able to assist a person in obtaining or applying to obtain a residential mortgage loan. A mortgage broker either prepares a residential mortgage loan for funding by another

entity or table-funds the residential mortgage loan. See the definition of "table funding." (These are the two activities allowed under the MBPA.)

For purposes of this definition, a person "assists a person in obtaining or applying to obtain a residential mortgage loan" by, among other things, counseling on loan terms (rates, fees, other costs), preparing loan packages, or collecting enough information on behalf of the consumer to anticipate a credit decision under Regulation X, 24 CFR Part 3500, Section 3500 (2)(b).

For purposes of this definition, a person "holds himself or herself out" by advertising or otherwise informing the public that they engage in any of the activities of a mortgage broker or loan originator, including the use of business cards, stationery, brochures, rate sheets, or other promotional items.

"Mortgage broker licensee" means a person that is licensed as a mortgage broker or is subject to licensing under RCW 19.146.200 or is acting as a mortgage broker subject to any provisions of the act.

"Mortgage Broker Practices Act" means chapter 19.146 RCW.

"Mortgage loan originator" means the same as "loan originator."

"Nationwide Mortgage Licensing System and Registry (NMLSR)" means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of mortgage loan originators.

"Out-of-state applicant or licensee" means a person subject to licensing that maintains an office outside of this state.

"Person" means a natural person, corporation, company, limited liability corporation, partnership, or association.

"Prepaid escrowed costs of ownership," as used in RCW 19.146.030(4), means any amounts prepaid by the borrower for the payment of taxes, property insurance, interim interest, and similar items in regard to the property used as security for the loan.

"Principal" means any person who controls, directly or indirectly through one or more intermediaries, or alone or in concert with others, a ten percent or greater interest in a partnership, company, association, or corporation, and the owner of a sole proprietorship.

"Registered agent" means a person located in Washington appointed to accept service of process for a licensee.

"Registered mortgage loan originator" means any individual who meets the definition of mortgage loan originator and is an employee of:

(a) A depository institution, a subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency, or an institution regulated by the farm credit administration; and

(b) Is registered with, and maintains a unique identifier through, the nationwide mortgage licensing system and registry.

"Residential mortgage loan" means any loan primarily for personal, family, or household use secured by a mortgage or deed of trust on residential real estate upon which is constructed or intended to be constructed a single family dwelling or multiple family dwelling of four or less units.

For purposes of this definition, a loan "primarily for personal, family, or household use" includes loan applications for a finance or refinance of a primary residence for any purpose, loan applications on second homes, and loan applications on nonowner occupied residential real estate provided the licensee has knowledge that proceeds of the loan are intended to be used primarily for personal, family or household use.

"Residential real estate" is real property upon which is constructed or intended to be constructed, a single family dwelling or multiple family dwelling of four or less units.

• Residential real estate includes, but is not limited to:

– A single family home;

– A duplex;

– A triplex;

– A fourplex;

– A single condominium in a condominium complex;

– A single unit within a cooperative;

– A manufactured home when the home and real property together will secure the residential mortgage loan; or

– A fractile, fee simple interest in any of the above.

• Residential real estate does not include:

– An apartment building or dwelling of five or more units;

– A single piece of real estate with five or more single family dwellings unless each dwelling is capable of being financed independently of the other dwellings; or

– Any dwelling on leased or rented land or space, such as dwellings in a manufactured home park unless the mortgage broker treats such property as residential real estate.

"S.A.F.E. Act" means the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, or Title V of the Housing and Economic Recovery Act of 2008 (HERA), P.L. 110-289, effective July 30, 2008.

"Table-funding" means a settlement at which a mortgage loan is funded by a contemporaneous advance of loan funds and an assignment of the loan to the person advancing the funds. The mortgage broker originates the loan and closes the loan in its own name with funds provided contemporaneously by a lender to whom the closed loan is assigned.

"Third-party provider" means any person other than a mortgage broker or lender who provides goods or services to the mortgage broker in connection with the preparation of the borrower's loan and includes, but is not limited to, credit reporting agencies, title companies, appraisers, structural and pest inspectors, or escrow companies.

A lender is considered a third party only when the lender provides lock-in arrangements to the mortgage broker in connection with the preparation of a borrower's loan.

"Underwriting" means a lender's detailed credit analysis preceding the offering or making of a loan. The analysis may be based on information furnished by the borrower (employment history, salary, financial statements), the borrower's credit history from a credit report, the lender's evaluation of the borrower's credit needs and ability to pay, and an assessment of the collateral for the loan. While mortgage brokers may have access to various automated underwriting systems to facilitate an evaluation of the borrower's qualifications, the mortgage broker who qualifies or approves a borrower in this manner is not the underwriter of the loan and cannot charge a

fee for underwriting the loan. Third-party charges the mortgage broker incurs in using or accessing an automated system to qualify or approve a borrower may, like other third-party expenses, be passed on to the borrower.

"Unique identifier" means a number or other identifier assigned by protocols established by the nationwide mortgage licensing system and registry.

AMENDATORY SECTION (Amending WSR 08-05-126, filed 2/20/08, effective 3/22/08)

**WAC 208-660-007 Good standing.** (1) **What does good standing mean?** For the purposes of the act and these rules, good standing means that the applicant, licensee, or other person subject to the act demonstrates financial responsibility, character, and general fitness sufficient to command the confidence of the community and to warrant a belief that the business will be operated honestly, fairly, and efficiently within the purposes of the act and these rules. In determining good standing the director will consider the following factors, and any other evidence relevant to good standing as defined in this rule:

(a) Whether the applicant or licensee has paid all fees due to the director or the NMLSR.

(b) Whether the mortgage broker licensee has filed their mortgage broker annual report.

(c) Whether the mortgage broker licensee has filed and maintained the required surety bond or had its surety bond canceled or revoked for cause.

(d) Whether the mortgage broker licensee has maintained a designated broker in compliance with the act and these rules.

(e) Whether the applicant, licensee, or other person subject to the act has had any license, or any authorization or ability to do business under any similar statute of this or any other state, suspended, revoked, or restricted within the prior five years.

(f) Whether the applicant, licensee, or other person subject to the act has been convicted of or pled guilty or nolo contendere to, in a domestic, foreign, or military court to:

(i) A gross misdemeanor involving dishonesty or financial misconduct~~((-or))~~ within the prior seven years;

(ii) A felony~~((;))~~ within the prior seven years; or

(iii) A felony that involved an act of fraud, dishonesty, breach of trust, or money laundering at any time preceding the date of application.

(g) Whether the licensee or other person subject to the act, is, or has been subject to a cease and desist order or an injunction issued pursuant to the act, or the Consumer Protection Act, or has been found through an administrative, civil, or criminal proceeding to have violated the provisions of the act or rules, or the Consumer Protection Act, chapter 19.86 RCW.

(h) Whether the director has filed a statement of charges, or there is an outstanding order by the director to cease and desist against the licensee or other person subject to the act.

(i) Whether there is documented evidence of serious or significant complaints filed against the licensee, or other person subject to the act, and the licensee or other person subject

to the act has been notified of the complaints and been given the opportunity to respond.

(j) Whether the licensee has allowed the licensed mortgage broker business to deteriorate into a condition that would result in denial of a new application for a license.

(k) Whether the licensee, or other person subject to the act has failed to comply with an order, directive, subpoena, or requirement of the director or director's designee, or with an assurance of discontinuance entered into with the director or director's designee.

(l) Whether the licensee or other person subject to the act has interfered with an investigation or disciplinary proceeding by willful misrepresentation of facts before the director or director's designee, or by the use of threats or harassment against a client, witness, employee of the licensee, or representative of the director for the purpose of preventing them from discovering evidence for, or providing evidence in, any disciplinary proceeding or other legal action.

(2) **Under what circumstances may the department conduct a good standing review of an applicant, mortgage broker licensee, designated broker, or exempt mortgage broker?** The department may conduct a good standing review when:

(a) Processing an application for a new mortgage broker branch office license.

(b) Processing an application for appointment of a different designated broker (both the licensed mortgage broker, including those individuals to whom the license was granted, and the proposed designated broker must meet good standing).

(c) Processing a request for recognition as an exempt mortgage broker under RCW 19.146.020~~((4))~~.

(3) **When will an applicant, licensee, or other person subject to the act receive notice from the department of their failure to meet a determination of good standing?** If the department conducts a good standing review, the department will notify the applicant, licensee, or other person subject to the act that they have failed to meet the department's good standing requirement within ten business days of the department's receipt of any application or request that requires a determination of good standing. See subsection (2) of this section. For purposes of the notice required by this section, a statement of charges filed and served on the licensee is sufficient notice of a lack of good standing.

(4) **What recourse does an applicant, licensee, or other person subject to the act have when the department has determined that they are not in good standing?** The applicant, licensee, or other person subject to the act may request a brief adjudicative proceeding under the Administrative Procedure Act, chapter 34.05 RCW, to challenge the department's determination. See WAC 208-660-009.

~~((5) What department determinations may be challenged through a brief adjudicative proceeding? Subsection (1)(a) through (l) of this section may be challenged through a brief adjudicative process.~~

~~(6) What specific sections of the Administrative Procedure Act are adopted by the director to administer brief adjudicative proceedings? The director adopts RCW 34.05.482 through 34.05.494 to administer brief adjudicative~~

proceedings requested by an applicant or licensee, or conducted at the director's discretion.

**~~(7) Who conducts the brief adjudicative proceeding?~~** Brief adjudicative proceedings are conducted by a presiding officer designated by the director. The presiding officer must have department expertise in the subject matter, but must not have personally participated in the department's determination of good standing, or work in the department's division of consumer services, or such other division within the department delegated by the director to oversee implementation of the act and these rules.

**~~(8) When and how will the presiding officer issue a decision?~~** Within ten business days of the final date for submission of materials, or oral argument, if any, the presiding officer must make a written initial order.))

AMENDATORY SECTION (Amending WSR 09-01-156, filed 12/23/08, effective 1/23/09)

**WAC 208-660-008 Exemptions ~~((from licensing))~~. (1) Who is exempt from all provisions of the act? Any person doing business under the laws of the state of Washington or the United States and any federally insured depository institution doing business under the laws of any other state relating to commercial banks, bank holding companies, savings banks, trust companies, savings and loan associations, credit unions, insurance companies, or real estate investment trusts as defined in 26 U.S.C. Sec. 856 and the affiliates, subsidiaries, and service corporations thereof.**

**(2) Who is exempt from licensing as a mortgage loan originator?**

**(a) Any individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual; or**

**(b) Any individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that served as the individual's residence.**

**(3) If I am licensed as an insurance agent under RCW 48.17.060, must I have a separate license to act as a loan originator or mortgage broker?** Yes. You will need a separate license as a loan originator or mortgage broker if you are a licensed insurance agent and you do any of the following:

(a) Take a residential mortgage loan application for a mortgage broker;

(b) Offer or negotiate terms of a mortgage loan for direct or indirect compensation or gain, or in the expectation of direct or indirect compensation or gain;

(c) Assist a person in obtaining or applying to obtain a residential mortgage loan, for compensation or gain; or

(d) Hold yourself out as being able to perform any of the above services.

**~~((2))~~ (4) Are insurance companies exempt from the Mortgage Broker Practices Act?** Yes. Insurance companies authorized to transact the business of insurance in this state by the Washington state office of the insurance commissioner are exempt from the Mortgage Broker Practices Act.

**~~((3)) If I make residential mortgage loans under the Consumer Loan Act, chapter 31.04 RCW, am I exempt from the Mortgage Broker Practices Act?~~** If you are

licensed under the Consumer Loan Act, only residential mortgage loans are exempt from the Mortgage Broker Practices Act. Complying with the Consumer Loan Act includes abiding by the requirements and restrictions of that act and counting all loans originated and made under that act for purposes of your annual assessment.

**~~(4) If I make residential mortgage loans under the Consumer Loan Act, chapter 31.04 RCW, are my loan originators exempt from the Mortgage Broker Practices Act?~~** Your loan originator employees are also exempt from the Mortgage Broker Practices Act for their loan originator activities on residential mortgage loans.

~~Your independent contractor loan originators are not exempt from the Mortgage Broker Practices Act for their residential mortgage loan originator activities.))~~

**(5) As an attorney, must I have a mortgage broker or loan originator license to assist a person in obtaining or applying to obtain a residential mortgage loan in the course of my practice?**

(a) If you are an attorney licensed in Washington and if the mortgage broker activities are incidental to your professional duties as an attorney, you are exempt from the Mortgage Broker Practices Act under RCW 19.146.020 (1)(c).

(b) Whether an exemption is available to you depends on the facts and circumstances of your particular situation. For example, if you hold yourself out publicly as being able to perform the services of a mortgage broker or loan originator, or if your fee structure for those services is different from the customary fee structure for your professional legal services, the department will consider you to be principally engaged in the mortgage broker business and you will need a mortgage broker or loan originator license before performing those services. A "customary" fee structure for the professional legal service does not include the receipt of compensation or gain associated with assisting a borrower in obtaining a residential mortgage loan on the property.

**(6) As a licensed real estate broker or salesperson, must I have a mortgage broker or loan originator license when I assist the purchaser in obtaining financing for a residential mortgage loan involving a bona fide sale of real estate?** You are exempt from the act under RCW 19.146.020 (1)((~~4~~)) **(e)** if you only receive the customary real estate commission in connection with the transaction. A "customary" real estate commission does not include receipt of compensation or gain associated with the financing of the property. A "customary" real estate commission only includes the agreed upon commission designated in the listing or purchase and sale agreement for the bona fide sale of the subject property.

**~~((7) Under what circumstances will the director approve an exemption under RCW 19.146.020(4) for the exclusive agents working as loan originators of an affiliate of a bank that is wholly owned by the bank holding company that owns that bank?~~**

(a) The director will provide a written exemption from loan originator licensing for the exclusive agents of an affiliate of a bank that is wholly owned by the bank holding company that owns the bank if the director finds that the affiliate is licensed and is in "good standing" with the department and the affiliate has procedures in place, as evidenced by a writ-

ten "plan of business," to reasonably assure the department that:

(i) The exclusive agents of the affiliate of a bank operate exclusively as loan originators for the affiliate and not for other mortgage brokers;

(ii) The affiliate of the bank requires continuing education for the exclusive agents that meets the same or similar requirements approved by the director for licensed loan originators;

(iii) The affiliate of the bank will notify the department if the affiliate terminates an exclusive agent because the exclusive agent:

(A) Has had any license, or any authorization to do business under any similar statute of this or any other state, suspended, revoked, or restricted within the prior five years; or

(B) Has been convicted of a felony, or a gross misdemeanor involving dishonesty or financial misconduct, within the prior seven years; or

(C) Has been subject to a cease and desist order or an injunction issued pursuant to the act, or the Consumer Protection Act, or has been found through an administrative, civil, or criminal proceeding to have violated the provisions of the act or rules, or the Consumer Protection Act, chapter 19.86 RCW.

(b) To qualify for this exemption, the affiliate must make a written request to the department and submit a "plan of business" with the request. After receipt of this request, the department will notify the affiliate in writing within ten business days whether the affiliate's exclusive agents qualify for the exemption, or if the department will conduct additional review of the affiliate and the "plan of business." The affiliates must receive the department's notice of qualification for exemption before the affiliate's exclusive agents take any action that would subject them to licensing under the act.

(c) The exemption granted by the director remains valid as long as the affiliate complies in all material respects with its "plan of business" and the affiliate remains in good standing with the department.

~~(8) What are the responsibilities of a mortgage broker that is exempt from the licensing provisions of the act?~~ The owners of companies exempt from licensing under RCW 19.146.020 (1)(c), (g), or (4), are responsible for:

(a) Complying with RCW 19.146.0201 through 19.146.080, and 19.146.235;

(b) Ensuring compliance with the act by all persons representing the exempt mortgage broker; and

(c) Notifying the director of any change affecting the mortgage broker's exempt status under the act.

~~(9)) (7) Are ((the)) independent contractor loan originators ((of a mortgage broker)) exempt from licensing ((under RCW 19.146.020 (1)(b), (c), (e), and (g) themselves exempt))?~~ No. ((After January 1, 2007,)) An independent contractor working as a loan originator ((for a mortgage broker exempt under RCW 19.146.020 (1)(b), (c), (e), and (g))) must hold a loan originator license.

~~((10)) (8) What other persons or entities are exempt from the Mortgage Broker Practices Act?~~

(a) Any person doing any act under order of any court except for a person subject to an injunction to comply with

any provision of the act or any order of the director issued under the act.

(b) The United States of America, the state of Washington, any other state, and any Washington city, county, or other political subdivision, and any agency, division, or corporate instrumentality of any of ((the)) these entities in this subsection (b).

(c) Registered mortgage loan originators, or any individual required to be registered, employed by entities exempt from the act.

(d) A manufactured or modular home retailer employee who performs purely administrative or clerical tasks and who receives only the customary salary or commission from the employer in connection with the transaction.

~~((11)) (9) When is a CLI provider exempt from the licensing requirements of the act?~~ A CLI provider is exempt from the licensing requirements of the act:

(a) When the CLI provider meets the general statutory requirements under RCW 19.146.020 (1)(a), (c), (d), ~~((e), (g),))~~ or ~~((h)) (f)~~; or

(b) When a real estate broker or salesperson licensed in Washington, acting as a CLI provider and a real estate agent, obtains financing for a real estate transaction involving a bona fide sale of real estate and does not receive either:

(i) A separate fee for the CLI service; or

(ii) A sales commission greater than that which would be otherwise customary in connection with the sales transaction; or

(c) When a person, acting as a CLI provider:

(i) Provides only information regarding rates, terms, and lenders;

(ii) Complies with all requirements of subsection (12) of this section;

(iii) Does not represent or imply to a borrower that they are able to obtain a residential mortgage loan from a mortgage broker or lender;

(iv) Does not accept a loan application, assist in the completion of a loan application, or submit a loan application to a mortgage broker or lender on behalf of a borrower;

(v) Does not accept any deposit for third-party provider services or any loan fees from a borrower in connection with a loan, regardless of when the fees are paid;

(vi) Does not negotiate interest rates or terms of a loan with a mortgage broker or lender on behalf of a borrower; and

(vii) Does not provide to the borrower a good faith estimate or other disclosure(s) required of mortgage brokers or lender(s) by state or federal law.

(d) If the CLI provider is not exempt under (a), (b), or (c) of this subsection, the CLI provider is not required to have a mortgage broker license if the CLI provider does not receive any fee or other compensation or gain, directly or indirectly, for performing or facilitating the CLI service.

~~((12)) (10) When is a CLI provider required to have a mortgage broker license?~~

(a) If a CLI provider, who is not otherwise exempt from the licensing requirements of the act, performs any act that would otherwise require that they be licensed, including accepting a loan application, or submitting a loan application to a mortgage broker or lender, the CLI provider must obtain a mortgage broker or a loan originator license.

(b) Example - License required: A CLI provider uses an internet-based CLI system in which an abbreviated application is available for online completion by borrower. Once the borrower presses "submit," the information collected in the abbreviated application is forwarded to lender. The information contains the borrower's name, Social Security number, contact information, purpose of the loan sought (e.g., purchase, refinance, home equity, second mortgage), size of loan requested, annual salary, and a self-declaration of total unsecured debt. The electronic entries made by the borrower are then used by lender to electronically populate "form fields" and to initiate lender's loan application. A loan originator for the lender then follows up with borrower to complete the loan application. On or after closing, CLI provider receives a CLI service fee.

(c) Example - License not required: A CLI provider uses an internet-based CLI system in which various interactive informational tools are present, including an online "prequalification" tool. Based upon borrower's self-declared data input, borrower receives an indication of borrower's "maximum affordable loan amount," based upon standard norms of debt-to-income ratio and loan-to-value ratio, and also subject to verification of information, availability and suitability of loan products, and independent underwriting by any lender. The borrower indicates a desire for follow-up from one or more lenders by inputting personal contact information and pressing "submit." A number of lenders receive only the personal identity information of borrower and not any financial information. However, the CLI system has been programmed (and may be continuously reprogrammed) to route personal contact information to certain lenders based upon borrower's "prequalification" data input and the lending criteria of each of the lenders for whom CLI provider has a relationship. None of borrower's self-declared financial information is actually submitted to any of the lenders whose criteria match borrower's profile. Loan originators from lender A and lender B initiate contact with borrower based solely on borrower's contact information. Lender A and lender B, through their assigned loan originators, contact borrower with the object of beginning and hopefully completing a loan application. In this example, CLI provider has not taken a loan application.

~~((13))~~ **(11) Must the CLI provider provide any disclosures?**

(a) Yes. If a borrower using or accessing the CLI services pays for the CLI service, either directly or indirectly, the CLI provider must give the following disclosure:

(i) The amount of the fee the CLI provider charges the borrower for the service;

(ii) That the use of the CLI system is not required to obtain a residential mortgage loan; and

(iii) That the full range of loans available may not be listed on the CLI system, and different terms and conditions, including lower rates, may be available from others not listed on the system.

(b) Each CLI provider must give the borrower a copy of the disclosure form when the first CLI service is provided to the borrower. The form must be signed and dated by the borrower and a copy maintained as part of the CLI provider's books and records for at least two years.

~~((14))~~ **(12) Are CLI system providers subject to enforcement under the act?** Yes. CLI system providers are responsible for any violations of the act and will be subject to any applicable fines or penalties.

AMENDATORY SECTION (Amending WSR 09-01-156, filed 12/23/08, effective 1/23/09)

**WAC 208-660-155 Mortgage brokers—General. (1) May I originate residential mortgage loans in Washington without a license?** No. Mortgage brokers and loan originators must have a valid Washington license, or be exempt from licensing pursuant to RCW 19.146.020, in order to originate residential mortgage loans. There is no "one-time, one loan" exception.

**(2) May I originate a Washington residential mortgage loan using the license of an already licensed or exempt Washington mortgage broker and then split the proceeds with that mortgage broker?** No. Mortgage broker licenses may only be used by the person named on the license. Mortgage broker licenses may not be transferred, sold, traded, assigned, loaned, shared, or given to any other person. Two individually licensed mortgage brokers may originate a loan. Each licensee is itemized in the disclosures and is paid their proportionate share of fees in relation to the work provided at the loan closing. Federal laws may prohibit this cobrokering.

**(3) As a licensed mortgage broker, am I responsible for the actions of my employees and independent contractors?** Yes. You are responsible for any conduct violating the act or these rules by any person you employ, or engage as an independent contractor, to work in the business covered by your license.

**(4) Who at the licensed mortgage broker company is responsible for the licensee's compliance with the act and these rules?** The designated broker, principals, and owners with supervisory authority are responsible for the licensee's compliance with the act and these rules.

**(5) What is the nature of my relationship with the borrower?** You have a fiduciary relationship with the borrower. See RCW 19.146.095.

~~((Under what circumstances may a mortgage broker charge the borrower a fee, commission, or other compensation for services rendered by the mortgage broker in obtaining a loan for the borrower?))~~ **May I charge upfront broker fees when assisting the borrower in applying for a loan?** No. You may only charge the borrower a fee, commission, or other compensation for the preparation, negotiation, and brokering of a residential mortgage loan when the loan is closed on the terms and conditions agreed upon by you and the borrower ~~((and the mortgage broker))~~.

~~((Under what circumstances may a mortgage broker charge the borrower a fee, commission, or other type of compensation for services rendered?))~~ **May I charge fees when the loan does not close ~~((at all))~~, or does not close on the terms and conditions agreed upon by me and the borrower ~~((and the mortgage broker))~~?** ~~((A mortgage broker))~~ You may charge a fee, and may bring a suit for collection of the fee, not to exceed three hundred dollars, for ser-

vices rendered, for the preparation of documents, or for the transfer of documents in the borrower's file which were prepared for, or paid for by, the borrower if:

(a) ~~((The mortgage broker has))~~ You have obtained a written commitment from a lender on the same terms and conditions agreed upon by you and the borrower ~~((and the mortgage broker))~~; and

(b) The borrower fails to close on a loan through no fault of ~~((the mortgage broker))~~ yours; and

(c) The fee is not otherwise prohibited by the Truth in Lending Act.

**(8) As a mortgage broker, may I solicit or accept fees from a borrower in advance to pay third-party providers?** Yes. However, prior to accepting the funds, you must provide the borrower in writing a notice identifying the specific third-party provider goods and services the funds are to be used for. Additionally, you must not charge the borrower more for the third-party provider goods and services than the actual costs of the goods and services charged by the provider. Once you have the funds you must then:

(a) Deposit the funds in a trust account pursuant to the act and these rules (see WAC 208-660-410 on Trust accounting);

(b) Refund any fees collected for goods or services not provided.

**(9) What is a "written commitment from a lender on the same terms and conditions agreed upon by the borrower and mortgage broker"?** The written commitment is a written agreement or contract between the mortgage broker and lender containing mutually acceptable loan provisions and terms. The lender must be one with whom the mortgage broker maintains a written correspondent or loan brokerage agreement as required by RCW 19.146.040(3). The mutually acceptable loan provisions and terms must be the same terms and conditions set forth in the most recent good faith estimate signed by both the borrower and the mortgage broker.

**(10) ~~((What action must a mortgage broker take to activate a loan originator license? To activate a loan originator license, the licensed mortgage broker))~~ How do I sponsor a loan originator?** You must file a sponsorship request through the NMLSR.

**(11) What action must a mortgage broker take to terminate a working relationship with a loan originator?** The licensed mortgage broker must process the termination through the NMLSR.

**(12) When must I update my record in the NMLSR after I terminate employment with a loan originator?** You must process the termination through the NMLSR within five business days of the termination.

**(13) Are there any loan originator compensation models I am prohibited from using?** Yes. You are prohibited from using a compensation model for loan originators based on a loan's interest rate or other terms. You are not prohibited from basing compensation on the principal balance of a loan.

AMENDATORY SECTION (Amending WSR 09-01-156, filed 12/23/08, effective 1/23/09)

**WAC 208-660-163 Mortgage brokers—Licensing.**

**(1) How do I apply for a mortgage broker license?** Your application consists of an on-line filing through the NMLSR and Washington specific requirements provided directly to DFI. You must pay an application fee through the NMLSR ~~((system))~~.

(a) **Appoint a designated broker.** You must appoint a designated broker who meets the requirements of WAC 208-660-250.

(b) **Submit an application.** You must complete an on-line application ~~((in a form prescribed by the director))~~ through the NMLSR.

(c) **Pay the application and license fees.** You will have to pay application fees to cover the costs of processing the application. You must also pay a separate annual license fee. See WAC 208-660-550, Department fees and costs.

(d) **Prove your identity.** You must provide information about the identity of owners, principals, officers, and the designated broker, including fingerprints.

(e) **Provide a surety bond.** Mortgage brokers must have a surety bond ~~((of twenty to sixty thousand dollars depending on the average number of loan originators representing))~~ based upon the annual loan origination volume of the mortgage broker. See WAC 208-660-175 (1)(e).

**(2) What information will the department consider when deciding whether to approve a mortgage broker license application?** The department considers the financial responsibility, character, and general fitness of the applicant, principals, and the designated broker.

**(3) Why does the department consider financial responsibility, character, and general fitness before issuing a mortgage broker license?** One of the purposes of the act is to ensure that mortgage brokers and loan originators deal honestly and fairly with the public. Applicants, principals, and designated brokers who have demonstrated their financial responsibility, character, and general fitness to operate their businesses honestly, fairly, and efficiently are more likely to deal honestly and fairly with the public.

**(4) What specific information will the department consider to determine if the mortgage broker business will be operated honestly, fairly, and in compliance with applicable law?**

(a) Whether the applicant, licensee, or other person subject to the act has had any license, or any authorization to do business under any similar statute of this or any other state, suspended, ~~((revoked,))~~ or restricted within the prior five years.

(b) Whether the applicant ~~((licensee or other person subject to the act has been convicted of a gross misdemeanor involving dishonesty or financial misconduct, or a felony, within the prior seven years))~~ has ever had a license revoked under this chapter or any similar state statute, including a license for insurance, securities, consumer lending, or escrow.

(c) Whether the applicant, licensee, or other person subject to the act has been convicted of, or pled guilty or nolo contendere to, in a domestic, foreign, or military court to:

(i) A gross misdemeanor involving dishonesty or financial misconduct within the prior seven years;

(ii) A felony within the prior seven years; or

(iii) A felony that involved an act of fraud, dishonesty, breach of trust, or money laundering at any time preceding the date of application.

(d) Whether the licensee or other person subject to the act is, or has been, subject to a cease and desist order or an injunction issued pursuant to the act, or the Consumer Protection Act, or has been found through an administrative, civil, or criminal proceeding to have violated the provisions of the act or rules, or the Consumer Protection Act, chapter 19.86 RCW.

~~((d))~~ (e) Whether the director has filed a statement of charges, or there is an outstanding order by the director to cease and desist against the licensee or other person subject to the act.

~~((e))~~ (f) Whether there is documented evidence of serious or significant complaints filed against the licensee, or other person subject to the act, and the licensee or other person subject to the act has been notified of the complaints and been given the opportunity to respond.

~~((f))~~ (g) Whether the licensee has allowed the licensed mortgage broker business to deteriorate into a condition that would result in denial of a new application for a license.

~~((g))~~ (h) Whether the licensee or other person subject to the act has failed to comply with an order, directive, subpoena, or requirement of the director or director's designee, or with an assurance of discontinuance entered into with the director or director's designee.

~~((h))~~ (i) Whether the licensee or other person subject to the act has interfered with an investigation, or disciplinary proceeding by willful misrepresentation of facts before the director or director's designee, or by the use of threats or harassment against a client, witness, employee of the licensee, or representative of the director for the purpose of preventing them from discovering evidence for, or providing evidence in, any disciplinary proceeding or other legal action.

**(5) What will happen if my mortgage broker license application is incomplete?** ~~((The department will reject and return the entire application package to you with a notice identifying the incomplete, missing, or inaccurate information. You must follow the department's directions to correct the problems. You can then resubmit the application package.))~~ If your application is incomplete your file will be marked "pending-deficient" in the NMLSR. The department will either identify each deficiency or respond that there are multiple deficiencies and ask you to contact the department. You are responsible for reviewing your record and responding to each issue.

**(6) How do I withdraw my application for a mortgage broker license?** ~~((Send the department a written request, in a form prescribed by the department, to withdraw your mortgage broker license application.))~~ You may request to withdraw the application through the NMLSR.

**(7) When will the department consider my mortgage broker license application ~~((package))~~ abandoned?** ~~((If you do not respond to the department within ten business days from the date of the department's second request for information, your application is considered abandoned. You~~

~~may reapply by submitting a new application per subsection (1) of this section.))~~ If you do not respond as directed by the department's request for information and within fifteen business days, your license application is considered abandoned and you forfeit all fees paid. Failure to provide the requested information will not affect new applications filed after the abandonment. You may reapply by submitting a new application package and new application fee.

**(8) What are my rights if the director denies my application for a mortgage broker license?** You have the right to request an administrative hearing pursuant to the Administrative Procedure Act, chapter 34.05 RCW. To request a hearing, you must notify the department within twenty days from the date of the director's notice to you that your license application has been denied, that you wish to have a hearing. See also WAC 208-660-009.

Upon denial of your mortgage broker license application, and provided the department finds no unlicensed activity, the department will return your surety bond, and refund any remaining portion of the license fee that exceeds the department's actual cost to investigate the license ~~((fee and any unused portion of the application fee)).~~

**(9) What Washington law protects my rights when my application for a mortgage broker license is denied, or my mortgage broker license is suspended or revoked?** The Administrative Procedure Act, chapter 34.05 RCW, governs the proceedings for license application denials, cease and desist orders, license suspension or revocation, the imposition of civil penalties or other remedies ordered by the department, and any appeals or reviews of those actions. See also WAC 208-660-009.

**(10) May I advertise my business while I am waiting for my mortgage broker license application to be processed?** No. It is a violation of the act for nonlicensed, non-exempt mortgage brokers or loan originators to hold themselves out as mortgage brokers or loan originators in Washington.

**(11) May I originate Washington residential mortgage loans while waiting for my mortgage broker license application to be processed?** No. You may not originate loans prior to receiving your mortgage broker license.

**(12) How do I change information on my mortgage broker license?** You must file a license amendment application through the NMLSR. ~~((You must file the amendment application within thirty days of the change occurring.))~~ See also WAC 208-660-400.

**(13) When does a mortgage broker license expire?** The mortgage broker license expires annually. The expiration date is shown on the license. If the license is an interim license, it may expire in less than one year.

**(14) When may the department issue interim mortgage broker licenses?** To prevent an undue delay, the director may issue interim mortgage broker licenses, including branch office licenses, with a fixed expiration date. The license applicant must have substantially met the initial licensing requirements, as determined by the director, to receive an interim license.

~~((For purposes of this section, undue delay includes the adjustment of license expiration or renewal dates to coincide with the implementation of systems designed to assist in~~

~~licensing uniformity and provide data repositories of licensing information.)~~

One example of having substantially met the initial licensing requirements is: Submitting a complete application, paying all application fees, and the department having received and reviewed the result of the applicant's background check.

~~(15) ((May the department issue replacement licenses with an expiration date? Yes. In order to create and maintain a licensing system with expiration or renewal dates that are uniform, the department may issue new licenses with expiration dates to existing license holders. The new licenses will expire annually.~~

~~(16))~~ **How do I renew my mortgage broker license?**

(a) Before the license expiration date you must:

(i) File the mortgage broker annual report(~~(s)~~) and any other required notices, with the director. See WAC 208-660-400(~~(, Reporting requirements)~~).

(ii) Complete a renewal request through the NMLSR.

(iii) Show evidence that your designated broker completed the required annual continuing education.

~~((iii) Verify the surety bond is adequate for the average number of loan originators, including all locations.)~~

(iv) Pay the annual license assessment fee.

(b) The renewed license is valid for the term listed on the license or until surrendered, suspended, or revoked.

~~((17))~~ **(16) If I let my mortgage broker license expire must I apply to get a new license?** If you complete all the requirements for renewal ~~((within forty five days of the expiration date))~~ on or before February 28th each year, you may renew an expired license. However, if you renew your license ~~((during this forty five day period))~~ after the expiration, in addition to paying the annual assessment on your license, you must pay an additional fifty percent of your annual assessment. See subsection ~~((16))~~ **(15)** of this section for the license renewal requirements.

During this ~~((forty five day))~~ two-month period, your license is expired and you must not conduct any business under the act that requires a license until your license has been renewed.

~~((Any renewal requirements received by the department must be evidenced by either a United States Postal Service postmark or a department "date received" stamp within the forty five days.))~~ If you fail to comply with the renewal request requirements ~~((within forty five days))~~ by March 1st of each year, you must apply for a new license.

~~((18))~~ **(17) May I still conduct my mortgage broker business if my mortgage broker license has expired?** No. If your mortgage broker license expires, you must not conduct any business under the act that requires a license until you renew your license.

~~((19))~~ **(18) What should I do if I wish to close my mortgage broker business?** You may surrender the mortgage broker license by ~~((notifying the department, in a form prescribed by the department, of your intention to stop doing mortgage loan business in Washington))~~ submitting a surrender request through the NMLSR and submitting a completed departmental closure form. Surrendering your license does not change your civil or criminal liability, or your liability for any administrative actions arising from any acts or omissions

occurring before you surrender your license. Contact the Washington department of revenue to find out how to handle any unclaimed funds in your trust account.

~~((20))~~ **(19) May I transfer, sell, trade, assign, loan, share, or give my mortgage broker license to another person or company?** No. A mortgage broker license authorizes only the person named on the license to conduct the business at the location listed on the license. See also WAC 208-660-155(2).

~~((21))~~ **(20) Must I display my mortgage broker license?** Yes. Your mortgage broker license must be prominently displayed at the licensed location.

AMENDATORY SECTION (Amending WSR 06-23-137, filed 11/21/06, effective 1/1/07)

**WAC 208-660-175 Mortgage brokers—Surety bond.**  
**(1) What are the surety bond requirements for licensed mortgage brokers?**

(a) Mortgage brokers must at all times have a valid surety bond on file with the director. The surety bond must be provided on a form prescribed by the department.

(b) The surety bond amount must be ~~((between twenty thousand dollars and sixty thousand dollars depending on the annual average number of loan originators representing the mortgage broker))~~ based upon the annual loan origination volume of the licensee in the state of Washington.

(c) When the mortgage broker initially applies for a license, the dollar amount of the surety bond must be ~~((sufficient to cover the number of licensed loan originators you intend to employ in your first year of business))~~ a minimum of twenty thousand dollars. Thereafter, by March 31st of each year, you must determine your required bond amount based on loan origination volume and provide DFI with proof of having an adequate bond.

(d) The surety bond must list the ~~((full name and any trade or doing business as names used by the))~~ mortgage broker's full name, unified business identifier (UBI), and NMLSR unique identifier. ~~((The surety bond must list the licensee's main physical address including street number, street name and direction, suite number, city, county, and state.))~~

(e) The surety bond must be signed by a principal of the mortgage broker as well as an authorized representative of the insurance company listed as surety. The power-of-attorney must identify the signing representative as authorized by the insurance company. The insurance company must include their surety bond number and seal on the surety bond form.

The following chart shows the surety bond amount required for the annual ~~((average number of loan originators))~~ loan origination volume of the licensee in the state of Washington:

<b>(Average Number of Loan Originators</b>	<b>Minimum Required Bond Amount</b>
up to 3.0	\$20,000
more than 3.0, up to 6.0	\$30,000
more than 6.0, up to 9.0	\$40,000
more than 9.0, up to 15.0	\$50,000
more than 15.0	\$60,000

~~(2) May I provide security in a form other than a surety bond?~~ No. Beginning January 1, 2007, the director will not accept an alternative to a surety bond.)

<u>Loan Volume in Millions</u>	<u>Bond Amount</u>
<u>\$40+</u>	<u>\$60,000</u>
<u>\$20 to \$40</u>	<u>\$40,000</u>
<u>\$0 to \$20</u>	<u>\$20,000</u>

~~((3))~~ **(2) Who provides mortgage broker surety bonds?** To purchase a surety bond, contact your insurance broker. A list of insurance companies that underwrite Washington surety bonds in Washington is available from the Washington state office of the insurance commissioner's web site.

~~((4))~~ **(3) What do I do with the surety bond once I receive it from my insurance company?** You must sign the original surety bond(~~-Then~~) and include the surety bond and the attached power-of-attorney with your license application package.

~~((5))~~ **(4) What happens to my mortgage broker license if my surety bond is canceled?** Failure to maintain a surety bond is a violation of the act and may result in an enforcement action against you.

~~((6))~~ **(5) May I change surety bond companies?** Yes. You may change your insurance provider at any time. Your current insurance company will issue a cancellation notice for your existing surety bond. The cancellation notice may be effective no less than thirty days following the director's receipt of the cancellation notice.

Prior to the cancellation date of the existing surety bond, you must have on file with the department a replacement surety bond. The replacement surety bond must be in effect on or before the cancellation date of the prior surety bond.

~~((7))~~ **(6) Why must I carry a surety bond to have a mortgage broker license?** The surety bond protects the state and any persons who suffer loss by reason of violations of any provision of the act or these rules by ~~(the licensee, its)~~ you or your employees(;) or independent contractors.

~~((8))~~ **(7) Who may make a claim against a licensed mortgage broker's surety bond?** The director, or any person, including a third-party provider, who has been injured by a violation of the act, may make a claim against a bond.

~~((9))~~ **(8) How may I make a claim against a licensed mortgage broker's surety bond?** The department can provide you with the name of a licensed mortgage broker's surety bond provider. Contact the surety bond company and follow its required procedures to make your claim.

~~((10) How may I make a claim against a certificate of deposit, an irrevocable letter of credit, or other instrument that the director has permitted to be filed instead of a surety bond?~~ File your claim against a certificate of deposit, an irrevocable letter of credit, or other instrument directly with the department, in a form prescribed by the department. After January 1, 2007, the department will only accept surety bonds; any claims arising over violations occurring after January 1, 2007, will be against a bond.

~~((11))~~ **(9) How long does the bond claim procedure take?** The time to complete a bond claim may vary among bonding companies. If the claimant is not a borrower, final

judgment will not be entered prior to one hundred eighty days after the claim is filed.

~~((12))~~ **(10) When must I file a bond claim?** A bond claim must be filed within one year of the date of the act that causes the claim.

NEW SECTION

**WAC 208-660-176 Mortgage brokers—Recovery fund in lieu of surety bond.** **(1) What if the surety bond required in WAC 208-660-175 is not reasonably available in the insurance market?** If the director determines that the bond required is not reasonably available due to the insurance market or other product availability issue, the director must waive the requirements for the bond.

**(2) If a recovery fund is created, how will it be funded?** All licensees will pay a fee at application and renewal, in addition to all license application fees, through the NMLSR, to fund the recovery fund.

**(3) How much will the recovery fund fees be?**

- (a) Two hundred fifty dollars for the main office location;
- (b) One hundred fifty dollars for each branch office; and
- (c) One hundred dollars for each mortgage loan originator.

**(4) Will the fund have a cap or maximum?** After the fund has been in existence for three years, and periodically thereafter, the director may determine the maximum fund amount needed based upon claims made.

**(5) What happens to any interest that accrues on the mortgage recovery fund balance?** All interest that accrues in the fund will be added to the balance of the fund.

**(6) Can the department use any of the recovery fund money?** Yes. On an annual basis the department may apply up to fifty thousand dollars to fund the department's expenses in administering the mortgage recovery fund.

**(7) What is the procedure for recovery from the fund?**

(a) A claimant must obtain a money judgment from a superior court that includes findings of violations of this act against a mortgage broker or mortgage loan originator.

(b) The final money judgment must be obtained after January 1, 2010, after execution has been returned unsatisfied and the judgment has been recorded.

(c) The person in (a) of this subsection must file a verified claim with the court in which the judgment was entered, and on twenty days' written notice to the director and to the judgment debtor, may apply to the court for an order directing payment from the mortgage recovery fund of any unpaid amount on such judgment.

(d) After giving notice and the opportunity for a hearing to the person seeking recovery, to the judgment debtor and to the department, the court may enter an order requiring the director to pay from the mortgage recovery fund the amount the court finds payable on the claim, pursuant to and in accordance with the limitations contained in this section, if the court is satisfied as to the proof of all matters required to be shown under subsection (a) of this section, and that the person seeking recovery from the mortgage recovery fund has satisfied all requirements of this section.

(e) If the court finds that the aggregate amount of claims against a mortgage broker or mortgage loan originator exceeds the limits set forth in WAC 208-660-175, the court must reduce proportionately the amount the court finds payable on the claim.

(f) When the director receives notice that a hearing is scheduled under this section, the director may enter an appearance, file a response, appear at the hearing or take any other appropriate action as he or she deems necessary to protect the mortgage recovery fund from spurious or unjust claims and to ensure compliance with the requirements for recovery under this section.

(g) The department must provide the court with information concerning the mortgage recovery fund necessary to enable the court to carry out its duties under this section.

**(8) What must a person show at the hearing on the recovery fund claim?** The person seeking recovery from the mortgage recovery fund must show:

(a) That the judgment has not been discharged in bankruptcy and is based on facts allowing recovery under the act;

(b) That the person is not a spouse of the judgment debtor, or the personal representative of the spouse;

(c) That the person is not a mortgage broker or mortgage loan originator as defined by this chapter who is seeking to recover any compensation regarding the mortgage loan transaction which is the subject of the money judgment upon which a claim against the mortgage recovery fund is based; and

(d) That, based on the best available information, the judgment debtor lacks sufficient nonexempt assets in this or any state to satisfy the judgment.

**(9) What may recovery funds obtained be used for?**

(a) Any recovery on the money judgment received by the judgment creditor before payment from the mortgage recovery fund must be applied by the judgment creditor to reduce the judgment creditor's actual damages which were awarded in the judgment.

(b) A recovery from the fund will not include punitive damages awarded by a court.

**(10) What is the statute of limitations for a claim from the recovery fund?** A verified claim against the recovery fund must be filed within one year of the date of termination of all court proceedings concerning the judgment, including appeals.

**(11) What types of claims will the fund award money on?**

(a) The fund will be used to reimburse persons awarded actual damages resulting from acts constituting violations of the act by a mortgage broker or mortgage loan originator who was licensed, or required to be licensed, under this chapter at the time that the act was committed.

(b) Payments from the mortgage recovery fund may not be made to:

(i) Any licensee whose acts were found by a court to be violations of this chapter and a basis of the court's award of a money judgment to a person injured by such violations;

(ii) Any person who acquires a mortgage loan where acts associated with the origination of such loan are found by a court to be violations of this chapter and a basis for a judgment obtained by a person injured by such violations; or

(iii) The spouse, the personal representative of the spouse of the judgment debtor or the personal representative of the judgment debtor.

**(12) Will the department revoke my license if a claim is made against the recovery fund based on my actions?**

(a) The director may revoke a license issued under this chapter if the director is required by court order under this section to make a payment from the mortgage recovery fund based on a money judgment that includes findings of violations of this chapter by such licensee.

(b) A person whose license has been revoked under this subsection is not eligible to be considered for the issuance of a new license under this chapter until the person has repaid in full, plus interest at the current legal rate, the amount paid from the mortgage recovery fund resulting from that person's violation of this chapter.

(c) This section does not limit the authority of the director to take disciplinary action against a licensee under this chapter for a violation of this chapter or of rules promulgated or orders issued pursuant to this chapter. The repayment in full to the mortgage recovery fund of all obligations of a licensee under this chapter does not nullify or modify the effect of any other disciplinary proceeding brought under this chapter.

AMENDATORY SECTION (Amending WSR 08-05-126, filed 2/20/08, effective 3/22/08)

**WAC 208-660-180 Mortgage brokers—Main office.**

**(1) Must a licensed mortgage broker have a designated broker?** Yes. Licensed mortgage broker companies must have an approved designated broker at all times.

**(2) How many designated brokers may a mortgage broker have?** ~~((The mortgage broker must have a qualified designated broker at all times.))~~ The mortgage broker may appoint only one individual to be the designated broker at any given time. The designated broker need not be a principal of the licensee.

It is a prudent business practice to have more than one qualified individual working for the licensee who could be appointed as the designated broker.

**(3) If my designated broker leaves, may I continue to operate my mortgage broker business?** Yes. You may continue to operate your mortgage broker business. However, you must notify the department within five business days of the loss of or change of your designated broker. You must then replace the designated broker within thirty days of the loss or change of the designated broker. If you need more than thirty days to replace the designated broker, you must seek approval from the department. Failure to replace your designated broker, or receive approval from the director for an extension, may result in an enforcement action against you.

**(4) What must I do to replace my designated broker?** You must apply ~~(, in a form prescribed by the department,)~~ through the NMLSR for approval of the new designated broker. The new designated broker must meet the requirements of WAC 208-660-250(1). You and the new designated broker ~~((and the licensee including those individuals to whom~~

the license was granted.) must meet the good standing requirements of WAC 208-660-007.

(5) **What must I do if I sell all or part of my mortgage broker company?** See WAC 208-660-400(13).

(6) **After my mortgage broker license is approved, may I change my business structure?** Yes. ~~((You must follow the notification requirements of WAC 208-660-400(12).))~~ See WAC 208-660-400 (7)(a)(iv).

(7) **May a licensed mortgage broker share an office with a licensed real estate broker?** Yes. A licensed mortgage broker may share an office with a licensed real estate broker. The mortgage broker location must be licensed as a main or branch mortgage broker office.

(8) **If a licensed mortgage broker shares an office with a licensed real estate broker, what must the mortgage broker do to notify the public that the office is shared?** The licensed mortgage broker must clearly identify the mortgage broker business as separate from the real estate business to the public on any signage, advertising, or other material identifying the businesses.

(9) **May I add a trade name (or "DBA") to my mortgage broker license?** Yes. You may add a trade or "DBA" name to the mortgage broker license if you first apply to the department, in a form prescribed by the department, and receive department approval. When the department has approved the trade name, you must conduct business under that trade name in at least one of the two following ways:

(a) Use your license name together with the trade name; or

(b) Use your mortgage broker license number together with the trade name.

(10) **May the department deny an application for a proposed DBA name because it is similar to an existing licensee name?** Yes. The director may deny an application for a proposed DBA name if the proposed DBA name is similar to a currently existing licensee name.

(11) **May I conduct my mortgage broker business from more than one location?** Yes. You may establish one or more branch offices under your license. See WAC 208-660-195 for information on licensing branch offices.

AMENDATORY SECTION (Amending WSR 09-01-156, filed 12/23/08, effective 1/23/09)

**WAC 208-660-195 Mortgage brokers—Branch offices.** (1) **May I open branch offices under my mortgage broker license?** Yes. A licensed mortgage broker may submit license application(s) to the department through the NMLSR to establish branch office(s) under the existing mortgage broker license. Each branch office must be licensed and must pay an annual license fee. See WAC 208-660-550, Department fees and costs.

(2) **If my branch offices are under separate ownership, does that limit my liability for their activities?** No. Licensed mortgage brokers are responsible for the activity and violations at their branch offices regardless of the structure or label given the branch offices. Licensure of a branch office creates a direct line of responsibility from the main office to the branch.

(3) **If my branch offices are under separate ownership, what level of supervision must I maintain?** Because branch offices, regardless of their business structure, are not independent from your license and surety bond, you are responsible for the conduct of anyone conducting business under your license. You must have a written supervisory plan. The details of the plan, and how you implement the plan for your branch offices, must take into account the number of branch offices, their location, and the number of individuals working at the branch offices. You must maintain your written supervisory plan as part of your business books and records.

(4) **How do I apply for a mortgage broker branch office license?** As the licensed mortgage broker, you must apply for a branch office license through the NMLSR and receive ~~((a branch office license))~~ approval from the department before operating from any location other than your licensed location. You must be in good standing ~~((and may need to increase the amount of the surety bond))~~. You will have to pay application and annual assessment fees for the branch office(s). See WAC 208-660-550, Department fees and costs.

(5) **What does the department consider when reviewing an application for a branch office license?** The department considers:

(a) Whether the mortgage broker is in good standing. See WAC 208-660-007.

(b) ~~((Whether the amount of the mortgage broker's surety bond is sufficient to cover the loan originators that will be working from the branch office.~~

~~((c))~~ Whether the physical address listed in the application can be verified as a branch office location.

(6) **Must I display my branch office license?** Yes. Your mortgage broker branch office license must be prominently displayed in the branch office.

(7) **If I am an internet company, how do I display my license?** You must display your license information, as it appears on your license, including any or all business names, and the license number, on your web site. The information must also include a list of the states in which you are licensed.

(8) **How do I change information on my mortgage broker branch office license?** You must file a license amendment through the NMLSR ~~((within thirty days of))~~ at least ten days prior to the change occurring.

(9) **Does my branch office license expire?** The license expires annually. The expiration date is shown on the license. If the license is an interim license, it may expire in less than one year.

(10) **How do I renew my mortgage broker branch office license?**

(a) Before the expiration date, the licensed mortgage broker must~~((~~

~~((i))~~ ~~Verify the surety bond is adequate for the licensee's average number of loan originators.~~

~~((ii))~~ submit ((a)) an on-line renewal and pay the branch office annual assessment fee through the NMLSR.

(b) The renewed mortgage broker branch office license is valid for the term listed on the license or until surrendered, suspended, or revoked.

(11) **If my mortgage broker branch office license expires, must I apply for a new license?** If you complete all the requirements for renewal (~~within forty-five days of the expiration date~~) by February 28th, each year, you may renew an existing license. However, if you renew your license during this (~~forty-five day~~) two-month period, in addition to paying the annual assessment on your branch office license, you must pay an additional fifty percent of your annual assessment for that branch. See subsection (10) of this section for the license renewal requirements.

During this (~~forty-five day~~) two-month period, your license is expired and you must not conduct any business under the act that requires a license until your license has been renewed.

(~~Any renewal requirements received by the department must be evidenced by either a postmark or "date received" stamp within the forty-five days.~~) If you fail to comply with the renewal request requirements (~~within forty-five days~~) by February 28th, each year, you must apply for a new license.

(12) **If my mortgage broker branch office license has expired, may I still conduct my mortgage broker business from that location?** No. Once the mortgage broker branch office license has expired, you must not conduct any business under the act that requires a license until you renew your license.

(13) **If my mortgage broker main office license expires, may I still conduct my mortgage broker business from a branch office?** No. Once the mortgage broker main office license expires, you must not conduct any business under the act that requires a license from any location until you renew the main office license.

(14) **May I add a trade name (or "DBA") to my mortgage broker branch office license?** Yes. You may add a trade name, or "DBA" name, to the mortgage broker branch office license if you first apply to the department, in a form prescribed by the director, and receive department approval. The branch office trade name must at all times be identified as connected with the mortgage broker's license name as it appears on the mortgage broker license. When the department has approved the trade name, you must conduct business under that trade name in at least one of the two following ways:

(a) Use your license name together with the branch office trade name; or

(b) Use the branch office trade name and mortgage broker branch office license number together.

(c) See WAC 208-660-180(10).

(15) **How must I identify my mortgage broker branch office(s)?** The branch office must be prominently identified as a branch or division of the licensed mortgage broker so as not to appear to be an independent enterprise.

(16) **Does my branch office have to be a physical location?** Yes. The physical location may be at a commercial or residential address but does not have to be in Washington. See WAC 208-660-420, Out-of-state mortgage brokers and loan originators.

(17) **Must I have a branch manager?** No. Although you may appoint one, the act does not require a branch man-

ager. (~~The licensee~~) You and the designated broker are responsible for the business conducted at all locations.

(18) **If I appoint a branch manager, must he or she be licensed?** If the branch manager performs any of the functions of a mortgage broker or loan originator, he or she must be licensed. If they do not perform those functions, they must not be paid a commission or salary based upon the number of transactions closed.

(19) **Must I have a designated broker at each branch?** No. (~~The licensed mortgage broker~~) You may have only one designated broker who is responsible for the mortgage broker business at all locations.

**(20) If I want to move my licensed company under the sponsorship of another mortgage broker, what must be completed before the licensed loan originators can start transacting business under the sponsorship of the other mortgage broker?** The loan originators may begin doing business when the other mortgage broker has filed for approval of a new branch office with the NMLSR, has sponsored each of the licensed loan originators through the NMLSR and you have filed the trust account paperwork with the department, you may transact business under the new mortgage broker for up to thirty days without a new license.

AMENDATORY SECTION (Amending WSR 09-01-156, filed 12/23/08, effective 1/23/09)

**WAC 208-660-250 Designated brokers—General. (1) How do I become a designated broker?**

(a) Be eighteen years or older.

(b) Have a high school diploma, an equivalent to a high school diploma, or two years experience in the industry in addition to the experience required in (e) of this subsection. The experience must meet the criteria in (e) of this subsection.

(c) You must pass the Washington designated broker test. See WAC 208-660-260, Designated brokers—Testing. If you will originate loans, you must also take and pass the loan originator national and Washington specific tests and apply for and receive a loan originator license.

(d) You must be appointed to the designated broker position by the licensed mortgage broker through an application and approval process with the department and the NMLSR.

(e) You must have a minimum of two years experience lending or originating residential mortgage loans.

(i) The work experience must be in one or more of the following, within the last five years:

(A) As a mortgage broker or designated broker of a mortgage broker for a minimum of two years; or

(B) As a mortgage banker, responsible individual, or manager of a mortgage banking business; or

(C) As a loan originator with responsibility primarily for originating loans secured by a lien on residential real estate; or

(D) As a branch manager of a lender with responsibility primarily for loans secured by a lien on residential real estate; or

(E) As a manager or supervisor of mortgage loan originators; or

(F) As a mortgage processor, underwriter, or quality control professional; or

(G) As a regulator, examiner, investigator, compliance expert, or auditor, whose primary function is the review of mortgage companies and their compliance processes, and the department determines your background is sufficient.

(ii) The work experience must be evidenced by a detailed work history and:

(A) W-2 Federal Income Tax Reporting Forms in the designated broker appointee's name; or

(B) 1099 Federal Income Tax Reporting Forms in the designated broker appointee's name; or

(C) Corporate tax returns signed by the designated broker appointee or corporate officer for a licensed or exempt residential mortgage company; or

(f) In addition to supplying the application information, both you and the licensed mortgage broker must be in good standing with the department ~~(-); or~~

(g) ~~(Financial background.~~

~~(+)) Demonstrate financial responsibility, character and general fitness.~~

**(2) How do I demonstrate financial responsibility?**

The department will review your credit history to determine if you have outstanding judgments (except judgments involving medical expenses); current outstanding tax liens or other government liens and filings; foreclosures within the last three years; or a pattern of seriously delinquent accounts within the past three years.

Specifically, you are not eligible to become a designated broker if you have one hundred thousand dollars or more of tax liens against you at the time of appointment by a licensed mortgage broker.

~~((ii) You may not be eligible to become a designated broker if your financial background during the two years prior to the appointment application shows a history of unpaid debts.~~

~~(2))~~ **(3) May I work as the designated broker for more than one company?** Yes. You may be the designated broker for more than one licensee.

~~((3))~~ **(4) As the designated broker, must ~~(the designated broker)~~ I hold a loan originator's license?** Yes. ~~((A designated broker approved by the department will be given a loan originator license if they do not already have one. If the designated broker already has a loan originator license, that license will be added to the licensed mortgage broker's list of loan originators.~~

~~(4))~~ If you perform any of the functions of a loan originator, you must apply for and receive a loan originator license.

**(5) May I work as the designated broker for one licensee and a licensed loan originator for another licensee?** Yes. If you want to originate loans for a mortgage broker different from the mortgage broker for whom you are the designated broker, you must ~~((apply to the department for an additional loan originator license))~~ amend your license information through the NMLSR to reflect the new relationship and the second company must sponsor you. Federal law may prohibit a mortgagee from hiring employees who work for more than one mortgage broker or who have multiple employers.

~~((5))~~ **(6) May a designated broker hire employees or independent contractors apart from the employees or independent contractors working for the mortgage broker licensee?** No. Only the mortgage broker licensee can have employees or independent contractors. This prohibition against a designated broker having employees or independent contractors includes clerical or administrative personnel whose work is related to the mortgage broker licensee's activities, and loan processors.

~~((6))~~ **(7) As a designated broker, what reporting requirements must I comply with?** See WAC 208-660-400, Reporting requirements.

AMENDATORY SECTION (Amending WSR 09-01-156, filed 12/23/08, effective 1/23/09)

**WAC 208-660-260 Designated brokers—Testing. (1) Must I pass a test prior to becoming a designated broker?** Yes. You must take and pass ~~((a test prior to becoming a designated broker))~~ the Washington designated broker test. See subsection (3) of this section if you are going to originate loans. See WAC 208-660-250(1) if you have never been a designated broker.

**(2) If I am currently a designated broker, will I have to take the test again?** You will only have to ~~((take the designated broker test again))~~ retake tests if you stop working ((as a designated broker)) in the industry for five years or longer.

**(3) If I am currently a designated broker that originates loans ~~(-)~~, will I have to take the loan originator test and obtain a loan originator license?** ~~((No. The department will provide you with a loan originator license automatically because you are a designated broker. Your loan originator license will renew in conjunction with the renewal of the mortgage broker main office you work with. If you stop acting as a designated broker, your loan originator license will become inactive. See WAC 208-660-350(12). You can reactivate the license by becoming affiliated with the same or another licensed mortgage broker as a loan originator. If you do not renew your license as provided in WAC 208-660-350(19), the license will expire.))~~ Yes. You must take and pass the national and state NMLSR tests and obtain the necessary preclicensing education prior to acting as a loan originator.

**(4) Where can I get information about the designated broker test?** ~~((The department will publish the names and contact information of approved testing providers on the department web site.))~~ Go to the department's web site for information about the designated broker test: [http://www.dfi.wa.gov/cs/mb\\_testing.htm](http://www.dfi.wa.gov/cs/mb_testing.htm).

**(5) What topics may be covered in the designated broker test?** See WAC 208-660-600(3).

**(6) How soon after failing the designated broker test may I take it again?** After failing the test three consecutive times you must wait at least fourteen days before taking the test again.

AMENDATORY SECTION (Amending WSR 06-23-137, filed 11/21/06, effective 1/1/07)

**WAC 208-660-270 Designated brokers—Continuing education.** (1) **Where can I get information about continuing education?** The ~~((department))~~ NMLSR will publish a list of approved courses and ~~((approved professional organizations offering courses of education))~~ providers. The ~~((course))~~ providers ~~((and professional organizations))~~ will have detailed information about the continuing education courses they offer. The department will accept the continuing education courses approved by the NMLSR for designated broker continuing education.

(2) **As a designated broker, how many ~~((clock))~~ hours of continuing education must I have?**

(a) The continuing education requirement for designated brokers ~~((will be in the form of approved courses))~~ is nine hours. ~~((While the individual clock hours may vary, you must complete three courses, of no less than three hours each, annually.))~~

(b) You ~~((may))~~ will receive one credit ~~((for one course))~~ hour by attending ~~((three))~~ one or more mortgage broker commission meeting(s).

(3) **As a designated broker, may I take the same approved course multiple times to meet my annual continuing education requirement?** No. You may not take the same approved course in the same or successive years to meet the annual requirements for continuing education.

(4) **If I teach ~~((an approved))~~ a continuing education course approved by the NMLSR, may I use my course as credit toward my annual continuing education requirement?** Yes. As an instructor of ~~((an))~~ a NMLSR approved continuing education course, you may receive credit for your annually required designated broker continuing education courses from the course(s) you teach. You will receive credit at the rate of one course taught equaling two continuing education course credits.

(5) ~~((How do I receive credit toward my continuing education requirement when I teach an approved continuing education course?~~ When you renew your license and seek to get credit for continuing education, submit your approved continuing education course material for the course(s) you taught during the year. The department will credit you with completing two continuing education courses for each one approved course you teach.

~~((6))~~ **Is ethics a required continuing education ~~((course))~~ topic for designated brokers?** Yes. You must take ~~((an))~~ two hours of ethics ~~((continuing education course in your first))~~ each year ~~((of acting))~~ you act as a designated broker. ~~((However, if you teach an approved continuing education course on ethics during your first year working as a designated broker, teaching that course will satisfy your ethics continuing education requirement.~~

(7) **As a designated broker, if I take a continuing education course approved for multiple jurisdictions, will the department accept it as part of my continuing education requirement?** If any state has continuing education requirements or standards at least as stringent as Washington's, that state's notification of satisfactory completion of continuing education may be approved by the department as meeting the

~~continuing education requirements under the act and these rules.~~

~~((8))~~ The ethics course must include the topics of fraud, consumer protection, and fair lending. You must not take the same course in the same or successive years.

(6) **If I accumulate more than the required designated broker continuing education course credits during a year, may I carry-over the excess credit to the next year?** No. Continuing education credits only apply to the year in which they are taken.

~~((9))~~ (7) **How do I provide the department with proof of the continuing education courses I have completed?**

(a) For S.A.F.E. required courses, the course provider will report your continuing education to the NMLSR and DFI will have access to that information.

(b) For Washington specific courses, you must provide the department with proof of your satisfactory completion of the course, in a form prescribed by the department.

~~((10))~~ (8) **If I fail to complete the required continuing education, what happens to my license?** When your license expires, the department will not renew it and you cannot continue conducting any business under the act. See WAC 208-660-350(20) to renew your license within ~~((forty-five days of it expiring.~~

~~((11))~~ ~~If the department reissues my license and the new expiration date does not coincide with the prior annual assessment period, will the department still give me credit for the continuing education courses I have taken in preparation for meeting the old annual assessment date?~~ Yes. The department will give you credit for the continuing education courses you have taken. You will not lose any credits due to the department's license expiration date adjustment) two months after expiration.

AMENDATORY SECTION (Amending WSR 09-01-156, filed 12/23/08, effective 1/23/09)

**WAC 208-660-300 Loan originators—General.** (1) **May I work as a loan originator for more than one mortgage broker?** Yes.

(2) **How do I obtain approval to work for more than one mortgage broker?** Using the NMLSR, the company will submit a sponsorship request. The department will notify you ~~((when the relationship is approved. The department will notify you))~~ and others associated with your license upon approval of your request. The NMLSR will charge a fee for the additional relationship. See also WAC 208-660-550.

(3) **If I work as a loan originator for more than one mortgage broker, may I take an application from a borrower without identifying one specific mortgage broker?** No. You may take an application for only one mortgage broker at a time in any one transaction. Prior to presenting yourself to a specific borrower as licensed to originate mortgage loans, you must state who you represent. You must clearly identify the mortgage broker by name and address on the application, on all disclosures, authorization forms, and other material provided to the borrower. There must be no confusion by the borrower as to which mortgage broker you are representing at any given time.

(4) **May I work from any location when I am a licensed loan originator?** No. You can only work from a licensed location. The licensed location can be the main company office, or any licensed branch.

(5) **May a loan originator transfer loan files to a mortgage broker other than the mortgage broker the loan originator is associated with?** No. Only the borrower may submit a written request to the licensed mortgage broker to transmit the borrower's selected information to another mortgage broker or lender. The licensed mortgage broker must transmit the information within five business days after receiving the borrower's written request.

(6) **Who owns loan files?** Loan files are the property of the mortgage broker named on the loan application and the mortgage broker must keep the original files and documents. ~~((The licensed mortgage broker must transmit the information within five business days after receiving the borrower's written request.~~

~~((6))~~ (7) **May I act as a loan originator and a real estate agent in the same transaction or for the same borrower in different transactions?** Yes, you may be both the loan originator and real estate broker or salesperson in the same transaction, or for the same borrower in different transactions. When either of these occur, you must provide to the borrower the following written disclosure:

"THIS IS TO GIVE YOU NOTICE THAT I OR ONE OF MY ASSOCIATES HAVE/HAS ACTED AS A REAL ESTATE BROKER OR SALESPERSON REPRESENTING THE BUYER/SELLER IN THE SALE OF THIS PROPERTY TO YOU. I AM ALSO A LOAN ORIGINATOR AND WOULD LIKE TO PROVIDE MORTGAGE SERVICES TO YOU IN CONNECTION WITH YOUR LOAN TO PURCHASE THE PROPERTY.

YOU ARE NOT REQUIRED TO USE ME AS A LOAN ORIGINATOR IN CONNECTION WITH THIS TRANSACTION. YOU ARE FREE TO COMPARISON SHOP WITH OTHER MORTGAGE BROKERS, AND LENDERS, AND TO SELECT ANY MORTGAGE BROKER, OR LENDER OF YOUR CHOOSING."

~~((7))~~ (8) **As a loan originator, may I be paid directly by the borrower for my services?** No. As a loan originator, you may not be paid any compensation or fees directly by the borrower.

~~((8))~~ (9) **May a loan originator charge the borrower a fee, commission, or other compensation for preparing, negotiating, or brokering a loan for the borrower?** No. A loan originator may not charge the borrower a fee, commission, or compensation of any kind in connection with the preparation, negotiation, and brokering of a residential mortgage loan.

~~((9))~~ (10) **As a loan originator, may I be paid my portion of the mortgage broker fee directly from the loan closing?**

(a) Yes. If authorized in the mortgage broker's demand, the settlement service provider may pay your portion of the mortgage broker fee directly to you; provided however, that the HUD-1 or equivalent settlement statement has the following information:

(i) Your name as it appears on your loan originator license;

(ii) Your loan originator license ~~((number))~~ unique identifier; and

(iii) The amount to be paid to you by the settlement service provider.

(b) You must provide a copy of the HUD-1 or equivalent settlement statement to the licensed mortgage broker within twenty-four hours of your receipt of funds from closing.

~~((10))~~ (11) **May a loan originator bring a lawsuit against a borrower for the collection of compensation?** No. Only licensed mortgage brokers, or exempt mortgage brokers, may bring collection actions against borrowers to collect compensation.

~~((11))~~ (12) **May I work as a licensed loan originator for a mortgage broker located out of the state?** Yes. You may originate loans for any mortgage broker ~~((you are affiliated with))~~ who sponsors you and who is licensed under Washington law.

~~((12))~~ (13) **May a licensed loan originator hire employees or independent contractors to assist in the mortgage broker licensee's activities?** No. Only the mortgage broker licensee can have employees or independent contractors. This prohibition against loan originators hiring employees or independent contractors includes clerical or administrative personnel whose work is related to the mortgage broker licensee's activities, and loan processors.

~~((13))~~ (14) **Do loan processors have to be licensed as loan originators?** W-2 employee loan processors are not required to have a loan originator license provided they work under the supervision and instruction of a licensed or exempt mortgage broker and do not hold themselves out as able to conduct the activities of a mortgage broker or loan originator. Independent contractor loan processors must be licensed as a mortgage broker, mortgage broker branch office, or loan originator.

~~((14))~~ (15) **May loan processors work on files from an unlicensed location?** A loan processor may work on loan files from an unlicensed location under the following circumstances:

(a) The loan files are in electronic format and the loan processor accesses the files directly from the licensed mortgage broker's main computer system. The loan processor may not maintain any electronic files on any computer system other than the system belonging to the licensed mortgage broker.

(b) The loan processor does not conduct any of the activities of a licensed loan originator.

(c) The licensed mortgage broker must have safeguards in place for the computer system that safeguards borrower information.

AMENDATORY SECTION (Amending WSR 09-12-111, filed 6/2/09, effective 7/3/09)

**WAC 208-660-350 Loan originators—Licensing.** (1) **How do I apply for a loan originator license? Your application consists of an on-line filing through the NMLSR and Washington specific requirements provided directly to DFI. You must pay an application fee through the NMLSR system. You also must:**

(a) **Be eighteen years or older.**

(b) **Have a high school diploma, an equivalent to a high school diploma, or three years experience in the**

**industry. The experience must meet the criteria in WAC 208-660-250 (1)(e)(i) and (ii).**

(c) **Pass a licensing test.** You must take and pass ~~((a test that assesses your knowledge of the mortgage business and related regulations))~~ the national and state components of the NMLSR tests. See WAC 208-660-360, Loan originators—Testing.

(d) **Submit an application.** You must ~~((complete))~~ submit an on-line application ((in a form prescribed by the director)) through the NMLSR.

(e) **Prove your identity.** You must provide information to prove your identity.

(f) **Pay the application fee.** You must pay an application fee for your application, as well as an administrative fee to the NMLSR. See WAC 208-660-550, Department fees and costs.

**(2) In addition to reviewing my application, what else will the department consider to determine if I qualify for a loan originator license?**

(a) **General fitness and prior compliance actions.** The department will investigate your background to see that you demonstrate the experience, character, and general fitness that commands the confidence of the community and creates a belief that you will conduct business honestly and fairly within the purposes of the act. This investigation may include a review of the number and severity of complaints filed against you, or any person you were responsible for, and a review of any investigation or enforcement activity taken against you, or any person you were responsible for, in this state, or any jurisdiction.

(b) **License suspensions or revocations.**

(i) You are not eligible for a loan originator license if you have been found to be in violation of the act or the rules, or have had a license issued under the act or any similar state statute suspended ~~((or revoked within five years of the filing of the present application)).~~

(ii) You are not eligible for a loan originator license if you have ever had a license issued under the Mortgage Broker Practices Act or the Consumer Loan Act or any similar state statute revoked.

(iii) For purposes of this subsection, a "similar statute" may include states involving other financial services, such as insurance, securities, escrow or banking.

(c) **Criminal history.**

(i) You are not eligible for a loan originator license if you have ever been convicted of a felony involving an act of fraud, dishonesty, breach of trust, or money laundering.

(ii) You are not eligible for a loan originator license if you have been convicted of a gross misdemeanor involving dishonesty or financial misconduct, or a felony not involving fraud, dishonesty, breach of trust, or money laundering, within seven years of the filing of the present application.

(d) **Financial background.**

(i) The department will investigate your financial background including a review of your credit report to determine if you have demonstrated financial responsibility including, but not limited to, an assessment of your current outstanding judgments (except judgments solely as a result of medical expenses); current outstanding tax liens or other government liens and filings; foreclosure within the last three years; or a

pattern of seriously delinquent accounts within the past three years.

(ii) Specifically, you are not eligible to receive a loan originator license if you have one hundred thousand dollars or more of tax liens against you at the time of appointment by a licensed mortgage broker.

~~((ii) You may not be eligible to receive a loan originator license if your financial background during the two years prior to the appointment application shows a history of unpaid debts.))~~

(3) **What will happen if my loan originator license application is incomplete?** After submitting your on-line application through the NMLSR, the department will notify you of any application deficiencies.

(4) **How do I withdraw my application for a loan originator license?** Once you have submitted the on-line application through NMLSR you may withdraw the application through NMLSR. You will not receive a refund of the NMLSR application fee but you may receive a partial refund of your licensing fee if the fee exceeds the department's actual cost to investigate the license application.

(5) **When will the department consider my loan originator license application to be abandoned?** If you do not respond ~~((within ten business days to))~~ as directed by the department's ((second)) request for information and within fifteen business days, your loan originator license application is considered abandoned and you forfeit all fees paid. Failure to provide the requested information will not affect new applications filed after the abandonment. You may reapply by submitting a new application package and new application fee.

(6) **What happens if the department denies my application for a loan originator license, and what are my rights if the license is denied?** Under the Administrative Procedure Act, chapter 34.05 RCW, you have the right to request a hearing. To request a hearing, notify the department, in writing, within twenty days from the date of the director's notice to you notifying you your license application has been denied. See also WAC 208-660-009.

(7) **How will the department provide me with my loan originator license?** The department may use any of the following methods to provide you with your loan originator license:

(a) ~~((A printed paper license sent to you by regular mail. (b)))~~ A license sent to you electronically that you may print.

~~((c))~~ (b) A license verification available on the department's web site and accessible for viewing by the public.

(8) **May I transfer, sell, trade, assign, loan, share, or give my loan originator license to someone else?** No. A loan originator license authorizes only the individual named on the license to conduct the business at the location listed on the license.

(9) **How do I change information on my loan originator license?** You must submit an amendment to your license through the NMLSR. You may be charged a fee.

(10) **What is an inactive loan originator license?** When a licensed loan originator is not sponsored by a licensed or exempt company, the license is inactive. ~~((When a person holds an inactive license, they may not conduct any~~

of the activities of a loan originator, or hold themselves out as a licensed loan originator.

~~((11)) **When my loan originator license is inactive, am I subject to the director's enforcement authority?** Yes. Your license is granted under specific authority of the director and under certain situations you may be subject to the director's authority even if you are not doing any activity covered by the act.~~

~~((12)) **If a licensed loan originator works for a consumer loan company (chapter 31.04 RCW) as a W-2 employee, they may continue to do business under their inactive license until June 30, 2010, or until the company goes onto the NMLSR and sponsors their license.**~~

~~((11)) **When my loan originator license is inactive, must I continue to pay annual fees, and complete continuing education for that year?** Yes. You must comply with all the annual licensing requirements or you will be unable to renew your inactive loan originator license.~~

~~((13)) **May I originate loans from a web site when my license is inactive?** No. You may not originate loans, or engage in any activity that requires a license under the act, while your license is inactive.~~

~~((14)) **(12) How do I activate my loan originator license?** The sponsoring company must submit a sponsorship request for your license through the NMLSR. The department will notify you and all the companies you are working with of the new working relationship if approved.~~

~~((15)) **(13) When may the department issue interim loan originator licenses?** To prevent an undue delay, the director may issue interim loan originator licenses with a fixed expiration date. The license applicant must have substantially met the initial licensing requirements, as determined by the director, to receive an interim license.~~

~~((For purposes of this section, undue delay includes the adjustment of license expiration or renewal dates to coincide with the implementation of systems designed to assist in uniformity and provide data repositories of licensing information.))~~

One example of having substantially met the initial licensing requirements is: Submitting a complete application, paying all application fees, and the department having received and reviewed the results of the applicant's background check.

~~((16)) **(14) When does my loan originator license expire?** The loan originator license expires annually on December 31st. If the license is an interim license, it may expire in less than one year.~~

~~((17)) **(15) How do I renew my loan originator license?**~~

(a) Before the license expiration date you must renew your license through the NMLSR. Renewal consists of:

- (i) Pay the annual assessment fee; and
- (ii) Meet the continuing education requirement.

(b) The renewed license is valid until it expires, or is surrendered, suspended or revoked.

~~((18)) **(16) If I let my loan originator license expire, must I apply to get a new license?** If you complete all the requirements for renewal ~~((within forty five days of the expiration date))~~ on or before February 28th each year, you may renew an existing license. However, if you renew your~~

license during this ~~((forty five day))~~ two-month period, in addition to paying the annual assessment on your license, you must pay an additional fifty percent of your annual assessment. See subsection ~~((17))~~ (15) of this section for the license renewal requirements.

During this ~~((forty five day))~~ two-month period, your license is expired and you must not conduct any business under the act that requires a license.

Any renewal requirements received by the department must be evidenced by either a United States Postal Service postmark or department "date received" stamp ~~((within the forty five days))~~ prior to March 1st each year. If you fail to comply with the renewal request requirements ~~((within the forty five days))~~ prior to March 1st, you must apply for a new license.

~~((19))~~ **(17) If I let my loan originator license expire and then apply for a new loan originator license within one year of the expiration, must I comply with the continuing education requirements from the prior license period?** Yes. Before the department will consider your new loan originator application complete, you must provide proof of satisfying the continuing education requirements from the prior license period.

~~((20))~~ **(18) May I still originate loans if my loan originator license has expired?** No. Once your license has expired you may no longer conduct the business of a loan originator, or hold yourself out as a licensed loan originator, as defined in the act and these rules.

~~((21))~~ **(19) What happens to the loan applications I originated before my loan originator license expired?** Existing loan applications must be processed by the licensed mortgage broker or another licensed loan originator working for the mortgage broker.

~~((22))~~ **(20) May I surrender my loan originator's license?** Yes. Only you may surrender your license before the license expires through the NMLSR.

Surrendering your loan originator license does not change your civil or criminal liability, or your liability for any administrative actions arising from acts or omission occurring before the license surrender.

~~((23))~~ **(21) Must I display my loan originator license where I work as a loan originator?** No. Neither you nor the mortgage broker company is required to display your loan originator license. However, evidence that you are licensed as a loan originator must be made available to anyone who requests it.

~~((24))~~ **(22) If I operate as a loan originator on the internet, must I display my license number on my web site?** Yes. You must display your license number, and the license number and name as it appears on the license of the licensed mortgage broker you represent, on the web site.

~~((25))~~ **(23) Must I include my ~~(loan originator)~~ license number on any documents?** You must include your license number immediately following your name on solicitations, including business cards, advertisements, and residential mortgage loan applications.

~~((26))~~ **(24) When must I disclose my loan originator license number?** In the following situations you must disclose your loan originator license number and the name and

license number of the mortgage broker you are associated with:

(a) When asked by any party to a loan transaction, including third party providers;

(b) When asked by any person you have solicited for business, even if the solicitation is not directly related to a mortgage transaction;

(c) When asked by any person who contacts you about a residential mortgage loan;

(d) When taking a residential mortgage loan application.

~~((27))~~ **(25) May I conduct business under a name other than the name on my loan originator license?** No. You must only use the name on your license when conducting business. If you use a nickname for your first name, you must use your name like this: "FirstName "Nickname" LastName."

**(26) Will I have to obtain an individual bond if the company I work for is exempt from licensing?** Reserved.

**(27) Will I have to file quarterly call reports if I have an individual bond?** Reserved.

#### NEW SECTION

**WAC 208-660-355 Loan originators—Prelicensing education.** (1) **Must I obtain prelicensing education before I will be given a license?** Yes. You must take 20 hours of prelicensing education from an NMLSR approved provider. The prelicensing education must include at least three hours of federal law and regulations; three hours of ethics, which must include instruction on fraud, consumer protection, and fair lending issues; two hours related to lending standards for the nontraditional mortgage product marketplace; and at least two hours of training specifically related to Washington law.

(2) **Who provides prelicensing education?** The NMLSR approves course providers and courses for prelicensing education. See the NMLSR Resource Center for a list of approved providers and courses.

(3) **Must I take continuing education in the year I complete the prelicensing education?** No. You will not have a continuing education requirement in the year in which you complete prelicensing education.

AMENDATORY SECTION (Amending WSR 09-01-156, filed 12/23/08, effective 1/23/09)

**WAC 208-660-360 Loan originators—Testing.** (1) **Must I pass a test prior to becoming a loan originator?** Yes. You must take and pass ~~((a))~~ the NMLSR national and state tests prior to becoming a loan originator. You must receive a score of seventy-five percent or higher to pass the test.

(2) **Where may I find information about the loan originator test?** ~~((The department will publish the names and contact information of approved testing providers on the department web site.))~~ The NMLSR contracts for its test provider. You will find information on the test provider on the NMLSR web site at [www.stateregulatoryregistry.org](http://www.stateregulatoryregistry.org).

(3) **How much does the loan originator test cost?** Testing costs are set by contract between the test provider and the ~~((department))~~ NMLSR and may be modified from time

to time. The department will publish the current testing fee ~~((with the testing provider contact information))~~ on its web site or you may find it on the NMLSR web site at [www.state-regulatoryregistry.org](http://www.state-regulatoryregistry.org).

(4) **How do I register to take the loan originator test?** The department will ~~((publish registration information with the testing provider contact information))~~ provide a link to the NMLSR test provider on its web site.

(5) **What topics may be covered in the loan originator test?** At a minimum, the test topics will include ethics, federal and state law and regulation pertaining to mortgage origination, federal and state law and regulation on fraud, consumer protection, nontraditional mortgage products, and fair lending. ~~((See WAC 208-660-600.))~~

(6) **After passing the loan originator test, will I have to take it again?** You must retake the loan originator test if you have not been a loan originator within the past five years.

(7) **If I have taken and passed the state loan originator test, must I take the NMLSR state test?** If you are licensed on or before July 30, 2009, and you took your loan originator test after May 2007, you will not be required to take the NMLSR state test if you remain licensed.

(8) **How soon after failing the loan originator test may I take it again?** ~~((After taking and failing the test three consecutive times, you must then wait at least fourteen days before taking the test again.))~~ You may retake a test three consecutive times with each consecutive taking occurring at least thirty days after the preceding test. After failing three consecutive tests, you must wait at least six months before taking the test again.

AMENDATORY SECTION (Amending WSR 09-01-156, filed 12/23/08, effective 1/23/09)

**WAC 208-660-370 Loan originators—Continuing education.** (1) **How many hours of continuing education must I have each year to renew my license?**

(a) You must have at least eight hours to satisfy the federal requirement. The eight hours of education must include three hours of federal law and regulations; two hours of ethics on fraud, consumer protection, and fair lending issues; and two hours on lending standards for the nontraditional mortgage product marketplace.

(b) You must have at least one additional hour of continuing education to satisfy the Washington requirement.

(2) **Who approves the continuing education for loan originators?**

(a) The NMLSR approves all education that meets the federal requirement.

(b) Washington has approved providers and courses that can provide education to meet the Washington requirement until the end of 2010.

(3) **Where may I get information about continuing education for loan originators?**

(a) ~~((The department will publish a list of the approved professional organizations that provide continuing education, and approved individual courses on the department's web site. The professional organizations will have detailed information about the continuing education courses they offer. See also WAC 208-660-600.))~~

~~(2) How many clock hours of loan originator continuing education must I have each year? You must complete a minimum of eight hours annually.~~

~~(3)) NMLSR web site will have information about the approved NMLSR courses.~~

~~(b) Washington will have information about the Washington approved courses and providers meeting the Washington requirement on its web site through 2010.~~

~~(4) As a loan originator, may I take the same approved course multiple times to meet my annual continuing education requirement? No. You may not take the same approved course in the same or successive years to meet the annual requirements for continuing education.~~

~~((4)) (5) If I teach an approved continuing education course may I use my course as credit toward my annual loan originator continuing education requirement? Yes. Up until December 31, 2009, as an instructor of an approved continuing education course, you may receive two continuing education credits for ((your annually required loan originator continuing education courses from the)) each course((s)) hour you teach. ((You will receive credit at the rate of one course taught equaling two continuing education course credits.~~

~~(5)) If approved as an NMLSR course provider you may receive two credit hours for each one hour taught.~~

~~(6) How do I receive credit toward my continuing education requirement when I teach an approved continuing education course? When you renew your license at the end of 2009 and seek to get credit for continuing education, submit to the department documentation evidencing approval of the continuing course you taught. The department will credit you with completing two continuing education courses for each one approved course you teach.~~

~~((6)) (7) Is ethics a required continuing education course for loan originators? Yes. You must take at least two ethics hours annually. The annual ethics credits must include the topics of fraud, consumer protection, and fair lending.~~

~~((7)) (8) If I take a loan originator continuing education course approved ((for multiple jurisdictions,)) by the NMLSR will the department accept it as part of my continuing education requirement? Yes. ((There will be)) The NMLSR approved continuing education courses ((that meet the requirements for all states)) will satisfy the federal requirement. Individual states will have individual state specific requirements.~~

~~((8)) (9) Can I receive credit for continuing education by attending the Mortgage Broker Practices Act Commission meetings? Yes. You will receive one credit hour by attending one or more mortgage broker commission meeting(s).~~

~~(10) If I accumulate more than the required loan originator continuing education course credits during a year, may I carry-over the excess credit to the next year? No. Continuing education credits only apply to the year in which they are taken.~~

~~((9)) (11) If I fail to complete the required continuing education, what happens to my loan originator license? When your license expires, the department will not renew it, and you cannot continue conducting any business~~

under the act. See WAC 208-660-350((18)) (16) to renew your license within ((forty-five days)) two months of it expiring. See also, WAC 208-660-350((19)) (15).

~~((10) How will I know which courses and providers satisfy the continuing education requirement? The department will approve continuing education courses offered by course providers and will approve professional organizations offering courses. The providers, courses, and contact information will be listed on the department's web site.~~

~~((11)) (12) How do I provide the department with proof of the continuing education courses I have completed? For the federal continuing education, the NMLSR will provide the process for receiving and calculating your continuing education. For Washington specific continuing education, you must provide the department with proof of your satisfactory completion of the course, in a form prescribed by the department.~~

~~((12) If the department reissues my license and the new expiration date does not coincide with the prior annual assessment period, will the department still give me credit for the continuing education courses I have taken in preparation for meeting the prior annual assessment date? Yes. The department will give you credit for the continuing education courses you have taken. You will not lose any credits due to the department's license expiration date adjustment.))~~

AMENDATORY SECTION (Amending WSR 09-01-156, filed 12/23/08, effective 1/23/09)

**WAC 208-660-400 Reporting requirements and notices to the department.** (1) As a licensed mortgage broker, what annual report must I provide to the department? You must file a mortgage broker annual report, in a form prescribed by the director. The report must include:

(a) The total number of residential mortgage loans secured by Washington real estate that you originated and closed in the prior calendar year; and

(b) The total dollar volume (principal loan amounts) of the residential mortgage loans secured by Washington real estate that you originated and closed in the prior calendar year. In the case of an open or closed end home equity line of credit, the amount to be reported is the loan or line of credit limit.

(2) When must I provide the mortgage broker annual report to the department? You must provide the completed report to the department by March 31st of each year. ((The first annual report, for activity occurring in 2007, must be received by the department before or on March 31, 2008.))

(3) What period of time must the mortgage broker annual report cover? The mortgage broker annual report must cover the prior calendar year from January 1st to December 31st.

(4) What action will the department take if I fail to file my mortgage broker annual report?

(a) ((When the report is over thirty days late,)) The department may begin an enforcement action against you if you fail to file the report on time.

(b) When your license is due for renewal, the department will not renew it if you have not filed your annual report.

~~(5) ((How do I notify the department when I want to change information on my mortgage broker or loan originator license? You must file a license amendment through the NMLSR within thirty days of the change occurring.~~

~~(6) As a designated broker or loan originator, must I notify the department if I change my residential address or telephone number? Yes. Whether your license is active or inactive, you must notify the department, through the NMLSR, within thirty days of a change in your residential address and telephone number.~~

~~(7) As a designated broker or loan originator must I notify the department if I change my name? Yes. Whether your license is active or inactive, you must notify the department, through NMLSR, within thirty days of a name change.~~

~~(8)) What are my quarterly filing requirements? Reserved.~~

~~(6) Will the filing of the fourth quarter call report satisfy the annual report requirement? Reserved.~~

~~(7) As a licensed mortgage broker what are my reporting responsibilities when something of significance happens to my business?~~

~~(a) Prior notification required. You must notify the director through amendment to the NMLSR twenty days prior to a change of:~~

~~(i) Principal place of business or any of its branch offices;~~

~~(ii) Name or legal status (e.g., from sole proprietor to corporation, etc.);~~

~~(iii) Legal or trade name; or~~

~~(iv) A change of ownership control of ten percent or more. The department will consider the qualifications of the new people and notify you whether or not the proposed change is acceptable. You may have to submit fingerprint cards for new controlling people directly to DFI.~~

~~(b) Post notification within ten days. You must notify the director through the NMLSR or in writing to the director within ten days after an occurrence of any of the following:~~

~~(i) Change in mailing address, telephone number, fax number, or e-mail address;~~

~~(ii) Cancellation or expiration of its Washington state master business license;~~

~~(iii) Change in standing with the Washington secretary of state;~~

~~(iv) Change in its standing with the state of Washington secretary of state, including the resignation or change of the registered agent;~~

~~(v) Failure to maintain the appropriate unimpaired capital under WAC 208-620-340;~~

~~(vi) Receipt of notification of cancellation of your surety bond;~~

~~(vii) Receipt of notification of license revocation proceedings against you in any state;~~

~~(viii) If you, or any officer, director, or principal is convicted of a felony, or a gross misdemeanor involving lending, brokering or financial misconduct; or~~

~~(ix) Name and mailing address of your registered agent if you are out-of-state.~~

~~(c) Post notification within twenty days. You must notify the director in writing within twenty days after the occurrence of any of the following developments:~~

~~(i) The filing of a felony indictment or information related to lending or brokering activities against you, or any officer, board director, or principal, or an indictment or information involving dishonesty against you, or any officer, board director, or principal;~~

~~(ii) The receipt of service of notice of the filing of any material litigation against you; or~~

~~(iii) The change in your residential address or telephone number.~~

~~(8) Must I notify the department of the physical address of my mortgage broker books and records? Yes. You must provide the physical address of your mortgage broker books and records in your initial license application through NMLSR. If the location of your books and records changes, you must provide the department, through the NMLSR, with the new physical address within five business days of the change.~~

~~(9) Must I notify the department if my designated broker leaves, or is no longer my designated broker? Yes. You must notify the department, through NMLSR, within five business days of the loss of or change of status of your designated broker. See WAC 208-660-180(3).~~

~~(10) ((When and how do I change the information about my registered agent? Within five business days of the change, you must file a statement of change through the NMLSR.~~

~~(11)) If I am a registered agent under the act, must I notify the department if I resign? Yes. You must provide the department with your statement of resignation letter at least thirty-one days prior to the intended effective date. You must also provide a copy of the resignation letter to the licensed mortgage broker. The department will terminate your appointment thirty-one days after receiving your resignation letter.~~

~~((12) Must I notify the department if I change the business structure of my company? When must I notify the department? If the change to your business adds officers, directors, or principal stockholders owning ten percent or more of the company, you must notify the department, through the NMLSR, at least thirty days prior to the change. The department will consider the qualifications of the new people and notify you whether or not the proposed change is acceptable. You may have to submit fingerprint cards for new controlling people directly to DFI.~~

~~(13)) (11) What are my responsibilities when I sell my business?~~

~~(a) At least thirty days prior to the effective date of sale, you must notify the department of the pending sale by completing the following: Update and file all required information through the NMLSR for your main and any branch offices, including updating information about the location of your books and records.~~

~~(b) You must give written notice to borrowers whose applications or loans are in process, advising them of the change in ownership.~~

~~(c) You must give written notice to third party providers that have or will provide services on loans in process, and all~~

third-party providers you owe money to, bringing accounts payable current.

(d) ~~((Surrender all physical licenses to DFI.~~

(e)) You must reconcile the trust account and return any funds to the borrowers or others to whom they belong, or transfer funds into a new trust account at the borrower's direction. If excess funds still remain and are unclaimed, follow the procedures provided by the department of revenue's unclaimed property division.

~~((14))~~ **(12) Must I notify the department if I cease doing business in this state?** Yes. You must notify the department within twenty days after you cease doing business in the state by updating your MU1 record ~~((and filing a surrender))~~ through the NMLSR, and filing your Mortgage Broker annual report directly with DFI.

~~((15))~~ **(13) Must I notify the department of changes to my trust account?** Yes. You must notify the department within five business days of any change in the status, location, account number, or other particulars of your trust account, made by you or the federally insured financial institution where the trust account is maintained. A change in your trust account includes the addition of a trust account.

~~((16) Must I notify the department of changes to my Washington master business license?~~ Yes. You must notify the department within five business days of any changes to your Washington master business license made by you or the agency issuing the license.

~~(17) Must I notify the department of changes to my standing with the Washington secretary of state?~~ Yes. You must notify the department within five business days of any changes to your standing with the Washington secretary of state made by you or the secretary of state.

~~(18))~~ **(14) What must I do if my licensed mortgage broker company files for bankruptcy?**

(a) ~~((Chapter 7 bankruptcy. If you are a licensed mortgage broker that files for a Chapter 7 bankruptcy, you must:~~

(i)) Notify the director ~~((and surrender your mortgage broker license))~~ within ten business days ~~((of))~~ after filing the bankruptcy.

~~((ii) Provide the department with a mortgage broker annual report for the calendar year preceding the filing within ten business days of filing the bankruptcy.~~

~~(b) Chapter 11 bankruptcy. If your licensed mortgage broker company files for a Chapter 11 bankruptcy, you must notify the director within ten business days of filing the bankruptcy.~~

~~(c) Chapter 13 bankruptcy. If your licensed mortgage broker company files for a Chapter 13 bankruptcy, you must:~~

(i) Notify the director and surrender your mortgage broker license within ten business days of filing the bankruptcy.

(ii) Provide the department with a mortgage broker annual report for the calendar year preceding the filing within ten business days of filing the bankruptcy.

~~(19))~~ **(b) Respond to the department's request for information about the bankruptcy.**

**(15) If I am a designated broker and file for personal bankruptcy, what are my reporting responsibilities?** A designated broker must notify the department in writing within ten business days of filing for bankruptcy protection.

~~((20))~~ **(16) If I am a designated broker and file for personal bankruptcy, what action may the department take?** The director may require the licensed mortgage broker to replace you with another designated broker.

~~((21))~~ **(17) If I am a loan originator and file for personal bankruptcy, what are my reporting responsibilities?** A licensed loan originator must notify the director in writing within ten business days of filing for bankruptcy protection.

~~((22))~~ **(18) If I am a loan originator and file for personal bankruptcy, what action may the department take?** Depending on the circumstances, the director may revoke or condition your license.

~~((23))~~ **(19) When may I apply for a license after surrendering one due to my personal bankruptcy filing?** If you surrendered your license, you may apply for a license at any time. However, the department may deny your license application for three years after the bankruptcy has been discharged provided that no new bankruptcies have occurred or are in progress.

~~((24) When may I apply for a license after the department has revoked my license due to my personal bankruptcy filing?~~ The director will not issue a license to any person who has had their license revoked within five years of applying. While you may apply at any time, the application will be denied until the five years have elapsed. For this reason it is important for you to consider a surrender of your license rather than allowing it to be revoked.

~~(25))~~ **(20) Who in the mortgage broker company must notify the department if they are charged with or convicted of a crime?** Licensees, whether on active or inactive license status, must notify the department in writing within ten business days of being:

(a) Charged by indictment or information with any felony, or a gross misdemeanor involving dishonesty or financial misconduct in any jurisdiction.

(b) Convicted of any felony, or any gross misdemeanor involving dishonesty or financial misconduct in any jurisdiction.

(c) Convicted of any felony involving fraud, dishonesty, breach of trust, or money laundering in any jurisdiction.

(d) Convicted outside of Washington for any crime that if charged in Washington would constitute a felony, or gross misdemeanor for dishonesty or financial misconduct.

~~((26))~~ **(21) Who in the mortgage broker company must notify the department if they are the subject of an administrative enforcement action?** Licensees, whether holding active or inactive licenses, must notify the department in writing within ten business days of the occurrence if:

(a) Charged with any violations by an administrative authority in any jurisdiction; or

(b) The subject of any administrative action, including a license revocation action, in any jurisdiction.

AMENDATORY SECTION (Amending WSR 06-23-137, filed 11/21/06, effective 1/1/07)

**WAC 208-660-410 Trust accounting. (1) What are trust funds?** Trust funds are all funds received from borrowers, or on behalf of borrowers, for payments to third-party

providers. The funds are considered to be held in trust immediately upon receipt. Trust funds include, but are not limited to, borrower deposits for appraisal fees, credit report fees, title report fees, and similar fees to be paid for services rendered by third-party providers in the borrower's loan transaction.

**(2) Are lock-in agreement fees paid by a borrower to the mortgage broker considered trust funds?** Yes, these fees are considered trust funds and must be deposited in the mortgage broker's trust account, unless the check is made payable to the lender. If the check is made payable to the lender, the mortgage broker has a duty to exercise ordinary care to see that the check is not used for any unauthorized purpose. The mortgage broker must deliver the check to the lender pursuant to any agreement with the lender, or within three business days of receiving the funds.

**(3) Must I have a trust account if I receive funds from borrowers for the payment of third-party providers?** Yes. All funds received from borrowers, or on behalf of borrowers, for payments to third-party providers are trust funds and are considered held in trust immediately upon receipt. You must deposit those funds in a trust account in your name as it appears on your license, or if exempt in the name of the exempt broker, in a federally insured financial institution's branch located in this state within three business days of receiving the funds. The funds must remain on deposit until disbursed to the third-party provider except as permitted by the act and these rules. The mortgage broker is responsible for depositing, holding, disbursing, accounting for and otherwise safeguarding the funds in accordance with the act and these rules.

**(4) Must I have a trust account if I do not receive any trust funds?** No. If you do not accept trust funds at any point before, during, or after a loan transaction, a trust account is not required.

**(5) Must I have a trust account if I am a mortgage broker exempt from licensing under the act?** Mortgage brokers exempt under RCW 19.146.020 (1)(a), (b), (c), (d), ~~((f), (h))~~ and (g) are not required to have a trust account even if they receive trust funds. ~~((Mortgage brokers exempt under RCW 19.146.020 (1)(e) and (g), and 19.146.020(4) are required to comply with RCW 19.146.050 and these rules.))~~

**(6) What does it mean to receive trust funds "on behalf of borrowers"?** Trust funds are identified by purpose rather than source. Funds received by the mortgage broker from the borrower for the payment of third-party provider services are trust funds. Funds received from relatives of borrowers, the seller in a real estate transaction, or an escrow company or lender reimbursing a mortgage broker for payments advanced are trust funds. Funds deposited to a borrower's subaccount by the mortgage broker as an advance are funds received on behalf of the borrower and are trust funds.

**(7) What forms of payment must trust funds take?** Trust funds may be in any form that allows deposit into the trust account, including, but not limited to, cash, check, or any electronic transmission of funds, including, but not limited to bank wires, ACH authorization, credit card or debit transactions, or on-line payments through a web site.

**(8) How do I receive trust funds through electronic transmission?**

(a) The trust funds must be transmitted directly from the borrower, or other person on behalf of the borrower, into your trust account, in a federally insured financial institution located in the state of Washington.

(b) Each electronic transmission must be evidenced by a record including a traceable identifying name or number supplied by the federally insured financial institution or transferring entity. Electronic transmissions must be included in the monthly trust account reconciliation.

**(9) When must I deposit trust funds?** You must deposit all funds you receive, that are required to be held in trust, before the end of the third business day following your receipt of the funds.

**(10) How must I document deposits?**

(a) You must document all deposits to the trust account(s) by having a bank deposit slip which has been validated by bank imprint, or an attached deposit receipt which bears the signature of an authorized representative of the mortgage broker indicating that the funds were actually deposited into the proper account(s).

(b) You must post the deposit of funds by wire transfer or any means other than cash, check, or money order in the same manner as other receipts. Any such transfer of funds must include a traceable identifying name or number supplied by the federally insured financial institution or transferring entity. You must also retain a receipt for the deposit of the funds which must contain the traceable identifying name or number supplied by the federally insured financial institution or transferring entity.

**(11) May I deposit funds other than trust funds into my trust account?** You may advance your own funds into the trust account(s) to prevent a disbursement in excess of an individual borrower's subaccount, provided that the exact sum of deficiency is deposited and detailed records of the deposit and its purpose are maintained in the trust ledger and the trust account(s) check register. Any deposits of your own funds into the trust account(s) must be held in trust in the same manner as funds paid by borrowers for the payment of third-party providers and treated accordingly in compliance with the act and these rules.

**(12) May a loan originator accept trust funds?** A loan originator may not solicit or receive fees for a third-party provider of goods or services except that a loan originator may transfer funds from a borrower to a licensed mortgage broker, exempt mortgage broker, or third-party provider, if the loan originator does not deposit, hold, retain, or use the funds for any purpose other than the payment of bona fide fees to third-party providers. The funds must be in the form of a check made payable to a licensed mortgage broker, exempt mortgage broker, or third-party provider. The loan originator must transfer the borrower's funds to the licensed mortgage broker, exempt mortgage broker, or third-party provider within one business day of receiving the check from the borrower.

**(13) May a mortgage broker accept and hold a check from a borrower that is made payable to a third-party provider and intended to be used to pay for third-party provider services without depositing the check into a trust account?** Yes. The check must be payable to a specific third-

party provider. The payee line may not be left blank. The mortgage broker has a duty to exercise ordinary care to see that the check is not used for any unauthorized purpose. The mortgage broker must deliver the check to the third-party provider within the time frames and requirements established in RCW 19.146.0201(12).

**(14) May a loan originator accept and hold a check from a borrower that is made payable to a third party and intended to be used to pay for third-party provider services?** A loan originator may only hold a borrower's check for the purpose of transferring the funds from the borrower to the licensed mortgage broker, exempt mortgage broker, or third-party provider. The loan originator must transfer the borrower's funds to the licensed mortgage broker, exempt mortgage broker, or third-party provider within one business day of receiving the check from the borrower.

**(15) Is a lender or mortgage broker, or agent or employee of a lender or mortgage broker, considered a third party?** A lender is considered a third party only when the lender provides lock-in arrangements to the mortgage broker in connection with the preparation of a borrower's loan.

**(16) If a mortgage broker receives funds from a third party, such as a closer, or a lender, as reimbursement for advancements for the payment of third-party provider services, are these funds considered trust funds?** Yes, all funds received by the mortgage broker on behalf of the borrower for the payment of third-party providers are considered trust funds.

**(17) What books and records must I keep regarding my trust account?** You must maintain as part of your books and records:

(a) A trust account deposit register and copies of all validated deposit slips or signed deposit receipts for each deposit to the trust account;

(b) A record of all invoices for payments made on behalf of a borrower including but not limited to payments for appraisals, credit reports, title cancellations, and verification of deposit;

(c) A ledger for each trust account. Each ledger must contain a separate subaccount ledger sheet for each borrower from whom funds are received for payment of third-party providers. Each receipt and disbursement pertaining to such funds must be posted to the ledger sheet at the time the receipt or disbursement occurs. Entries to each ledger sheet must show the date of deposit, identifying check or instrument number, amount and name of remitter. Offsetting entries to each ledger sheet must show the date of check or electronic transmission, check number or identifying electronic transmission number, amount of check or electronic transmission, name of payee and invoice number if any. Canceled or closed ledger sheets must be identified by time period and borrower name or loan number;

(d) A trust account check register consisting of a record of all deposits to and disbursements from the trust account whether by check or electronic transmission;

(e) Reconciled trust account bank statements;

(f) A monthly trial balance of the ledger of trust accounts, and a reconciliation of the ledger of trust accounts with the related bank statement(s) and the related check reg-

ister(s). The reconciled balance of the trust account(s) must at all times equal the sum of:

(i) The outstanding amount of funds received from or on behalf of borrowers for payment of third-party providers; and

(ii) The outstanding amount of any deposits into the trust fund of the mortgage broker's own funds in accordance with subsection (11) of this section; and

(g) A printed and dated source document file to support any changes to existing accounting records.

Any alternative records you propose for use must be approved in advance by the director.

**(18) What is a "subaccount"?** A "subaccount" is a recordkeeping segregation of each borrower's funds held in the mortgage broker's single deposit trust account that holds the aggregated funds for the mortgage broker's clients. Alternatively, the mortgage broker may establish a separate bank account for each borrower. When added together, individual subaccounts must exactly equal the total of funds held in trust.

**(19) May I transfer funds between a borrower's subaccounts?** If a borrower has more than one loan application pending with a mortgage broker, the mortgage broker must maintain a separate subaccount ledger for each loan application. The borrower must consent to any transfer of trust account funds between the individual subaccounts associated with these pending loan applications. The consent must be maintained in the borrower's loan file and referenced in the borrower's subaccount ledger sheets.

**(20) May I be reimbursed for funds that I have advanced into the trust account?**

(a) If you deposit your own funds into the trust account as provided in subsection (11) of this section, you may receive reimbursement for such deposit at closing into your general business bank account provided:

(i) All third-party provider's charges associated with your deposit have been paid;

(ii) The HUD-1 Settlement Statement provided to the borrower clearly reflects the line item, "deposit paid by broker," and the amount deposited;

(iii) The HUD-1 Settlement Statement provided to the borrower clearly reflects the line item, "reimbursement to broker for funds advances," and the amount reimbursed; and

(iv) Any funds disbursed by escrow at closing to you for payment of unpaid third-party providers' expenses charged or to be charged to you are deposited into the borrower's subaccount of the trust account.

(b) If you advance your own funds into the trust account as provided in subsection (11) of this section, and the loan does not close, the funds remain the property of the borrower.

**(21) May I disburse trust funds through electronic transmission?** Yes. You may disburse trust funds from the trust account by electronic transmission. Each electronic transmission must be evidenced by a record including a traceable identifying name or number supplied by the federally insured financial institution or transferring entity.

Electronic transmission(s) must be included in the monthly trust account reconciliation.

**(22) How must I handle trust account disbursements?**

(a) Disbursements from trust accounts may be by electronic transmission or manual check. If a manual check is

used, the check must on its face identify the specific third-party provider transaction or borrower refund, except as specified in this section. If an electronic transmission is used, each transmission must be evidenced by a record including a traceable identifying name or number supplied by the federally insured financial institution or transferring entity.

(b) Disbursements may be made from the trust account(s) for the payment of bona fide third-party providers' services rendered in the course of the borrower's loan origination, if the borrower has consented in writing to the payment. Such consent may be given at any time during the application process and in any written form, provided that it contains sufficient detail to verify the borrower's consent to the use of trust funds. No disbursement on behalf of the borrower may be made from the trust account until the borrower's or broker's deposit of sufficient funds into the trust account(s) is available for withdrawal.

**(23) What are the requirements concerning the checks I write from my trust account?** You must use checks that are prenumbered by the supplier (printer) unless you use an automated check writing system which numbers all checks in sequence. All trust account checks must have the words "trust account" on the front. If you use an automated program that writes checks, the check number must appear in the magnetic coding which also identifies the account number for readability by federally insured financial institution computers and the program may assign suffixes or subaccount codes before or after the check number for identification.

**(24) What disbursements are prohibited?** Among other prohibited disbursements, no disbursement may be made from a borrower's subaccount:

(a) In excess of the amount held in the borrower's subaccount (commonly referred to as a disbursement in excess);

(b) In payment of a fee owed to any employee of the mortgage broker or in payment of any business expense of the mortgage broker;

(c) For payment of any service charges related to the management or administration of the trust account(s);

(d) For payment of any fees owed to the mortgage broker by the borrower, or to transfer funds from the subaccount to any other account; and

(e) For the payment of fees owed to the broker under RCW 19.146.070 (2)(a).

**(25) When may a mortgage broker transfer excess funds from a borrower subaccount?**

(a) A mortgage broker may, in the case of a closed and funded transaction, transfer excess funds remaining in the individual borrower's subaccount into the mortgage broker's general business bank account in full or partial payment of fees owed to the mortgage broker upon determination that all third-party providers' expenses have been accurately reported in the loan closing documents and have been paid in full, and that the borrower has received credit in the loan closing documents for all funds deposited in the trust account.

(b) Each mortgage broker must maintain a detailed audit trail for any disbursements from the borrower's subaccount(s) into the mortgage broker's general business bank account, including documentation in the form of a final HUD-1 Settlement Statement form showing that credit has been received

by the borrower in the closing and funding of the transaction. The disbursements must be made by a check drawn or electronic transmission on the trust account and deposited directly into the mortgage broker's general business bank account.

**(26) What if there are funds remaining in a borrower's subaccount after all third-party providers have been satisfied?** Any remaining funds in a borrower's subaccount must be returned to the borrower within five business days of the determination that all payments to third-party providers owed by the borrower have been satisfied.

**(27) What if the mortgage broker cannot locate a borrower in order to remit excess funds in the borrower's subaccount?** The mortgage broker must follow the procedures provided by the department of revenue's unclaimed property division to handle any trust funds held for a borrower who cannot be located.

**(28) Is a mortgage broker responsible for all disbursements out of the trust account?** Yes. A mortgage broker is responsible for all disbursements from the trust account whether disbursed by personal signature, signature plate, signature of another person authorized to act on its behalf, or any authorized electronic transfer.

**(29) If a mortgage broker receives a check from closing that includes both the mortgage broker's fee and a payment or payments for third-party providers, how does the mortgage broker lawfully handle the funds?** The mortgage broker may either:

(a) Split the check at the teller window at the time of deposit and route any moneys due to third-party providers to an approved trust account, and moneys due to its general account; or

(b) Deposit the entire check into the trust account. After paying any and all moneys due to third-party providers and insuring that the borrower has received credit for all funds deposited in the trust account, the mortgage broker may transfer excess funds remaining in the individual borrower's subaccount into the mortgage broker's general business bank account. This amount must be equal to the fee disclosed on the final HUD-1 Settlement Statement, less any amounts already received by the mortgage broker, and must be duly recorded in the trust subaccount ledger. The mortgage broker may not transfer moneys from the trust account to its general business bank account before the loan is closed.

**(30) Is the mortgage broker allowed to transfer funds out of the trust account for any reason other than for payment to a third-party provider?** The mortgage broker may transfer the borrower's funds out of the trust account by check back to the borrower or to any party so instructed in writing by the borrower. A mortgage broker, when complying with these rules, may transfer excess trust funds to itself; however, failure to comply with these rules is a serious violation punishable by imprisonment, other penalties, or both as authorized by the act.

**(31) How do I pay a third-party provider's fees if escrow disburses the funds to me and I don't have a trust account?** You must return the funds to escrow for proper disbursement, or maintain a trust account for such incidental occurrences.

(32) **If I choose not to have a trust account, and a closing agent did not follow written instructions and issued a check to me after closing that has fees in it for third-party providers, may I deposit the check into my business account and pay those third-party providers immediately?** No. You must not deposit those fees into your business account under any circumstances.

(33) **After closing, if an escrow agent, title company, or lender wires funds into my general account that are intended for third-party providers, will the department take action against me for a violation of the trust fund requirements?** Provided that the number of times funds are mistakenly wired to your general account is immaterial compared to the total number of loans you closed and you can provide proof that you took the following steps, the department will not take action against you for a violation of the trust account requirements under RCW 19.146.050:

(a) You gave the escrow agent, title company, or lender clear written instruction not to send funds intended for third-party providers to you; and you forwarded all funds mistakenly wired to your general account to the proper party on or before the end of the third business day after receipt; or

(b) You provided accurate wire instruction for the trust account and the funds transmitter caused the error by accidentally placing the funds into your general account, and within one day you transfer all trust funds to your trust account.

(34) **How does a mortgage broker disburse funds from a subaccount when there is more than one borrower due to receive those funds?** When disbursing funds back to the borrowers, a mortgage broker must make the trust account disbursement check payable to all borrowers with the term "and" written between each borrower's name. When disbursing funds to another party instructed by the borrowers, all borrowers must sign the written notice of instruction.

(35) **May mortgage brokers using an interest-bearing trust account keep the interest?** No. Mortgage brokers using an interest bearing account must refund or credit to the borrower the interest earned on the borrower's subaccount. The refund or credit to the borrower may be made either at closing or upon withdrawal or denial of the borrower's loan application.

(36) **Are there any separate requirements for a computerized accounting system?** Yes. The requirements are as follows:

(a) Your computer system must provide the capability to back up data files;

(b)(i) You must print the following documents at least once per month and retain them as part of your books and records:

- (A) Trust account deposit register;
- (B) Trust account check register;
- (C) Trial balance ledger;

(ii) You must print each subaccount at closure and retain the closure document as part of your books and records;

(c) You must ensure that all written checks are included within your computer accounting system; and

(d) You must print your computer-generated reconciliations of the trust account at least once each month and retain the printouts as a part of your books and records.

(37) **Are there penalties for violating trust account requirements under RCW 19.146.050?** A violation of this section is a class C felony and may be punishable by imprisonment. In addition, a mortgage broker or other person violating this section may be subject to penalties as enumerated under RCW 19.146.220.

AMENDATORY SECTION (Amending WSR 09-01-156, filed 12/23/08, effective 1/23/09)

**WAC 208-660-420 Out-of-state mortgage brokers and loan originators.** (1) **May I be a licensed mortgage broker in Washington without a physical office in Washington?** Yes. You are not required by the act to have a physical location in Washington.

(2) **May I be a licensed mortgage broker in Washington and have branch offices both in Washington and outside of Washington?** Yes. However, each of your branch offices that offer Washington residential mortgage loans must hold a Washington license, even if the location is outside Washington.

(3) **May my mortgage broker business be conducted entirely on the internet?** Yes. But you must have a license for all locations including those that offer loans by mail or internet.

(4) **May I work as a loan originator in Washington if I do not have a physical location in Washington?** Yes. You may originate Washington loans from any location licensed under the act, inside or outside of Washington.

(5) **May I work as a licensed loan originator for a licensed mortgage broker that is out of the state?** Yes, as long as the location from which you work is licensed under the act.

(6) **If my mortgage broker business is not located in Washington, where must I keep my records?** If your business is located outside of Washington, you may either maintain the books and records at a location in Washington, or pay the department's travel expenses to the out-of-state location to examine the books and records. Travel expenses may include, but are not limited to, transportation, meals, and lodging.

(7) **What additional requirements must I comply with if my business does not have a physical location in Washington?** You must continuously maintain a registered agent in Washington and provide the department, through the NMLSR, with the registered agent's name, physical and mailing address, and written consent to be the registered agent.

(8) **How do I change the information about my registered agent?** You must update the information in the NMLSR within ((five)) ten business days from the change.

(9) **If I am a registered agent under the act, what must I do to resign as registered agent?**

(a) Provide the department with a statement of resignation at least thirty-one days prior to the intended effective date of your resignation.

(b) Provide a copy of the statement of resignation to the licensed mortgage broker.

(c) The department will terminate your appointment on the thirty-first day after the date on which the statement of resignation was delivered.

~~((10) Where must the director initiate lawsuits arising under the act against out-of-state licensees? Lawsuits initiated by the director under the act must be initiated in the superior court of Thurston County, Washington.))~~

AMENDATORY SECTION (Amending WSR 09-01-156, filed 12/23/08, effective 1/23/09)

**WAC 208-660-430 Disclosure requirements. (1) What disclosures must I make to borrowers and when?** Within three business days of receiving a borrower's loan application, or receiving money from a borrower for third-party provider services, you, as a mortgage broker or loan originator on behalf of a mortgage broker, must make all disclosures required by RCW 19.146.030 (1), (2), (3), and 19.144.020. The one page disclosure summary required by RCW 19.144.020 must be dated when provided to the borrower. The disclosures must be in a form acceptable to the director.

**(2) What is the disclosure required under RCW 19.146.030(1)?** A full written disclosure containing an itemization and explanation of all fees and costs that the borrower is required to pay in connection with obtaining a residential mortgage loan, and specifying the fee or fees which inure to the benefit of the mortgage broker. A good faith estimate of a fee or cost must be provided if the exact amount of the fee or cost is not determinable. This subsection does not require disclosure of the distribution or breakdown of loan fees, discount, or points between the mortgage broker and any lender or investor.

The specific content of the disclosure required under RCW 19.146.030(1) is identified in RCW 19.146.030(2).

**(3) What is the disclosure required under RCW 19.146.030(2)?** Mortgage brokers must disclose the following content:

(a) The annual percentage rate, finance charge, amount financed, total amount of all payments, number of payments, amount of each payment, amount of points or prepaid interest and the conditions and terms under which any loan terms may change between the time of disclosure and closing of the loan; and if a variable rate, the circumstances under which the rate may increase, any limitation on the increase, the effect of an increase, and an example of the payment terms resulting from an increase.

Disclosure in compliance with the requirements of the Truth-in-Lending Act and Regulation Z, as now or hereafter amended, is considered compliance with the disclosure content requirements of this subsection; however, RCW 19.146.030(1) governs the delivery requirement of these disclosures;

(b) The itemized costs of any credit report, appraisal, title report, title insurance policy, mortgage insurance, escrow fee, property tax, insurance, structural or pest inspection, and any other third-party provider's costs associated with the residential mortgage loan. Disclosure through good faith estimates of settlement services and special information booklets in compliance with the requirements of RESPA and Regulation X, as now or hereafter amended, is considered compliance with the disclosure content requirements of this

subsection; however, RCW 19.146.030(1) governs the delivery requirement of these disclosures;

(c) If applicable, the cost, terms, duration, and conditions of a lock-in agreement and whether a lock-in agreement has been entered, and whether the lock-in agreement is guaranteed by the mortgage broker or lender, and if a lock-in agreement has not been entered, disclosure in a form acceptable to the director that the disclosed interest rate and terms are subject to change;

(d) A statement that if the borrower is unable to obtain a loan for any reason, the mortgage broker must, within five days of a written request by the borrower, give copies of any appraisal, title report, or credit report paid for by the borrower, to the borrower, and transmit the appraisal, title report, or credit report to any other mortgage broker or lender to whom the borrower directs the documents to be sent;

(e) Whether and under what conditions any lock-in fees are refundable to the borrower; and

(f) A statement providing that moneys paid by the borrower to the mortgage broker for third-party provider services are held in a trust account and any moneys remaining after payment to third-party providers will be refunded.

**(4) What is the disclosure required under RCW 19.144.020?** See WAC 208-600-200.

**(5) How do I disclose my yield spread premium (YSP) from the lender?**

(a) You ~~((should))~~ must disclose the YSP ~~((in the 800 series of lines))~~ as a dollar amount credited to the borrower on the GFE. ((The YSP must be listed using the words "yield spread premium" and expressed as a dollar amount or dollar amount range.))

(b) You must direct the settlement service provider to disclose the YSP ~~((in the 800 series of))~~ on line((s)) 802 on the HUD-1 or equivalent settlement statement. The YSP must be ~~((listed using the words "yield spread premium" and))~~ expressed as a dollar amount.

(c) Failure to properly disclose the yield spread premium (YSP) is a violation of RCW 19.146.0201 (6) and (11), and RESPA.

**(6) Are there additional disclosure requirements related to interest rate lock-ins?** Yes. Pursuant to RCW 19.146.030(3), if subsequent to the written disclosure being provided under this section, a mortgage broker or loan originator enters into a lock-in agreement with a borrower or represents to the borrower that the borrower has entered into a lock-in agreement, then within three business days the mortgage broker or loan originator must deliver or send by first-class mail to the borrower a written confirmation of the terms of the lock-in agreement, which must include a copy of the disclosure made under subsection (3)(c) of this section.

**(7) What must I disclose to the borrower if they do not choose to enter into a lock-in agreement?** If a lock-in agreement has not been entered into, you must disclose to the borrower that the disclosed interest rate and terms are subject to change.

**(8) Will a lock-in agreement always guarantee the interest rate and terms?** No. A lock-in agreement may or may not be guaranteed by the mortgage broker or lender. The lock-in agreement must clearly state whether the lock-in agreement is guaranteed by the mortgage broker or lender.

(9) **Must a mortgage broker enter into a lock-in agreement with a borrower?** No. The statute does not require a mortgage broker to enter into a lock-in agreement with a borrower.

(10) **Are there any model forms that suffice for the disclosure content under RCW 19.146.030(2)?** Yes. The following model forms are acceptable forms of disclosure:

(a) For RCW 19.146.030 (2)(a), mortgage brokers are encouraged to use the federal truth-in-lending disclosure form for mortgage loan transactions provided under the Truth-in-Lending Act and Regulation Z, as now or hereafter amended. However, the federal truth-in-lending disclosure only suffices for the content of disclosures under RCW 19.146.030 (2)(a). The delivery of disclosures is governed by RCW 19.146.030(1).

(b) For RCW 19.146.030 (2)(b), mortgage brokers are encouraged to use the federal good faith estimate disclosure form provided under the Real Estate Settlement Procedures Act and Regulation X, as now or hereafter amended. However, the federal good faith estimate disclosure only suffices for the content of disclosures under RCW 19.146.030 (2)(b). The delivery of disclosures is governed by RCW 19.146.030 (1).

(c) For RCW 19.146.030 (2)(c), (d), (e), (f) and (3), the department encourages mortgage brokers to use the department published model disclosure forms that can be found on the department's web site.

(11) **May my mortgage broker fees increase following the disclosures required under RCW 19.146.030(1)?** Pursuant to RCW 19.146.030(4), a mortgage broker must not charge any fee that inures to the benefit of the mortgage broker if it exceeds the fee disclosed on the initial written good faith estimate disclosure required in RCW 19.146.030 (1) and (2)(b), unless:

(a) The need to charge the fee was not reasonably foreseeable at the time the written disclosure was provided; and

(b) The mortgage broker has provided to the borrower, no less than three business days prior to the signing of the loan closing documents, a clear written explanation of the fee and the reason for charging a fee exceeding that which was previously disclosed.

(12) **Are there any situations in which fees that benefit the mortgage broker can increase without additional disclosure?** Yes, there are two possible situations where an increase in the fees benefiting the mortgage broker may increase without the requirement to provide additional disclosures. These situations are:

(a) The additional disclosure is not required if the borrower's closing costs, excluding prepaid escrowed costs of ownership, on the final settlement statement do not exceed the total closing costs, excluding prepaid escrowed costs of ownership, in the most recent good faith estimate provided to the borrower. For purposes of this section "prepaid escrowed costs of ownership" mean any amounts prepaid by the borrower for the payment of taxes, property insurance, interim interest, and similar items in regard to the property used as security for the loan; or

(b) The fee or set of fees that benefit the mortgage broker are disclosed as a percentage of the loan amount and the

increase in fees results from an increase in the loan amount, provided that:

(i) The increase in loan amount is requested by the borrower; and

(ii) The fee or set of fees that are calculated as a percentage of the loan amount have been disclosed on the initial written disclosure as both a percentage of the loan amount and as a dollar amount based upon the assumed loan amount used in the initial written disclosure; and

(iii) The total aggregate increase in the fee or set of fees that benefit the mortgage broker as a result of the increase in loan amount is less than seven hundred fifty dollars.

This section does not apply to the disclosure required in RCW 19.144.020.

(13) **What action may the department take if I improperly disclose my mortgage broker fees on the good faith estimate and HUD-1/1A statement (~~on lines other than 808 through 811~~)?** If you fail to disclose your mortgage broker fees as required, the department may request, direct, or order you to refund those fees to the borrower. ~~(For example, if you disclose your mortgage broker fees as loan origination fees or discount points, the department may find that this is a deceptive practice and take action against you as indicated))~~ if the result of that disclosure resulted in confusion or deception to the borrower.

(14) **May the department take action against a mortgage broker when mortgage broker fees are disclosed incorrectly on the HUD-1/1A and the incorrect disclosure was made by an independent escrow agent, title company, or lender?** If the mortgage broker can show the department that they disclosed their fees correctly on the good faith estimate, and have instructed the independent escrow agent, title company, or lender to disclose the fees correctly on the HUD-1/1A, and the independent escrow agent, title company, or lender has not followed the instructions, the department may not take action against the mortgage broker.

(15) **What action may the department take if I fail to provide additional disclosures as required under RCW 19.146.030(4)?** Generally, the department may request, direct, or order you to refund fees.

(16) **How will the department determine whether to request, direct or order me to refund fees to the borrowers?** Generally, the department will make its determination by answering the following questions:

(a) Has an initial good faith estimate disclosure of costs been provided to the borrower in accordance with RCW 19.146.030 (1) and (2)(b)?

(b) Were any subsequent good faith estimate disclosures of costs provided to the borrower no less than three business days prior to the signing of the loan closing documents? Additionally, was the subsequent disclosure accompanied by a clear written explanation of the change?

(c) How were the costs disclosed in each good faith estimate (e.g., dollar amount, percentage, or both)?

(d) Did the total costs, excluding prepaid escrowed costs of ownership, on the final settlement statement exceed the total closing costs, excluding prepaid escrowed costs of ownership, in the most recent good faith estimate provided to the borrower no less than three business days prior to the signing of the loan closing documents?

(e) If the costs at closing did exceed the most recent disclosure of costs was the need to charge the fee reasonably foreseeable at the time the written disclosure was provided?

(f) If the costs at closing did exceed the most recent disclosure of costs did the mortgage broker provide a clear written explanation of the fee and the reason for charging a fee exceeding that which was previously disclosed, no less than three business days prior to the signing of the loan closing documents?

(17) **If I failed to provide the initial good faith estimate or TILA disclosure under RCW 19.146.030 (1) and (2)(a) and (b) what action may the department take?** If you have not provided the initial good faith estimate or TILA disclosure as required, including both delivery and content requirements, the department may request, direct or order you to refund to the borrower fees that inured to your benefit.

(18) **If I received trust funds from a borrower, but failed to provide the disclosures as required in RCW 19.146.030 (1) and (2), what action may the department take?** If you did not provide the disclosures as required, including both delivery and content requirements, the department may request, direct, or order you to refund to the borrower any trust funds they have paid regardless of whether you have already expended those trust funds on third-party providers.

(19) **Under what circumstances must I redisclose the initial disclosures required under the act?** Generally, any loan terms or conditions that change must be redisclosed to the borrower no less than three business days prior to the signing of the loan closing documents. Some examples are:

- (a) Adjustable rate loan terms, including index, margin, and any changes to the fixed period.
- (b) The initial fixed period.
- (c) Any balloon payment requirements.
- (d) Interest only options and any changes to the options.
- (e) Lien position of the loan.
- (f) Terms and the number of months or years for amortization purposes.
- (g) Prepayment penalty terms and conditions.
- (h) Any other term or condition that may be specific to a certain loan product.

(20) ~~**(Must I provide the written disclosures required under RCW 19.146.030 if all I do is obtain a credit report on a consumer who has identified a specific property for a purchase and sales agreement or contract, or a refinance loan?**~~ Yes. At that point, you have collected enough information on behalf of the consumer for you to anticipate a credit decision under RESPA's Regulation X, 24 CFR Sections 3500 et seq. and you must provide the consumer with all required disclosures. See the definition of "application" in these rules.

~~(21))~~ **If a loan application is canceled or denied within three days of application must I provide the disclosures required under RCW 19.146.030?** If you have not used any borrower trust funds and those funds have been returned to the borrower in conformance with these rules, the disclosures pursuant to RCW 19.146.030 are not required.

~~((22))~~ **(21) Is a mortgage broker that table funds a loan exempt from disclosures?** No. A mortgage broker must provide all disclosures required by the act, and disclose

all fees as required by Regulation X, regardless of the funding mechanism used in the transaction.

~~((23) **What must I disclose to a potential borrower when I advertise my business or services to them using information about their current loan?**~~ You must disclose the source from which you obtained the information about the borrower's current loan when the information was not obtained by soliciting, making a residential loan, or assisting that potential borrower in obtaining or applying to obtain a residential mortgage loan. If the information was provided by a company that searched public records and provided you the information, the "source" is the company that provided the records, not "public records."

~~(24))~~ **(22) What must I provide to the borrower if I am unable to complete a loan for them and they have paid for services from third-party providers?** If you are unable to complete a loan for the borrower for any reason, and if the borrower has paid you for third-party provider services, and the borrower makes a written request to you, you must provide the borrower with copies of the product from any third-party provider, including, but not limited to, an appraisal, title report, or credit report. You must provide the copies within five business days of the borrower's request.

The borrower may also request that you provide the originals of the documents to another mortgage broker or lender of the borrower's choice. By furnishing the originals to another mortgage broker or lender, you are conveying the right to use the documents to the other broker or lender. You must, upon request by the other broker or lender, provide written evidence of the conveyance. You must provide the originals to the mortgage broker or lender within five business days of the borrower's request.

AMENDATORY SECTION (Amending WSR 06-23-137, filed 11/21/06, effective 1/1/07)

**WAC 208-660-450 Recordkeeping requirements. (1) What business books and records must I keep to comply with the act?** The following books and records for your business must be available to the department.

(a) **Mortgage transaction documents.**

(i) All forms of loan applications, written or electronic (the Fannie Mae 1003 is an example);

(ii) The initial rate sheet or other supporting rate information;

(iii) The last rate sheet, or other supporting rate information, if there was a change in rates, terms, or conditions prior to settlement;

(iv) All written disclosures required by the act and federal laws and regulations. Some examples of federal law disclosures are: The good faith estimate, truth in lending disclosures, Equal Credit Opportunity Act disclosures, affiliated business arrangement disclosures, and RESPA servicing disclosure statement;

(v) Documents and records of compensation paid to employees and independent contractors;

(vi) An accounting of all funds received in connection with loans, including a trust account statement with supporting data;

(vii) Rate lock agreements and the supporting rate sheets or other rate supporting document;

(viii) Settlement statements (the final HUD-1 or HUD-1A);

(ix) Broker loan document requests (may also be known as loan document request or demand statements) that include any prepayment penalties, terms, fees, rates, yield spread premium, loan type and terms;

(x) Records of any fees refunded to applicants for loans that did not close;

(xi) All file correspondence and logs; and

(xii) All mortgage broker contracts with lenders and all other correspondence with the lenders.

(b) **Advertisements.** All advertisements placed by or at the request of the mortgage broker that mention rates or fees, and the corresponding rate sheets for the advertised rates. The copies must include newspaper and print advertising, scripts of radio and television advertising, telemarketing scripts, all direct mail advertising, and any advertising distributed directly by delivery, facsimile, or computer network. The record of each advertisement must include the date or dates of publication, the name of the publisher if advertised by newspaper, radio, television or telephone information line, or in the case of a flyer, the dates, methods and areas of distribution.

(c) **Trust accounting records.** See WAC 208-660-410, Trust accounting.

(d) **Other.** All other books, accounts, records, papers, documents, files, and other information relating to the mortgage broker operation. Examples include, but are not limited to, personnel files, company policy and procedure documents, training materials, records evidencing compliance with applicable federal laws and regulations, and complaint correspondence and supporting documents. See also the department's *Mortgage Broker Examination Manual*, available on the department web site.

(2) **What books and records must I keep for my trust account?** See WAC 208-660-410, Trust accounting.

(3) **How long must I keep my books and records to comply with the act?**

(a) You must keep the books, accounts, records, papers, documents, files, and other information relating to the mortgage broker operation for a minimum of twenty-five months.

(b) You must keep the mortgage transaction documents described in subsection (1)(a) of this section for a minimum of three years. It may be a prudent business practice to keep your books and records longer (~~(than twenty-five months)~~). For example, if a consumer's loan becomes an adjustable rate mortgage (~~(after a two-year fixed mortgage rate term)~~), the consumer may become unhappy that the terms of their mortgage have changed and file a complaint against you. The department must begin an investigation into the complaint. If you do not have the records to show proof of proper disclosures and all other compliance with state and federal laws, the department may rely solely on the consumer's records as evidence in the case.

(4) **Where must I keep my business records?**

(a) You must keep all books and records in a location that is on file with and readily available to the department during normal business hours. In the event of a department

examination, the location must have the work space and resources that are conducive to business operations. A readily available location may include places of business, personal residences, computers, safes, or vaults. See WAC 208-660-400(8) for the reporting requirements if the address changes.

(b) If your usual business location is outside of Washington, you may either maintain the books and records at a readily available location in Washington, or pay the department's expenses to travel to the location to examine the books and records stored out-of-state. Travel costs may include, but are not limited to, transportation costs, meals, and lodging.

(5) **May I keep my books and records electronically?** Yes. You may keep the required records described in subsection (1) of this section by electronic display equipment if you can meet all of the following requirements:

(a) The equipment must be made available to the department for the purposes of an examination or investigation;

(b) The records must be stored exclusively in a (~~nonrewritable~~) nonrewritable and nonerasable format;

(c) The hardware or software needed to display the records must be maintained during the required retention period under subsection (3) of this section.

If the department requests the books and records in hard copy, you must provide it in that form and within the time frame requested or directed by the department.

AMENDATORY SECTION (Amending WSR 09-01-156, filed 12/23/08, effective 1/23/09)

**WAC 208-660-500 Prohibited practices.** (1) **What may I request of an appraiser?** You may request an area or market survey. While there are no strict definitions of these terms, generally they refer to general information regarding a region, area, or plat. The information usually includes the high, low and average sales price, numbers of properties available for sale or that have been sold within a set period, marketing times, days on market, absorption rate or the mixture of different property types in the specified area, among other possible components. An area survey does not contain sufficient information or is not so defining as to allow an appraiser or reader to determine the value of a specified property or property type.

(2) **How may I discuss property values with an appraiser, prior to the appraisal, without the discussion constituting improperly influencing the appraiser?** You may inform the appraiser of your opinion of value, the borrower's opinion of value, or the list or sales price of the property. You are prohibited from telling the appraiser the value you need or that is required for your loan to be successful.

(3) **What business practices are prohibited?** The following business practices are prohibited:

(a) Directly or indirectly employing any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person.

(b) Engaging in any unfair or deceptive practice toward any person.

(c) Obtaining property by fraud or misrepresentation.

(d) Soliciting or entering into a contract with a borrower that provides in substance that the mortgage broker may earn a fee or commission through the mortgage broker's "best

efforts" to obtain a loan even though no loan is actually obtained for the borrower.

(e) Charging discount points on a loan which does not result in a reduction of the interest rate. Some examples of discount point misrepresentations are:

(i) A mortgage broker or lender charging discount points on the good faith estimate or settlement statement payable to the mortgage broker or any party that is not the actual lender on the resident mortgage loan.

(ii) Charging loan fees or mortgage broker fees that are represented to the borrower as discount points when such fees do not actually reduce the rate on the loan, or reflecting loan origination fees or mortgage broker fees as discount points.

(iii) Charging discount points that are not mathematically determinable as the same direct reduction of the rate available to any two borrowers with the same program and underwriting characteristics on the same date of disclosure.

(f) Failing to clearly and conspicuously disclose whether a payment advertised or offered for a residential mortgage loan includes amounts for taxes, insurance, or other products sold to the borrower. This prohibition includes the practice of misrepresenting, either orally, in writing, or in any advertising materials, a loan payment that includes only principal and interest as a loan payment that includes principal, interest, tax, and insurance.

(g) Failing to provide the exact pay-off amount of a loan you own or service as of a certain date five or fewer business days after being requested in writing to do so by a borrower of record or their authorized representative.

(h) Failing to record a borrower's payment, on a loan you own or service, as received on the day it is delivered to any of the licensee's locations during its regular working hours.

(i) Negligently making any false statement or willfully making any omission of material fact in connection with any application or any information filed by a licensee in connection with any application, examination or investigation conducted by the department.

(j) Purchasing insurance on an asset secured by a loan without first attempting to contact the borrower by mailing one or more notices to the last known address of the borrower in order to verify that the asset is not otherwise insured.

(k) Willfully filing a lien on property without a legal basis to do so.

(l) Coercing, intimidating, or threatening borrowers in any way with the intent of forcing them to complete a loan transaction.

(m) Failing to reconvey title to collateral, if any, within thirty days when the loan is paid in full unless conditions exist that make compliance unreasonable.

(n) Failing to make disclosures to loan applicants and noninstitutional investors as required by RCW 19.146.030 and any other applicable state or federal law.

(o) Making, in any manner, any false or deceptive statement or representation with regard to the rates, points, or other financing terms or conditions for a residential mortgage loan. An example is advertising a discounted rate without clearly and conspicuously disclosing in the advertisement the cost of the discount to the borrower and that the rate is discounted.

(p) Engage in bait and switch advertising.

Bait and switch means a deceptive practice of soliciting or promising a loan at favorable terms, but later "switching" or providing a loan at less favorable terms. While bait and switch will be determined by the facts of a case, the following examples, alone or in combination, may exhibit a bait and switch practice:

(i) A deceptive change of loan program from fixed to variable rate.

(ii) A deceptive increase in interest rate.

(iii) The misrepresentation of discount points. This may include discount points that have a different rate buydown effect than promised, or origination fees that a borrower has been led to believe are discount points affecting the rate.

(iv) A deceptive increase in fees or other costs.

(v) A deceptive disclosure of monthly payment amount. This practice may involve soliciting a loan with payments that do not include monthly amounts for taxes and insurance or other reserved items, while leading the borrower to believe that such amounts are included.

(vi) Additional undisclosed terms such as prepayment penalties or balloon payments, or deceiving borrowers about the effect of disclosed terms.

(vii) Additional layers of financing not previously disclosed that serve to increase the overall cost to the borrower. This practice may involve the surprise combination of first and second mortgages to achieve the originally promised loan amount.

(viii) Leading borrowers to believe that subsequent events will be possible or practical when in fact it is known that the events will not be possible or practical.

(ix) Advertising or offering rates, programs, or terms that are not actually available at the time. See WAC 208-660-440((4)) (5).

(q) Engage in unfair or deceptive advertising practices. Unfair advertising may include advertising that offends public policy, or causes substantial injury to consumers or to competition in the marketplace.

(r) Negligently making any false statement or knowingly and willfully make any omission of material fact in connection with any reports filed by a mortgage broker or in connection with any investigation conducted by the department.

(s) Making any payment, directly or indirectly, to any appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property.

(t) Advertising a rate of interest without clearly and conspicuously disclosing the annual percentage rate implied by the rate of interest.

(u) Failing to comply with the federal statutes and regulations in RCW 19.146.0201(11).

(v) Failing to pay third-party providers within the applicable timelines.

(w) Collecting or charging, or attempting to collect or charge, or use or propose any agreement purporting to collect or charge any fees prohibited by the act.

(x) Acting as a loan originator and real estate broker or salesperson, or acting as a loan originator in a manner that violates RCW 19.146.0201(14).

(y) Failing to comply with any provision of RCW 19.146.030 through 19.146.080 or any rule adopted under those sections.

(z) Intentionally delay closing of a residential mortgage loan for the sole purpose of increasing interest, costs, fees, or charges payable by the borrower.

(aa) Steering a borrower to less favorable terms in order to increase the compensation paid to the company or mortgage loan originator.

**(4) What federal guidance has the director adopted for use by the department in determining if a violation under subsection (3)(b) of this section has occurred?** The director has adopted the following documents:

(a) The Conference of State Bank Supervisors and American Association of Residential Mortgage Regulators "Guidance on Nontraditional Mortgage Product Risks" (released November 14, 2006); and

(b) The Conference of State Bank Supervisors, American Association of Residential Mortgage Regulators, and National Association of Consumer Credit Administrators "Statement on Subprime Mortgage Lending," effective July 10, 2007 (published in the Federal Register at Vol. 72, No. 131).

**(5) What must I do to comply with the federal guidelines on nontraditional mortgage loan product risks and statement on subprime lending?** You must adopt written policies and procedures implementing the federal guidelines that are applicable to your mortgage broker business. The policies and procedures must be maintained as a part of your books and records and must be made available to the department upon request.

**(6) When I develop policies and procedures to implement the federal guidelines, what topics must be included?** The policies and procedures must include, at a minimum, the following:

(a) **Consumer protection.**

**Communication with borrowers.** Providers must focus on information important to consumer decision making; highlight key information so that it will be noticed; employ a user-friendly and readily navigable format for presenting the information; and use plain language, with concrete and realistic examples. Comparative tables and information describing key features of available loan products, including reduced documentation programs, also may be useful for consumers. Promotional materials and other product descriptions must provide information about the costs, terms, features, and risks of nontraditional mortgages that can assist consumers in their product selection decisions. Specifically:

- Borrowers must be advised of potential increases in payment obligations. The information should describe when structural payment changes will occur and what the new payment would be or how it was calculated. For example, loan products with low initial payments based on a fixed introductory rate that expires after a short time and then adjusts to a variable index rate plus a margin must be adequately described to the borrower. Because initial and subsequent monthly payments are based on these low introductory rates, a wide initial spread means that borrowers are more likely to experience negative amortization, severe payment shock, and an earlier than scheduled recasting of monthly payments.

- Borrowers must be advised as to the maximum amount their monthly payment may be if the interest rate increases to its maximum rate under the terms of the loan.

- Borrowers must be advised as to the maximum interest rate that can occur under the terms of the loan.

- Borrowers must be alerted to the fact that the loan has a prepayment penalty and the amount of the penalty.

- Borrowers must be made aware of any pricing premium based on reduced documentation.

(b) **Control standards.**

(i) Actual practices must be consistent with the written policies and procedures. Employees must be trained in the policies and procedures and performance monitored for compliance. Incentive programs should not produce high concentrations of nontraditional products. Performance measures and reporting systems should be designed to provide early warning of increased risk.

(ii) Reporting to DFI. In a separate written document, as prescribed by the director and submitted with the mortgage broker annual report, every licensee must submit information regarding the offering of nontraditional mortgage loan products.

**(7) May I charge a loan origination fee or discount points when I originate but do not make a loan?** No. You may not charge a loan origination fee or discount points as described in Regulation X, Part 3500, Appendix A.

**(8) What mortgage broker fees may I charge?** You may charge a mortgage broker fee that was agreed upon between you and the borrower as stated on a good faith estimate disclosure form or similar document provided that such fee is disclosed in compliance with the act and these rules.

**(9) How do I disclose my mortgage broker fees on the good faith estimate and settlement statement?** You must disclose or direct the disclosure of your fees on ~~((lines 808 through 811 of))~~ the good faith estimate and HUD-1/1A Settlement Statement or similar document.

**(10) May I charge the borrower a fee that exceeds the fee I initially disclosed to the borrower?** Pursuant to RCW 19.146.030(4), you may not charge any fee that benefits you if it exceeds the fee you initially disclosed unless:

(a) The need to charge the fee was not reasonably foreseeable at the time the initial disclosure was provided; and

(b) You have provided to the borrower, no less than three business days prior to the signing of the loan closing documents, a clear written explanation of the fee and the reason for charging a fee exceeding that which was previously disclosed. See WAC 208-660-430 for specific details, disclosures, and exceptions implementing RCW 19.146.030(4).

AMENDATORY SECTION (Amending WSR 06-23-137, filed 11/21/06, effective 1/1/07)

**WAC 208-660-510 Director and department powers—Examination authority. (1) Why is the department authorized to examine my business?** The department is authorized to examine your business to determine your compliance with the act.

**(2) When may the department examine my business?** The department may examine your business ~~((if you have~~

obtained a mortgage broker main or branch office license within the last five years.

~~(3) How many times may the department examine my business in a five year period?~~ Your business may be examined once during the first five years of licensing. This applies to the main office and each branch office. However, if violations are found during an examination, the department may conduct additional examinations to follow up with the correction of these violations. The time frame of any additional examination will depend, in part, on the department's assessment of the continuing risk associated with the violations found during the previous examination.

~~(4)) at any time.~~

**(3) Will the department give me advance notice of an examination?**

(a) The department will generally give you advance notice of at least thirty days of a routine examination to allow you to compile the requested documents and prepare for the examiner's arrival. However, you and the department may agree on an earlier date for the examination. Extensions of time beyond that are at the director's discretion.

(b) The department will not give you advance notice of "for cause" examinations. "For cause" means the department may have reason to believe you have violated the act.

~~((5))~~ **(4) What are the protocols for an examination of my business?** The examination protocols are detailed in the department's Mortgage Broker Examination Manual. A summary of the manual is available on the department's web site.

The basic protocols include, but are not limited to:

(a) **Frequency of examinations.** The department's examination frequency will be determined using appropriate measurements of risk and random selection.

The primary purpose for measuring risk to determine the examination schedule and frequency cycle is to help the department identify those mortgage brokers whose compliance practices display potential weaknesses requiring examination attention. These same measurements of risk assist the department in determining the need for expanding the scope of an examination or expanding the initial examination time period. The protocols for measuring risk may include, but are not limited to:

- (i) The history of licensing;
- (ii) Known enforcement issues or problems;
- (iii) The number and severity of complaints;
- (iv) The licensee's responsiveness to department inquiries;
- (v) The licensee's volume of loan activity;
- (vi) The number of licensed locations and staff size;
- (vii) Prior examination or investigation results; and
- (viii) The existence of internal and external systems and controls to ensure compliance.

(b) **Advance notice.** You will generally receive a department notice listing the documents the department will examine at your business. Your preparation before the arrival of the department examiners will help the examination proceed more efficiently. The department will make every effort to minimize the impact of the examination on your business.

(c) **A preexamination meeting at your business.** The department examiner(s) will meet with you upon arrival at your business location.

(d) **The on-site review at your business.** The department examiner will conduct the examination of your business.

(e) **An exit meeting after you have provided all the requested information, and the examiner has completed the preliminary analysis.** The examiner(s) may request additional information from you. After receiving that information and completing the preliminary analysis, the examiner may discuss the preliminary analysis with you.

(f) **Post examination work and report.** The department examiner will prepare an examination report and submit the report and examination file to the review examiner. After making any necessary changes, the department will deliver the report to you unless the violations are deemed serious and the file is delivered to enforcement.

(g) **Notification of violations and opportunity for response.** The department will document in the examination report any violations or deficiencies identified during the examination. You will have an opportunity to respond to the examination findings and any violations or deficiencies unless the violations are deemed serious or are repeat violations and the file is delivered to enforcement.

(h) **A possible referral to enforcement.** While any violation of the act or these rules may be referred to enforcement, it is usually the case that only serious or repeat violations are referred. An enforcement action may result in a suspension or revocation of your license, the imposition of fines, the payment of restitution, or a ban from the mortgage broker industry.

~~((6))~~ **(5) What is the scope of the examination of my business?** In general, the scope of the examination will include, but is not limited to:

- (a) Reviewing trust accounting compliance.
- (b) Reviewing loan files.
- (c) Conducting interviews to better understand the business, solicitation practices, transactional events, disclosure compliance, and complaint resolution.
- (d) Reviewing the business books and records, including employee records.

~~((7))~~ **(6) When would the department expand the scope of an examination of my business?** If, during an examination, the department finds a clear need to expand the scope of the examination, it may do so. Two examples of a clear need to expand the scope of an examination are:

- (a) When the department finds an apparent violation of trust accounting.
- (b) When apparent violations of the prohibited practices section of the act are discovered. See RCW 19.146.0201 for prohibited practices.
- (c) When there are clear systemic violations requiring greater review than is possible in a routine examination.

These examples are illustrative only and do not limit the circumstances under which the department may decide to expand the scope of an examination.

~~((8))~~ **(7) Will I receive notice if the department decides to expand the scope of the examination of my business?** Yes. The department will provide you with five

business days' written notice if examination findings clearly identify the need to expand the scope of the examination. See subsection ~~((7))~~ (6) of this section for examples of when the department may decide to expand the scope of the examination.

The expanded examination may include a different location and may go beyond the initial five-year time limit.

~~((9))~~ (8) **Will I have to pay for an examination of my business?**

(a) If you are located in Washington, you do not have to pay for the costs of the examination.

(b) If you are located outside of Washington, you will have to pay for the examiner's travel costs. Travel costs include, but are not limited to, transportation costs, meals, and lodging. Travel reimbursement rates are established by the Washington state office of financial management.

(c) If your examination was the result of a referral from enforcement, the department may charge an investigative fee. The department will not charge an investigation fee in an investigation or examination if it is determined that no violation occurred, or when the mortgage broker or loan originator implements a remedy satisfactory to the complainant and the department, and no department order has been issued.

The department will send you an invoice and you will have thirty days to reimburse the department for the examination and the travel costs. See WAC 208-660-550, Department fees and costs.

~~((10))~~ (9) **May the department consider reports made by independent certified professionals instead of conducting their own examination of a mortgage broker business?** Yes. Instead of examining a mortgage broker's business, the department may consider the reports of independent certified professionals who have examined the mortgage broker using the same standards used by the department (see the standards in the department's Mortgage Broker Examination Manual). The department may then prepare a report of examination that incorporates all or part of the independent certified professional's reports, or the examiner may expand the scope of the examination.

~~((11))~~ (10) **What are the pros and cons of hiring my own independent certified professional versus waiting for a department examination?** The department's cost of examination will not be charged to you directly, although you may experience some minor business interruption. If you hire your own independent certified professional, you will incur the cost of that examination; however, you will control the time and manner in which the examination is conducted. The greatest benefits you may derive from hiring your own independent certified professional are:

(a) Early notice of problems you may encounter during an examination;

(b) The ability to correct deficiencies or problems at an early stage when the greatest benefit of correction may be derived;

(c) The early implementation of a sound compliance program; and

(d) The ability to control the timing for your convenience.

~~((12))~~ (11) **If I want the department to consider an independent certified professional's report instead of**

**examining my business, how must I make that request, and who submits the report to the department?** When you receive notice from the department that your business is scheduled for an examination, you must notify the department that you wish the department to consider the report of an independent certified professional instead of the department examining your business. The independent certified professional must then submit their report directly to the department, in a form acceptable to the department.

~~((13))~~ (12) **How may the department determine if the independent certified professional's report meets the standards of examination established by the department?** The department will compare the sufficiency of the report submitted by the independent certified professional to the requirements in the department's examination manual. If the report is missing any of the requirements from the manual, the department may require the licensee to provide the missing information.

~~((14))~~ (13) **If the independent certified professional's report is missing information, how may the department obtain the missing information?** The department may interview, obtain records from, or otherwise contact the licensee, or with the licensee's permission contact the independent certified professional, if additional information is required for the department's review of the report.

~~((15))~~ (14) **What will the department do if the independent certified professional's report is not sufficient?** If the department determines the report is not sufficient, the department will notify the licensee and schedule an examination of the business.

~~((16))~~ (15) **What will the department do if the independent certified professional's report is sufficient?** If the department determines the report is sufficient, the department will prepare a report of examination that incorporates all or part of the independent certified professional's report.

~~((17))~~ (16) **May the department retain professionals or specialists to examine a licensee?** Yes. The department, at its own expense, may retain attorneys, accountants, or other professionals or specialists as examiners, auditors, or investigators to examine a licensee.

~~((18))~~ (17) **Do I receive any reports from the examination?** Yes.

(a) When you have provided all the requested information, and the examiner has completed the preliminary analysis, the examiner will issue an exit report of examination containing preliminary examination findings.

(b) After additional department review, including the consideration of new information, if any, the department will issue a final report of examination.

~~((19))~~ (18) **Must I do anything as a result of the examination?** Yes. You will receive instructions from the department on the actions you must take. For example, if adverse findings or deficiencies were cited in the report of examination, you must respond to those findings.

~~((20))~~ (19) **How do I respond to findings in a report of examination?** You must respond in writing within thirty days of the date the department issues the report of examination. Your response must address any deficiencies noted in the report and describe the corrective actions you have taken.

~~((21))~~ (20) **What will happen if I do not respond to the report of examination?** If you fail to respond to the report of examination, you may be referred to enforcement where further administrative actions may be taken against you.

AMENDATORY SECTION (Amending WSR 08-14-114, filed 6/30/08, effective 7/31/08)

**WAC 208-660-550 Department fees and costs. (1) Mortgage broker licenses.**

Mortgage broker - license application fee	\$371.00
Mortgage broker - annual assessment (due upon initial licensing, then an annual renewal fee, per location)	\$530.00
Mortgage broker late renewal assessment (fifty percent of annual assessment)	\$265.00
Mortgage broker branch office - license application fee	\$185.00
Mortgage broker branch office - annual assessment (annual renewal fee, per location)	\$530.00
Mortgage broker - license amendment	No fee
Mortgage broker - change of designated broker	\$25.00

**(2) Loan originator licenses.**

Loan originator - license application fee	\$125.00
Loan originator - annual assessment (not due until first renewal; then an annual renewal fee)	\$125.00
Loan originator late renewal assessment (fifty percent of annual assessment)	\$62.50
Loan originator - cancel association with any mortgage broker	No fee
Loan originator - license amendment - add a mortgage broker relationship	\$50.00
Loan originator - license amendment - other	No fee

~~((When the realignment of license expiration or renewal dates results in a partial year of licensing, the department will~~

~~impose a proportionate fee structure to accommodate that realignment.))~~

**(3) Examinations.**

(a) In Washington. The department does not charge a licensee located in Washington for the costs of an examination unless the examination is a referral from enforcement. See WAC 208-660-510(8).

(b) Outside of Washington. The department will charge the licensee for travel costs.

(c) If the department hires professionals, specialists, or both to examine an out-of-state licensee, the professional, specialist, or both will be considered examiners for the purpose of billing the licensee for travel costs.

**(4) Investigations.**

(a) The department will charge forty-eight dollars per hour for an examiner's time devoted to an investigation.

(b) The department will bill the licensee for the costs of services from attorneys, accountants, or other professionals or specialists retained by the director to aid in the investigation.

**(5) Travel costs.** If the mortgage business is out-of-state, the department will charge the business the travel costs associated with an examination or investigation. Travel costs include, but are not limited to, transportation costs (airfare, rental cars), meals, and lodging.

**(6) How is the annual assessment calculated?** The assessment is a flat rate per license.

**(7) How does the department use license application fees?** The fees collected by the department are used to pay the costs of administering the act.

AMENDATORY SECTION (Amending WSR 09-01-156, filed 12/23/08, effective 1/23/09)

**WAC 208-660-600 Administration and facilitation of prelicensing and continuing education.** (1) **Who may offer prelicensing and continuing education courses to principals, designated mortgage brokers, and loan originators? Prelicensing and continuing education (~~may be~~) is offered by(~~:~~**

~~(a))~~ course providers (~~with~~) and courses (~~of education approved by the director, or~~

~~(b) Course providers with courses of education approved by professional organizations)) approved (~~by the director~~) through NMLSR.~~

~~(2) (~~What does it mean to offer and administer a course of education?~~ Offering and administering a course of education is the creation of a curriculum and the administrative processes to operate and maintain the curriculum. See the department's approval standards in subsections (7) and (14) of this section.~~

~~(3) **What is a "course of education" under the act?** A course of education is formal training that satisfies all or part of the continuing education requirements of the act and these rules.~~

~~(4) **What is a "course provider" under the act?** A course provider is a person or organization that provides continuing education. Course providers may provide education that meets the requirements of the act and these rules by~~

applying for and receiving approval from the department for a specific course of education.

**(5) What is a "professional organization" under the act?** A professional organization is an organization with at least ten members created for the primary purpose of furthering the professional interests of its members, protecting the public interest, or both. Education must be an essential element of the professional organization's purpose. A professional organization must have the director's approval to offer and administer courses of education.

**(6) If I am a course provider not affiliated with a professional organization, how do I obtain approval for my courses of education?** You must apply to the department for course approval. If the department approves the course, you will be issued a certificate of approval that will be effective for two years from the date of issuance.

**(7) What standard is required and what will the department review when considering approval of continuing education provided by course providers not affiliated with professional organizations?** Continuing education courses must provide the course taker with a working knowledge of, and competency in, the subject matter. To ensure this standard, the department will review the following when considering approval of education courses:

- (a) The instructor's experience and qualifications;
- (b) Whether the instructor or proposed course of education has been approved, denied, or rescinded by the department in the past; and
- (c) The course materials and lesson plans for the proposed courses. Each course must run a minimum of three hours; the materials and lesson plans must have the content to support a presentation of this length.

**(8) If I am a course provider with courses of education approved by a professional organization, may I also offer courses of education unaffiliated with the professional organization?** Yes. However, your courses of education unaffiliated with the professional organization must be approved by the department.

**(9) May the department rescind approval of a course provider's course of education?** Yes. The department may rescind approval of a course of education:

- (a) Upon a determination that the course of education does not meet the standards in subsection (7) of this section; or
  - (b) If the course provider does not provide the required quarterly reports described in subsection (13) of this section.
- (10) What action must a course provider take if notified by the department that its course of education has been rescinded?** The course provider must immediately:
- (a) Cease advertising or soliciting for the course of education;
  - (b) Inform registered course takers of the department's rescission of course approval, and cancel the course of education; and
  - (c) Refund any fees paid by course takers for the course.

**(11) May a course provider appeal the department's decision to deny or rescind course approval?** Yes. A course provider may appeal the department's decision to deny or rescind a course. The course provider must appeal the

decision to the department within twenty days of being notified by the department of the decision.

**(12) If a course provider has appealed the department's denial or rescission of a course of education, must it still take the immediate action in subsection (10) of this section?** Yes. A course provider appealing a department decision about a course of education must comply with subsection (10) of this section.

**(13) I am a course provider who provides approved continuing education courses directly to licensees, or I provide courses with the approval of a professional organization. What reports must I provide to the department?** You must provide quarterly reports to the department, in a form prescribed by the director. The reports must be received by the department no later than April 10, July 10, October 10, and January 10 of each year. The reports must contain the following information:

- (a) The course taker's name;
- (b) The course taker's license number, or Social Security number;
- (c) The name of the course;
- (d) The date the course was taken; and
- (e) Whether the course taker received a certificate of satisfactory completion.

If you provide the reports electronically, the data must be encrypted as prescribed by the director.

**(14) What standards will the department review when considering approving professional organizations to offer and administer courses of education under the act and rules?** The department will review the following:

- (a) A description of the course of education curriculum that satisfies the content of continuing education under subsection (22) of this section;
- (b) Whether the professional organization has sufficient procedures and guidelines to:
  - (i) Establish a course(s) of education and approve a course provider(s);
  - (ii) Audit and evaluate an approved course(s) of education and course provider(s);
  - (iii) Remove courses and providers from the professional organization's curriculum;
  - (iv) Provide board reconsideration of denial or removal of a course of education or a course provider;
  - (v) Ascertain the identity of course of education takers;
  - (vi) Issue certificates of satisfactory completion, that include, at a minimum, the course taker's name, the course provider's name, the course title, and the date of course completion;
  - (vii) Collect, hold, disburse and refund course of education fees;
  - (c) Whether the professional organization requires members to adhere to an established code of conduct or ethics.

**(15) Is the department liable for a professional organization's decision to approve, deny, or revoke authorization for a course provider to offer courses of education?** No. The department is not liable for a professional organization's decision to approve, deny, or revoke a course provider's authorization to provide courses of education for the professional organization.

**(16) Is the department liable for a course provider's contractual relationship with a professional organization?** No. Course providers independently contract with professional organizations and the department is not liable for the consequences of that relationship.

**(17) May the department remove a professional organization's authorization to offer and administer courses of education?** Yes. The department may rescind a professional organization's authorization to offer and administer courses of education:

(a) Upon a determination that the professional organization fails to meet subsection (14) of this section; or

(b) If the professional organization fails to provide the required quarterly reports described in subsection (21) of this section.

**(18) What action must a professional organization take if notified by the department that its authorization has been rescinded?** The professional organization must immediately:

(a) Cease advertising or soliciting for all courses of education;

(b) Inform registered course takers of the department's rescission of approval, and cancel the courses of education; and

(c) Refund any fees paid by course takers for the courses.

**(19) May a professional organization appeal the department's decision to deny or rescind authorization?** Yes. A professional organization may appeal the department's decision to deny or rescind the professional organization's authorization to approve course providers. The professional organization must appeal the decision to the department within twenty days of being notified by the department of the decision.

**(20) If a professional organization has appealed the department's denial or rescission of authorization, must it still take the immediate action in subsection (18) of this section?** Yes. A professional organization appealing a department decision about a course provider or course of education must comply with subsection (18) of this section.

**(21) When a professional organization is approved by the department to offer continuing education courses to licensees, and does so, what reports must the professional organization provide to the department?** The professional organization must provide quarterly reports to the department, in a form prescribed by the director. The reports must be received by the department no later than April 10, July 10, October 10, and January 10 of each year. The reports must contain the following information:

(a) The course taker's name;

(b) The course taker's license number, or Social Security number if not currently licensed;

(c) The name of the course;

(d) The date the course was taken; and

(e) Whether the course taker received a certificate of satisfactory completion.

If you provide the reports electronically, the data must be encrypted as prescribed by the director.

**(22) How long does department approval for a professional organization to offer continuing education courses last, and may the approval be renewed?** Approval

of a continuing education course is valid for two years. Approval may be renewed by applying to the director forty-five days prior to expiration of a current approval and providing detailed information about the course(s) and instructor(s) if they are to be changed.

**(23) What topics must be included as continuing education courses?** Continuing education courses must include some or all of the topics listed below. Courses may be designed to cover a range of topics or they may focus in detail on a single topic.

(a) **General.**

(i) Ethics in the mortgage industry.

The responsibilities and liabilities of the profession including instruction on fraud, consumer protection, and fair lending issues.

(ii) Lending standards for nontraditional mortgage products.

(iii) Arithmetical computations common to mortgage lending including without limitation, the computation of annual percentage rate, finance charge, amount financed, payment and amortization.

(b) **Compliance and internal audit standards.**

Proper use and application of the department's published standards and guidelines for examinations.

Internal audit and compliance practices, standards, methods and procedures.

Developing policies and procedures for regulatory compliance.

Responding to regulatory inquiries, directives, subpoenas and enforcement orders.

Training and supervision of mortgage professionals.

Establishing, managing, reconciling and reviewing a trust account (trust account compliance under the act and these rules).

(c) **Washington law and associated regulations.**

The Mortgage Broker Practices Act.

The Consumer Protection Act.

The Eserow Agent Registration Act.

The Usury Act.

Unfair practices with respect to real estate transactions (RCW 49.60.222).

Mortgage, deed of trust, and real estate contract statutes set forth in Title 61 RCW.

Real estate and appraisal law, including without limitation, the provisions of chapters 18.85 and 18.140 RCW.

Washington principal and agent law.

Any subsequent act or regulation applying to mortgage brokers.

(d) **Federal law and associated regulations.**

The Real Estate Settlement Procedures Act.

Truth in Lending Act.

Equal Credit Opportunity Act.

Fair Credit Reporting Act.

Fair Housing Act.

Home Mortgage Disclosure Act.

Community Reinvestment Act.

Gramm-Leach Bliley Act.

Home Ownership Protection Act.

Bank Secrecy Act.

Appraisal regulations.

Underwriting.

The SAFE Act (Title V of the Housing and Economic Reform Act of 2008 ("HERA")) Public Law No. 110-289.

Any subsequent act or regulation applying to mortgage brokers.

**(e) Mortgage services and products.**

Conventional.

Reverse mortgages.

FHA mortgages.

VA mortgages.

Nonprime mortgages.

Other products or services deemed relevant to continuing education by the department.

**(24) May the department audit or review a course of education?** Yes. The department may audit or review any continuing education course by registering for the course or attending the course of education unannounced by presenting the course provider with official identification prior to the start of the course. The department will not be charged any fee for official audit or review of the course of education.))

**On what topics of education will I be tested?**

**(a) Prelicensing education.** The topics of education will be federal law and regulations, ethics (fraud, consumer protection, fair lending) and lending standards for the nontraditional mortgage marketplace.

**(b) Continuing education.** The topics of education will be the same as for prelicensing education, plus Washington specific topics.

**(3) What specific topics should I study in preparation for any of the required tests?****(a) General.****(i) Ethics in the mortgage industry.**

The responsibilities and liabilities of the profession including instruction on fraud, consumer protection, and fair lending issues.

(ii) Lending standards for nontraditional mortgage products.

(iii) Arithmetical computations common to mortgage lending including without limitation, the computation of annual percentage rate, finance charge, amount financed, payment and amortization.

**(b) Compliance and internal audit standards.**

Proper use and application of the department's published standards and guidelines for examinations.

Internal audit and compliance practices, standards, methods and procedures.

Developing policies and procedures for regulatory compliance.

Responding to regulatory inquiries, directives, subpoenas and enforcement orders.

Training and supervision of mortgage professionals.

Establishing, managing, reconciling and reviewing a trust account (trust account compliance under the act and these rules).

**(c) Washington law and associated regulations.**

The Mortgage Broker Practices Act.

The Consumer Protection Act.

The Escrow Agent Registration Act.

The Usury Act.

Unfair practices with respect to real estate transactions (RCW 49.60.222).

Mortgage, deed of trust, and real estate contract statutes set forth in Title 61 RCW.

Real estate and appraisal law, including without limitation, the provisions of chapters 18.85 and 18.140 RCW.

Washington principal and agent law.

Any subsequent act or regulation applying to mortgage brokers.

**(d) Federal law and associated regulations.**

The Real Estate Settlement Procedures Act.

Truth in Lending Act.

Equal Credit Opportunity Act.

Fair Credit Reporting Act.

Fair Housing Act.

Home Mortgage Disclosure Act.

Community Reinvestment Act.

Gramm-Leach-Bliley Act.

Home Ownership Protection Act.

Bank Secrecy Act.

Appraisal regulations.

Underwriting.

The S.A.F.E. Act (Title V of the Housing and Economic Reform Act of 2008 ("HERA")) Public Law No. 110-289.

Any subsequent act or regulation applying to mortgage brokers.

**(e) Mortgage services and products.**

Conventional.

Reverse mortgages.

FHA mortgages.

VA mortgages.

Nonprime mortgages.

**WSR 09-24-092****PERMANENT RULES****DEPARTMENT OF****SOCIAL AND HEALTH SERVICES**

(Aging and Disability Services Administration)

[Filed December 1, 2009, 11:33 a.m., effective January 1, 2010]

Effective Date of Rule: January 1, 2010.

Purpose: RCW 74.39A.360 requires all training for individual providers represented by an exclusive bargaining representative to be provided by a training partnership. The purpose of the new language in chapter 388-71 WAC is to add this requirement. The purpose of new rules in WAC 388-71-05850 through 388-71-05890 is to clarify that the requirements for nurse delegation core training also apply to the nurse delegation specialized diabetes training.

Citation of Existing Rules Affected by this Order: Amending WAC 388-71-05665, 388-71-05690, 388-71-05695, 388-71-05775, 388-71-05850, 388-71-05860, 388-71-05875, 388-71-05880, and 388-71-05890.

Statutory Authority for Adoption: RCW 74.08.090, 74.39A.360.

Adopted under notice filed as WSR 09-21-095 on October 20, 2009.

Changes Other than Editing from Proposed to Adopted Version: A clarification was added to the proposed language in WAC 388-71-05875 as follows:

(2) "...The training partnership or their contracted training entity must maintain a record for each instructor which, at a minimum must contain:

(a) Copy of current professional licenses, as required."

A final cost-benefit analysis is available by contacting Tiffany Sevruck, Home and Community Services, P.O. Box 45600, Olympia, WA 98504-5600, phone (360) 725-2538, fax (360) 407-7582, e-mail sevruta@dshs.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 9, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 9, Repealed 0.

Date Adopted: December 1, 2009.

Susan Dreyfus  
Secretary

AMENDATORY SECTION (Amending WSR 04-16-029, filed 7/26/04, effective 8/26/04)

**WAC 388-71-05665 What definitions apply to WAC 388-71-05670 through 388-71-05909? "Client"** means an individual age eighteen or older, receiving in-home services through medicaid personal care, COPEs, MNIW, or Chore programs.

**"Competency"** means the minimum level of information and skill trainees are required to know and be able to demonstrate.

**"DSHS"** refers to the department of social and health services.

**"Learning outcomes"** means the specific information, skills and behaviors desired of the learner as a result of a specific unit of instruction, such as what they would learn by the end of a single class or an entire course. Learning outcomes are generally identified with a specific lesson plan or curriculum.

**"Routine interaction"** means contact with clients that happens regularly.

**"Training partnership"** means a joint partnership or trust that includes the office of the governor and the exclusive bargaining representative of individual providers under RCW 74.39A.270 with the capacity to provide training, peer mentoring, and workforce development, or other services to individual providers.

AMENDATORY SECTION (Amending WSR 04-02-001, filed 12/24/03, effective 1/24/04)

**WAC 388-71-05690 What documentation is required for orientation?** The home care agency or individual provider must maintain documentation of completion of orientation, issued by the home care agency(~~(-area agency on aging,))~~ or (~~(DSHS office))~~ the training entity that provides the orientation, that includes:

- (1) The trainee's name;
- (2) A list of the specific information taught;
- (3) (~~(Signature))~~ Name of the person or training entity overseeing the orientation indicating completion of the required information;
- (4) The trainee's date of employment;
- (5) The location of the orientation; and
- (6) The date(s) of orientation.

AMENDATORY SECTION (Amending WSR 06-05-022, filed 2/6/06, effective 3/9/06)

**WAC 388-71-05695 Who is required to complete orientation, and when must it be completed?** (1) Home care agency providers must complete orientation before working with the agency's clients. Orientation must be provided by appropriate agency staff or the training entity.

(2) Individual providers must complete orientation provided by (~~(DSHS, the area agency on aging (AAA), or managed care entity))~~ the training partnership no later than fourteen calendar days after beginning to work with their first DSHS client. Individual providers (~~(who live and are providing care at a great distance from the DSHS or AAA office))~~ may be oriented by distance learning, with phone contact by the person overseeing the orientation to answer questions.

(3) Parents who are individual providers for their adult children are exempt from the orientation requirement.

AMENDATORY SECTION (Amending WSR 04-02-001, filed 12/24/03, effective 1/24/04)

**WAC 388-71-05775 What is continuing education?** Continuing education is additional caregiving-related training designed to increase and keep current a person's knowledge and skills. (~~(DSHS does not preapprove continuing education programs or instructors))~~ Training entities and home care agencies may provide continuing education without prior approval of curricula or instructors by the department.

AMENDATORY SECTION (Amending WSR 04-02-001, filed 12/24/03, effective 1/24/04)

**WAC 388-71-05850 What training must include the DSHS-developed competency test?** Basic training, modified basic training, and nurse delegation core and specialized diabetes training must include the DSHS-developed competency test.

AMENDATORY SECTION (Amending WSR 04-02-001, filed 12/24/03, effective 1/24/04)

**WAC 388-71-05860 What form of identification must providers show a tester before taking a competency or challenge test?** Providers must show a tester photo identification before taking a competency test (or challenge test, when applicable) for basic training, modified basic training, or nurse delegation core and specialized diabetes training.

AMENDATORY SECTION (Amending WSR 04-02-001, filed 12/24/03, effective 1/24/04)

**WAC 388-71-05875 Must instructors be approved by DSHS ((~~or an AAA~~))?** (1) DSHS must approve any instructor ((~~under~~) through a contract with DSHS to conduct basic training, modified basic training, or nurse delegation core and specialized diabetes training classes using the training curricula developed by DSHS. DSHS may select contracted instructors using any applicable contracting procedures. Contractors must meet the minimum qualifications for instructors under this chapter and any additional qualifications established through the contracting procedure.

(2) ((~~DSHS contracts with area agencies on aging (AAA) or other entities to conduct~~)) The training partnership is legislatively mandated to provide orientation, basic, modified basic, six hour DDD parent provider training, nurse delegation core and specialized diabetes training, and continuing education training programs for individual providers ((~~and home care agency providers~~)). The training ((~~entity must approve any instructor under contract with the entity to conduct training programs. The entity's contractors must meet the minimum qualifications for instructors under this chapter and any additional qualifications established through the entity's contracting procedures~~)) partnership will ensure instructors meet the minimum qualifications under this chapter. The training partnership or their contracted training entity must maintain a record for each instructor which, at a minimum must contain:

(a) Copy of current professional licenses, as required.

(b) Documentation to verify the instructor meets the required minimum instructor qualifications.

(3) Home care agencies shall utilize a DSHS approved instructor or training entity.

AMENDATORY SECTION (Amending WSR 04-02-001, filed 12/24/03, effective 1/24/04)

**WAC 388-71-05880 Can DSHS ((~~or the AAA~~)) deny or terminate a contract with an instructor or training entity?** (1) DSHS ((~~or an area agency on aging (AAA), as applicable,~~)) may determine not to accept an offer by a person or organization seeking a contract with DSHS ((~~or the AAA~~)) to conduct training programs. No administrative remedies are available to dispute DSHS' ((~~or the AAA's~~)) decision not to accept an offer, except as may be provided through the contracting process.

(2) DSHS ((~~or the AAA~~)) may terminate any training contract in accordance with the terms of the contract. The contractor's administrative remedies shall be limited to those specified in the contract.

AMENDATORY SECTION (Amending WSR 04-02-001, filed 12/24/03, effective 1/24/04)

**WAC 388-71-05890 What are the minimum qualifications for an instructor for basic, modified basic or nurse delegation core and specialized diabetes training?** An instructor for basic, modified basic, or nurse delegation core and specialized diabetes training must meet the following minimum qualifications:

(1) General qualifications:

(a) Twenty-one years of age;

(b) Has not had a professional health care or social services license or certification revoked in Washington state (however, no license or certification is required).

(2) Education and work experience:

(a) Upon initial approval or hire, must have:

(i) A high school diploma and one year of professional or caregiving experience within the last five years in an adult family home, boarding home, supported living through DDD per chapter 388-820 WAC, or home care setting; or

(ii) An associate degree in a health field and six months of professional or caregiving experience within the last five years in an adult family home, boarding home, supported living through DDD per chapter 388-820 WAC, or home care setting.

(3) Teaching experience:

(a) Must have one hundred hours of experience teaching adults on topics directly related to the basic training; or

(b) Must have forty hours of teaching while being mentored by an instructor who meets these qualifications, and must attend a class on adult education that meets the requirements of WAC 388-71-05899.

(4) The instructor must be experienced in caregiving practices and capable of demonstrating competency with respect to the course content or units being taught;

(5) Instructors who will administer tests must have experience or training in assessment and competency testing; and

(6) If required under WAC 388-71-05730 or 388-71-05760, instructors must successfully complete basic or modified basic training prior to beginning to train others.

## WSR 09-24-093

### PERMANENT RULES

### DEPARTMENT OF

### SOCIAL AND HEALTH SERVICES

(Juvenile Rehabilitation Administration)

[Filed December 1, 2009, 11:35 a.m., effective January 1, 2010]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This filing revises chapter 388-720 WAC, Collection of costs of support, treatment, and confinement of juveniles under RCW 13.40.220.

It is necessary to revise this rule to more accurately reflect:

(1) Current gross personal income levels used to calculate obligation to reimburse the department, and

(2) Current costs of institutional care for juveniles in legal custody of the department.

Other changes are intended to:

- (1) Clarify rule language,
- (2) Allow use of additional information available to the department in establishing financial obligation,
- (3) Revise percentage base of gross income used to calculate of reimbursement obligation,
- (4) Apply federal poverty guidelines to reimbursement calculations, and to
- (5) Establish periodic recalculation of residential care cost, removing fixed cost of care from rule.

Citation of Existing Rules Affected by this Order: Amending WAC 388-720-0010, 388-720-0020, 388-720-0030, 388-720-0040, and 388-720-0050.

Statutory Authority for Adoption: RCW 13.40.220.

Adopted under notice filed as WSR 09-19-128 on September 22, 2009.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 3, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 5, Repealed 0.

Date Adopted: November 30, 2009.

Stephanie E. Vaughn  
Rules Coordinator

AMENDATORY SECTION (Amending Order 3752 [WSR 00-22-019], filed 10/20/00, effective 11/20/00)

**WAC 388-720-0010 Definitions.** ~~((1) "Juvenile" means juvenile offender sentenced to confinement in the department, other than an offender for whom a parent is approved to receive adoption support under chapter 74.13 RCW.~~

~~(2) "Department" means the department of social and health services, state of Washington.~~

~~(3) "Gross income" means the total income from all sources, received by the parent, the juvenile, or other children of the parent remaining in the household, other than a stepchild, as determined by the department.~~

~~(4) "Parent" means the parent of the juvenile or other person legally obligated to care for and support the juvenile, not including a stepparent.~~

~~(5) "Parents and dependents" means the juvenile's parent or parents, a stepparent living in the home who has no income, any child on whom the parent may claim a federal income tax deduction, not including the juvenile confined to the department, and any stepchild for whom the parent is the sole means of support))~~ "Department" means the department of social and health services, state of Washington.

"Dependent" means the juvenile's parent or parents, a registered domestic partner, a stepparent living in the home who has no income, any child, stepchild or adult family member on whom the parent may claim a federal income tax deduction, not including the juvenile confined to the department.

"Federal Poverty Guidelines" means the poverty guidelines updated periodically in the federal register by the U.S. Department of Health and Human Services (HHS) under the authority of 42 U.S.C. 9902(2).

"Gross income" means the total income, as determined by the department, from all sources, received by the legally obligated person, the legally obligated person's spouse or registered domestic partner, the juvenile, or other children or step-children of the legally obligated person remaining in the household. Child support received for the juvenile will be included as gross income; child support received for other children will not be counted as part of the legally obligated person's gross income.

"Juvenile" means a juvenile offender sentenced to confinement in the department, other than an offender for whom a parent is approved to receive adoption support under chapter 74.13 RCW.

"Legally obligated person", "financially obligated person" and "responsible person" mean the parent or parents of the juvenile or other person or persons, including registered domestic partners, legally obligated to care for and support the juvenile, including a stepparent.

**Reviser's note:** The bracketed material preceding the section above was supplied by the code reviser's office.

AMENDATORY SECTION (Amending WSR 04-05-080, filed 2/17/04, effective 3/19/04)

**WAC 388-720-0020 Cost reimbursement schedule and ability to pay.** ~~((As provided for in RCW 13.40.220 the office of financial recovery may negotiate payment schedules and the methods used to satisfy costs of support, treatment and confinement with parents and other legally obligated persons, on behalf of the department. The results of the application of this rule may be appealed as provided for in RCW 13.490.220 (4) and (6) and Part IV Adjudicative Proceedings, of chapter 34.05 RCW, Administrative Procedure Act.))~~ (1) A parent or other legally obligated person shall pay a percentage of gross income to reimburse the department for the cost of support, treatment and confinement of the juvenile.

(2) Gross income, adjusted annually according to the published Federal Poverty Guidelines, shall form the basis to determine obligation to pay.

(3) Ability to pay ((will be)) and obligation to reimburse are determined by ((the)) application of the information provided by a parent or other legally obligated person in the financial information statement and/or by other information available to the department to the reimbursement schedule below:

((Monthly Gross Income	Percentage of Gross Income Ordered for Reimbursement of Costs Number of Parents and Dependents Remaining in Household							
	1	2	3	4	5	6	7	8+
TANF or \$0 - 600	0	0	0	0	0	0	0	0
\$601 - 1000	8%	6%	4%	2%	0	0	0	0
\$1001 - 2000	12%	10%	8%	6%	4%	2%	0	0
\$2001 - 3000	16%	14%	12%	10%	8%	6%	4%	2%
\$3001 - 4000+	18%	16%	14%	12%	10%	8%	6%	4%))

<u>Gross Income as Percentage of Federal Poverty Guideline</u>	<u>Dependents in Home</u>					
	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>6</u>
150 - 174%	12%	12%	10%	10%	8%	8%
175 - 199%	13%	13%	11%	11%	9%	9%
200 - 224%	14%	14%	12%	12%	10%	10%
225 - 249%	15%	15%	13%	13%	11%	11%
250 - 274%	16%	16%	14%	14%	12%	12%
275 - 299%	17%	17%	15%	15%	13%	13%
300 - 399%	18%	18%	16%	16%	14%	14%
400%+	20%	20%	18%	18%	16%	16%

Reimbursement Obligation: Assessed Percentage of Gross Income

~~((4)) (4)~~ Within fifteen days of receipt of the financial information statement, ~~((a parent or other))~~ the legally obligated person shall complete, sign and mail the statement to the department.

~~(5)~~ Based on the statement, if returned, and on other information available to it, the department shall determine the ~~((parent's))~~ legally obligated person's gross income, the number of parents or registered domestic partners and dependents remaining in the household, and the reimbursement obligation, and shall serve on the ~~((parent))~~ legally obligated person a notice and finding of financial responsibility.

~~((2)) (6)~~ If a ~~((parent or))~~ legally obligated person fails to timely provide a financial statement and insufficient information is available to the department to determine ability to pay, the reimbursement obligation shall be ~~((twenty-three hundred dollars per month))~~ the current monthly average (marginal) institutional cost of care as determined by the department.

~~((3))~~ If the juvenile's parents or other legally obligated person reside in separate households, each parent shall be liable for reimbursement.

~~(4)~~ The gross income of a parent shall be reduced by the amount the parent pays in spousal maintenance to the juvenile's parent, which is gross income to the receiving parent. The gross income of a parent or other legally obligated person shall be reduced by the amount of current child support paid for any child, including the juvenile offender. This credit shall be available when the support is paid to any section of the department or to any other person legally entitled to receive those support payments, pursuant to court order or administrative order for a child the parent did not claim as a dependent under the reimbursement schedule.

~~(5) Reimbursement)~~ ~~(7)~~ Assessed obligation for reimbursement may not exceed the institutional average daily rate (full cost of care) as determined by the department.

~~((6)) (8)~~ The reimbursement obligation commences the day the juvenile enters the custody of the department, regardless of when the notice and finding of financial responsibility is received by the parent. ~~((A))~~ The monthly reimbursement obligation shall be reduced on a pro rata basis for any days in which the juvenile was not in the custody of the department.

~~((7)) (9)~~ If the juvenile's parents or other legally obligated persons reside in separate households, each shall be liable for reimbursement.

~~(10)~~ The gross income of a legally obligated person shall be reduced by the amount the person pays in spousal maintenance to the juvenile's parent, which is gross income to the receiving parent.

~~(11)~~ The gross income of a legally obligated person shall be reduced by the amount of current child support paid for any child, including the juvenile offender. This credit shall be available when the support is paid to any section of the department or to any other person legally entitled to receive those support payments, pursuant to court order or administrative order for a child the legally obligated person did not claim as a dependent under the reimbursement schedule.

~~(12)~~ The ~~((parent or other))~~ legally obligated person of the juvenile shall be exempt from the payment of the cost of the juvenile's care in the state facility if:

(a) The ~~((parent or other))~~ legally obligated person receives adoption support or is eligible to receive adoption support for the juvenile offender; or ~~((if))~~

(b) The ~~((parent, or other))~~ legally obligated person, or such person's child, spouse, registered domestic partner, or spouse's child~~(;)~~ or a dependent person in the household

was the victim of the offense for which the juvenile was committed to the department.

(13) As provided for in RCW 13.40.220, the office of financial recovery, on behalf of the department, may negotiate with legally obligated persons the payment schedules and methods used to satisfy costs of support, treatment and confinement.

AMENDATORY SECTION (Amending Order 3752 [WSR 00-22-019], filed 10/20/00, effective 11/20/00)

**WAC 388-720-0030 ((Hearing)) Modifications.** ~~((A parent may request a hearing under RCW 13.40.220(5) to contest a notice and finding of financial responsibility issued by the department. The department shall ensure the hearing is governed by chapter 34.05 RCW and chapter 388-02 WAC. The sole issues at the hearing include whether the:~~

~~(1) Person receiving the notice and finding of financial responsibility is a parent of the juvenile; and~~

~~(2) Department correctly:~~

~~(a) Determined the parent's gross income and the number of parents and dependents; and~~

~~(b) Calculated the reimbursement obligation in accordance with the reimbursement schedule as described under WAC 388-720-0020)) (1) A legally obligated person may submit a modified financial statement upon a change in gross income or in the number of persons residing in the household only if the change decreases the reimbursement obligation by one hundred dollars per month or more. A decrease may be granted only from the date on which the request for modification is made, and may not be applied retroactively.~~

(2) A legally obligated person shall file a financial statement modification if a change in gross income or the number of persons residing in the household increases the reimbursement obligation by one hundred dollars per month or more. An increase may be applied retroactively from the date of the change in income.

(3) The department will issue a new notice and finding of financial responsibility upon receipt of a modified financial statement as defined in subsections (1) or (2) of this section. The department may also issue a new notice based upon its own review of information available to it if the conditions of subsection (1) or (2) of this section are met.

**Reviser's note:** The bracketed material preceding the section above was supplied by the code reviser's office.

AMENDATORY SECTION (Amending Order 3752 [WSR 00-22-019], filed 10/20/00, effective 11/20/00)

**WAC 388-720-0040 ((Modifications)) Hearing.** ~~(1) ((A parent may modify the parent's financial statement upon a change in gross income or in the number of persons residing in the household only if the change decreases the reimbursement obligation by one hundred dollars per month or more. A decrease may be granted only from the date on which the request for modification is made, and may not be applied retroactively)) A legally obligated person may request a hearing pursuant to RCW 13.40.220(6) and chapter 34.05 RCW to contest a notice and finding of financial responsibility issued by the department.~~

~~(2) ((A parent shall file a financial statement modification if a change in gross income or the number of persons residing in the household increases the reimbursement obligation by one hundred dollars per month or more. An increase may be applied retroactively.~~

~~(3) The department will issue a new notice and finding of financial responsibility upon receipt of a modified financial statement as defined in subsections (1) or (2) of this section. The department may also issue a new notice based upon its own review if the conditions of subsection (1) or (2) of this section are met)) The sole issues which may be considered at the hearing are whether the:~~

(a) Person receiving the notice and finding of financial responsibility is a person financially obligated for the care and support of the juvenile; and

(b) Department, as described under WAC 388-720-0020 correctly:

(i) Determined the legally obligated person's gross income and determined the number of parents in the household, including registered domestic partners, and dependents;

(ii) Determined exemptions; and

(iii) Calculated the reimbursement obligation in accordance with the reimbursement schedule as described under WAC 388-720-0020.

**Reviser's note:** The bracketed material preceding the section above was supplied by the code reviser's office.

AMENDATORY SECTION (Amending WSR 03-01-044, filed 12/10/02, effective 1/10/03)

**WAC 388-720-0050 Powers of the administrative law judge.** ~~The administrative law judge ((in the final order rendered)) after the hearing conducted in accordance with WAC ((388-720-0030)) 388-720-0040, in the final order rendered shall:~~

~~(1) Include the name and age of the juvenile ((in that final order)). ((The administrative law judge shall also indicate))~~

~~(2) Include the ((parent's or other)) legally obligated person's monthly ((liability)) obligation amount for the period of the juvenile's confinement beginning with the date the child enters the custody of the department. ((The administrative law judge shall))~~

~~(3) Not establish ((in the final order)) any amount constituting a repayment figure of any accrued obligation of the ((parent but shall indicate)) legally obligated person.~~

~~(4) State ((in the final order)) that any accrued obligation shall be paid by the ((parent)) legally obligated person to the department's office of financial recovery (OFR) and that OFR will be responsible for determining the method of repayment of the parent's accrued obligation.~~

~~((The administrative law judge shall also)) (5) Include a statement ((in the final order)) that the ((parent's)) responsible person's financial obligation is collectible by OFR and that should the ((parent)) legally obligated person fail to comply with any payment plan entered into by OFR and the ((parent)) legally obligated person, or the ((parent)) legally obligated person fails to pay the amount set out in the final order, OFR shall be authorized to take legal collection action to recover the amounts due from the ((parent)) legally obligated~~

person. Legal collection action can include, but is not limited to:

- ~~((1))~~ (a) The filing of liens against the real and personal property of the ~~((parent))~~ responsible person; or
- ~~((2))~~ (b) The issuance of a garnishment order against the wages, bank accounts, or other property of the responsible persons.

#### WSR 09-24-094

#### PERMANENT RULES

#### DEPARTMENT OF

#### SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed December 1, 2009, 11:37 a.m., effective January 1, 2010]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This amendment is necessary to describe the payment methodology the department will use to meet the legislature's intent that the department continue to meet federal payment standards for durable medical equipment (DME) with a lower overall level of appropriation.

Citation of Existing Rules Affected by this Order: Amending WAC 388-543-2900.

Statutory Authority for Adoption: Section 1109, chapter 564, Laws of 2009 (ESHB 1244); RCW 74.04.050, 74.04.057, 74.08.090.

Adopted under notice filed as WSR 09-20-063 on October 2, 2009.

A final cost-benefit analysis is available by contacting Melissa Usitalo, DSHS/HRSA, P.O. Box 45500, Olympia, WA 98504-5500, phone (360) 725-1853, fax (360) 586-9727, e-mail Melissa.Usitalo@dshs.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: December 1, 2009.

Susan N. Dreyfus  
Secretary

AMENDATORY SECTION (Amending WSR 03-19-083, filed 9/12/03, effective 10/13/03)

**WAC 388-543-2900 Medical supplies and nondurable medical equipment (MSE)—Reimbursement methodology.** (1) ~~((MAA determines rates for each category of med-~~

~~ical supplies and non-DME (MSE) using either the))~~ The department sets, evaluates and annually updates rates for each category of medical supplies and nonDME (MSE) in the medical assistance fee schedule using one or more of the following:

~~(a) ((Medicare fee schedule; or~~

~~(b) Manufacturers' catalogs and commercial data bases for price comparisons))~~ The medicare fee schedule, for those items that are included in the fee schedule for the medicare program, as established by the federal centers for medicare and medicaid services (CMS).

(b) For those items not included in the medicare fee schedule, the department uses manufacturers' catalogs and commercial data bases to identify brands to comprise the department's pricing cluster. When establishing the fee for products in a pricing cluster, the maximum allowable fee is the lesser of either:

(i) Eighty-five percent of the average manufacturer's list price; or

(ii) One hundred twenty-five percent of the average dealer cost.

(c) Input from stakeholders or other relevant sources that the department determines to be reliable and appropriate.

(2) ((MAA evaluates and updates the maximum allowable fees for MSE as follows)) The department's pricing cluster is made up of all the brands for which the department obtains pricing information. However, the department may limit the number of brands included in the pricing cluster if doing so is in the best interests of its clients as determined by the department. The department considers all of the following when establishing the pricing cluster:

~~(a) ((MAA sets the maximum allowable fees for new MSE using one of the following:~~

~~(i) Medicare's fee schedule; or~~

~~(ii) For those items without a medicare fee, commercial data bases to identify brands to make up MAA's pricing cluster. MAA establishes the fee for products in the pricing cluster by using the lesser of either:~~

~~(A) Eighty five percent of the average manufacturer's list price; or~~

~~(B) One hundred twenty five percent of the average dealer cost.~~

~~(b) All the brands for which MAA obtains pricing information make up MAA's pricing cluster. However, MAA may limit the number of brands included in the pricing cluster if doing so is in the best interests of its clients. MAA considers all of the following:~~

~~(i) A client's medical needs;~~

~~(ii) Product quality;~~

~~(iii) Cost; and~~

~~(iv) Available alternatives))~~ A client's medical needs;

(b) Product quality;

(c) Cost; and

(d) Available alternatives.

(3) ((MAA's)) The department's nursing facility per diem rate, established per chapter 74.46 RCW and chapter 388-96 WAC, includes any reusable and disposable medical supplies that may be required for a nursing facility client. ((MAA)) The department may reimburse the following medical supplies separately for a client in a nursing facility:

(a) Medical supplies or services that replace all or parts of the function of a permanently impaired or malfunctioning internal body organ. This includes, but is not limited to the following:

(i) Colostomy and other ostomy bags and necessary supplies; and

(ii) Urinary retention catheters, tubes, and bags, excluding irrigation supplies;

(b) Supplies for intermittent catheterization programs, for the following purposes:

(i) Long term treatment of atonic bladder with a large capacity; and

(ii) Short term management for temporary bladder atony; and

(c) Surgical dressings required as a result of a surgical procedure, for up to six weeks after surgery.

(4) ~~((MAA))~~ The department considers decubitus care products to be included in the nursing facility per diem rate and does not reimburse for these separately.

**WSR 09-24-102**  
**PERMANENT RULES**  
**OFFICE OF**

**INSURANCE COMMISSIONER**

[Insurance Commissioner Matter No. R 2009-11—Filed December 2, 2009,  
7:06 a.m., effective January 2, 2010]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Licensed reinsurance intermediary brokers and managers do not always promptly inform the commissioner of changes in the information that was contained in their original application for licensing and are unclear on what changes must be reported. This rule will provide clarity as to the information that must be submitted and when it must be submitted to the commissioner. This rule also amends the session law citations contained in the original rule to the current RCW citations.

Citation of Existing Rules Affected by this Order: Amending WAC 284-13-700, 284-13-720, 284-13-730, and 284-13-740.

Statutory Authority for Adoption: RCW 48.02.060 and 48.94.055.

Other Authority: RCW 48.94.010.

Adopted under notice filed as WSR 09-20-067 on October 5, 2009.

A final cost-benefit analysis is available by contacting Jim Tompkins, P.O. Box 40258, Olympia, WA 98504-0258, phone (360) 725-7036, fax (360) 586-3109, e-mail jimt@oic.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 3, Amended 4, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 3, Amended 4, Repealed 0.

Date Adopted: November 18, 2009.

Mike Kreidler  
Insurance Commissioner

AMENDATORY SECTION (Amending Order R 93-15, filed 9/1/93, effective 10/2/93)

**WAC 284-13-700 Definitions.** (1) Terms used in this regulation (WAC 284-13-700 through ~~((284-13-740))~~ 284-13-760) that are defined in the Reinsurance Intermediary Act ~~((chapter ((48.—))~~ 48.94 RCW ~~((sections 22 through 33, chapter 462, Laws of 1993)))~~ ("the act") have the meaning stated there.

(2) Whether a person is an "employee" of the reinsurer for purposes of ~~((section 23 (7)(a), chapter 462, Laws of 1993,))~~ RCW 48.94.005 (7)(a) depends on the facts and is not controlled by a mere ~~((labelling))~~ labeling of the person as an employee in an agreement.

(3) A reinsurer is "licensed in this state" for purposes of ~~((section 23(8), chapter 462, Laws of 1993,))~~ RCW 48.94.005(8) when it holds a certificate of authority to transact the relevant line of insurance.

NEW SECTION

**WAC 284-13-715 Changes to information contained in an application for license.** A licensed reinsurance intermediary must notify the commissioner within fifteen business days after occurrence of material changes to the information that was included in the application. For example this includes, but is not limited to, a change to:

- (1) The reinsurance intermediary's legal name;
- (2) The reinsurance intermediary's formation documents if it is a business entity;
- (3) The reinsurance intermediary's registered address;
- (4) Individuals authorized to act under the license; and
- (5) The reinsurance intermediary's designation to receive service of process.

AMENDATORY SECTION (Amending Order R 93-15, filed 9/1/93, effective 10/2/93)

**WAC 284-13-720 Financial statement of reinsurance intermediary-manager.** A reinsurer shall obtain from each reinsurance intermediary-manager, and a reinsurance intermediary-manager shall give to the reinsurer, annual statements of financial condition prepared by an independent certified public accountant. The form of the statements shall be such that the statements clearly show the results of operations, and the assets, liabilities, and equity of the reinsurance intermediary-manager. Nothing in the act or this regulation (WAC 284-13-700 through ~~((284-13-740))~~ 284-13-760) prevents a reinsurer from requiring additional information, more

detail, or a specified format so long as that specified format at least meets the requirements of this section.

AMENDATORY SECTION (Amending Order R 93-15, filed 9/1/93, effective 10/2/93)

**WAC 284-13-730 Submission and approval of contracts between reinsurers and reinsurance intermediary—Managers.** Contracts filed for approval under ((~~section 28, chapter 462, Laws of 1993,~~) RCW 48.94.030) must include the provisions required by that section. If those provisions are not in the order given in that section, or if any other provisions precede or separate any of those required provisions, then the submitted contract shall be accompanied by a statement showing where in the contract each required provision is.

AMENDATORY SECTION (Amending Order R 93-15, filed 9/1/93, effective 10/2/93)

**WAC 284-13-740 Reporting of claims.** The reporting threshold under ((~~section 28 (9)(b)(v), chapter 462, Laws of 1993,~~) RCW 48.94.030 (9)(b)(v)) is the lesser of fifty thousand dollars or an amount set by the reinsurer.

NEW SECTION

**WAC 284-13-750 Reporting of discipline in another jurisdiction.** A reinsurance intermediary, or a pending applicant, must notify the commissioner within fifteen business days of a disciplinary action taken against it by another governmental jurisdiction.

NEW SECTION

**WAC 284-13-760 Reporting of a felony conviction.** A person holding a reinsurance intermediary license, or a pending applicant, convicted of any felony involving dishonesty or a breach of trust, or convicted of an offense under the Violent Crime Control and Law Enforcement Act of 1994 (108 Stat. 2115; 18 U.S.C. Sec. 1033) must notify the commissioner of the conviction within fifteen business days after the conviction.

**WSR 09-24-104**

**PERMANENT RULES**

**UTILITIES AND TRANSPORTATION  
COMMISSION**

[Docket TV-091038, General Order R-556—Filed December 2, 2009, 8:25 a.m., effective January 2, 2010]

In the matter of amending WAC 480-15-020, 480-15-145, 480-15-180, 480-15-450 and 480-15-610, relating to household goods carrier permits and advertisement to implement the 2009 legislature's HB 1536.

**1 STATUTORY OR OTHER AUTHORITY:** The Washington utilities and transportation commission (commission) takes this action under Notice No. WSR 09-19-143, filed with the code reviser on September 23, 2009. The commission brings

this proceeding pursuant to RCW 80.01.040, 80.04.160, 34.05.353, and chapter 94, Laws of 2009 (HB 1536).

**2 STATEMENT OF COMPLIANCE:** This proceeding complies with the Administrative Procedure Act (chapter 34.05 RCW), the State Register Act (chapter 34.08 RCW), the State Environmental Policy Act of 1971 (chapter 43.21C RCW), and the Regulatory Fairness Act (chapter 19.85 RCW).

**3 DATE OF ADOPTION:** The commission adopts this rule on the date this order is entered.

**4 CONCISE STATEMENT OF PURPOSE AND EFFECT OF THE RULE:** RCW 34.05.325(6) requires the commission to prepare and publish a concise explanatory statement about an adopted rule. The statement must identify the commission's reasons for adopting the rule, describe the differences between the version of the proposed rules published in the register and the rules adopted (other than editing changes), summarize the comments received regarding the proposed rule changes, and state the commission's responses to the comments reflecting the commission's consideration of them.

**5** To avoid unnecessary duplication in the record of this docket, the commission designates the discussion in this order, including Appendix A, as its concise explanatory statement, supplemented where not inconsistent by the staff memoranda preceding the filing of the CR-105 proposal and the adoption order. Together, these documents provide a complete but concise explanation of the agency actions and its reasons for taking those actions.

**6 REFERENCE TO AFFECTED RULES:** This order amends WAC 480-15-020 Definitions, 480-15-145 Enforcement, 480-15-180 Carrier operations that require a household goods permit, 480-15-450 Involuntary cancellation of a permit, and 480-15-610 Advertising.

**7 PREPROPOSAL STATEMENT OF INQUIRY AND ACTIONS THEREUNDER:** A preproposal statement of inquiry is not required under RCW 34.05.353 Expedited rule making.

**8 NOTICE OF EXPEDITED RULE MAKING:** The commission filed an expedited rule making (CR-105) on September 23, 2009, at WSR 09-19-143. The statement advised interested persons that the commission was considering a rule making to amend language in rules relating to household goods carrier permits and advertisement to implement the provisions in the 2009 legislature's HB 1536. The commission also informed persons of this matter by providing notice of the subject and the CR-105 to everyone on the commission's list of persons requesting such information pursuant to RCW 34.05.320(3), the commission's list of all household goods companies operating in the state, persons interested in household goods issues, as well as attorneys representing the industry, and by posting all information on the commission's web site.

**9 WRITTEN COMMENTS:** The commission received written comments from Angela Chiders of Able Moving, Inc., and from Jim Tutton of the Washington Trucking Association. Able Moving, Inc., initially had an objection to the rule making, but later withdrew its objection on November 23, 2009. The Washington Trucking Association wrote in favor of the rules. There are no outstanding objections to the rules.

**10 COMMISSION ACTION:** After considering all of the information regarding this proposal, the commission finds

and concludes that it should amend the rules as proposed in the CR-105 at WSR 09-19-143.

**11 STATEMENT OF ACTION; STATEMENT OF EFFECTIVE DATE:** After reviewing the entire record, the commission determines that WAC 480-15-020, 480-15-145, 480-15-180, 480-15-450, and 480-15-610 should be amended to read as set forth in Appendix A, as a rule of the Washington utilities and transportation commission, to take effect pursuant to RCW 34.05.380(2) on the thirty-first day after filing with the code reviser.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 5, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

#### ORDER

##### 12 THE COMMISSION ORDERS:

13 The commission amends WAC 480-15-020, 480-15-145, 480-15-180, 480-15-450, and 480-15-610 to read as set forth in the CR-105 at WSR 09-19-143, to take effect on the thirty-first day after the date of filing with the code reviser pursuant to RCW 34.05.380(2).

14 This order and the rules set out in Appendix A, after being recorded in the register of the Washington utilities and transportation commission, shall be forwarded to the code reviser for filing pursuant to chapters 80.01, 34.05 RCW and 1-21 WAC.

DATED at Olympia, Washington, December 2, 2009.

Washington state utilities and transportation commission.

Jeffrey D. Goltz, Chairman  
Patrick J. Oshie, Commissioner  
Philip B. Jones, Commissioner

#### Appendix A

**AMENDATORY SECTION** (Amending Docket TV-070466, General Order R-547, filed 12/27/07, effective 1/27/08)

**WAC 480-15-020 Definitions.** For the purpose of this chapter, the words, terms, and phrases in this section have the following meaning:

**Accessorial services:** Any service provided by a household goods carrier that supplements, or is incidental to, the transportation of household goods. Examples include packing, unpacking, wrapping or protecting a portion of the ship-

ment or providing special equipment or services such as hoisting.

**Agent:** A permitted carrier, who, under the provisions of a formal written agreement, performs services on behalf of another permitted carrier.

**Application docket:** A commission publication listing applications requesting operating authority.

**Authority:** The rights granted to a carrier to transport household goods.

**Cancellation:** An act by the commission to terminate a household goods carrier's authority.

**Carrier or household goods carrier:** A ~~((company performing household goods moves))~~ person who transports for compensation, by motor vehicle within this state, or who advertises, solicits, offers, or enters into an agreement to transport household goods.

**Commission:** The Washington utilities and transportation commission.

**Customer:** Anyone who hires a household goods carrier.

**Engaging in business as a household goods carrier:** Transporting household goods for compensation, by motor vehicle within this state, or advertising, soliciting, offering, or entering into an agreement to transport household goods.

#### Estimate:

(a) Nonbinding estimate: The written estimate the carrier gives to the customer in advance of the move. A nonbinding estimate is not binding on the mover. The final charges will be based upon the actual cost of the move and the services provided, although a carrier may not charge more than twenty-five percent over the nonbinding estimate.

(b) Binding estimate: The written estimate the carrier gives to the customer in advance of the move, signed by the carrier and the customer, and by which both the carrier and customer are bound. The carrier may not charge any amount other than the binding estimate and the customer must pay the amount of the binding estimate.

(c) Supplemental estimate: An amendment to the original nonbinding estimate, necessary when the circumstances of a move change in a way from the original written estimate that increases the cost of the move.

**Filing:** Any application, petition, tariff proposal, annual report, comment, complaint, pleading or other document submitted to the commission.

**Household goods:** The personal effects and property used, or to be used, in a residence when transported or arranged to be transported between residences or between a residence and a storage facility with the intent to later transport to a residence or when referenced in connection with advertising, soliciting, offering, or entering into an agreement for such transportation. Transportation of the goods must be arranged and paid for by the customer or by another individual, company or organization on behalf of the customer.

**Local move:** A move taking place within the limits of a city or town or moves where the shipment is transported fifty-five miles or less.

**Long distance move:** A move where the shipment is transported fifty-six miles or more.

**Motor vehicle or vehicle:** Any motor truck, tractor or other self-propelled vehicle, any trailer, semi-trailer or any combination of such vehicles moving as a single unit.

**Permit:** A document issued by the commission describing the authority granted to a household goods carrier.

**Person:** Any individual, firm, corporation, company, or partnership.

**Shipment:** A load of household goods moved by a carrier from a single residence or as a single transaction.

**State:** The state of Washington.

**Suspension** also includes **suspend, suspended, suspending:** An act by the commission to withhold temporarily a household goods carrier's authority.

**Tariff:** A publication containing rates and charges carriers must assess on shipments of household goods and the rules that govern how rates and charges are assessed.

AMENDATORY SECTION (Amending Docket TV-070466, General Order R-547, filed 12/27/07, effective 1/27/08)

**WAC 480-15-145 Enforcement.** The commission has a number of options available to enforce its statutes, rules, orders and tariff requirements, as follows:

(1) RCW 81.04.110 allows the commission to file a complaint and hold a hearing.

(2) RCW 81.04.260 allows the commission to file in court for an immediate injunction for violations of law, commission rule, order, direction or requirement of the commission.

(3) RCW 81.04.380 allows penalties against public service companies of up to one thousand dollars for each violation for each day the violation occurs or continues to occur.

(4) RCW 81.04.387 allows penalties against corporations, other than public service companies, of up to one thousand dollars for each offense.

(5) RCW 81.04.390 provides that violations may be treated as misdemeanors.

(6) RCW 81.04.405 allows penalties of one hundred dollars for each violation for each day the violation occurs or continues to occur. These penalties are issued through a penalty assessment with a fifteen-day response period.

(7) RCW 81.04.510 (~~and 81.80.070~~) allows the commission to issue cease and desist orders against a carrier operating without a permit.

(8) Section 4(5), chapter 94, Laws of 2009 (HB 1536), allows a penalty of up to ten thousand dollars per violation for any person who engages in business as a household goods carrier in violation of a cease and desist order.

(9) RCW 81.80.280 allows the commission to cancel, suspend, alter, or amend a permit for violations of federal or state law, or commission rule.

~~((9) RCW 81.80.070 also)~~ (10) Section 4(4), chapter 94, Laws of 2009 (HB 1536), allows a penalty of ((one thousand and five hundred)) up to five thousand dollars to any carrier operating without a permit. If the basis for the violation is advertising, each advertisement reproduced, broadcast, or displayed via a particular medium constitutes a separate violation.

~~((10))~~ (11) RCW 81.80.355 provides that advertising without a permit may be treated as a misdemeanor.

~~((11))~~ (12) RCW 81.80.357 allows a penalty of five hundred dollars for each violation when a carrier does not include its permit number, physical address, and telephone number in its advertisements.

~~((12))~~ (13) WAC 480-120-172 allows a telecommunications company to disconnect a customer's service if that service is used for illegal purposes, such as operating without a permit issued by the commission.

AMENDATORY SECTION (Amending Docket TV-070466, General Order R-547, filed 12/27/07, effective 1/27/08)

**WAC 480-15-180 Carrier operations that require a household goods permit.** A carrier must receive a permit from the commission before transporting household goods, for compensation, by motor vehicle (including a rental truck) over public roads between two points within the state (~~unless the carrier is operating in the territory described in subsection (1) or (2) of this section:~~

~~(1) Under RCW 81.80.040(1), a carrier does not need a permit to operate exclusively between points within the limits of a city or town with a population of less than ten thousand, unless it borders a city or town with a population of greater than ten thousand.~~

~~(2) Under RCW 81.80.040(2), a carrier does not need a permit to operate exclusively between points within a city with a population between ten thousand and thirty thousand if the commission has issued an order exempting transportation within that city from regulation. As of June 2007, these cities included:~~

~~(a) Cities of Mountlake Terrace and Mercer Island, exempted by commission General Orders 178, effective March 3, 1965, and R-66, effective May 8, 1974.~~

~~(b) City of Ellensburg, exempted by commission General Order 199, effective April 17, 1968), or before advertising, soliciting, offering, or entering into an agreement to transport household goods.~~

AMENDATORY SECTION (Amending Docket TV-070466, General Order R-547, filed 12/27/07, effective 1/27/08)

**WAC 480-15-450 Involuntary cancellation of a permit.** (1) The commission may cancel a permit without the carrier's authorization for good cause. Good cause includes, but is not limited to, the carrier:

(a) Failing to file an annual report or pay required regulatory fees.

(b) Failing to correct, within the time frame specified in the suspension order, all conditions that led to the suspension of a permit.

(c) Failing or refusing to comply with applicable laws and commission rules pertaining to operations of household goods carriers, including safety requirements set in law or rule.

(d) Failing to supply information necessary to the commission for the performance of its regulatory functions when the commission requests the carrier to do so.

(e) Submitting false, misleading or inaccurate information.

(f) Allowing others to transport goods under the carrier's permit authority.

(g) Operating in a manner that constitutes unfair or deceptive business practices.

(h) Committing fraud.

(2) The commission will hold a hearing prior to cancelling a permit unless the permit is subject to cancellation because the carrier failed, within the time frame specified by a suspension order, to correct the causes of the suspension. In that case:

(a) The commission will send the carrier notice of the date the commission will cancel a permit. The commission will enter an order canceling the permit thirty days after the service date of the notice.

(b) A carrier may contest the cancellation of its permit by requesting a hearing or brief adjudicative proceeding. Chapter 480-07 WAC describes the procedures for such hearings.

(3) When the commission has canceled a household goods carrier permit, the carrier must, when directed by the commission, provide notice to every customer that its permit has been canceled, and provide proof of such notice to the commission.

(4) If the permit is canceled and the carrier corrects all conditions that led to cancellation of the permit, the carrier may apply for reinstatement.

(a) To reinstate the permit within thirty days of cancellation, the carrier must file an application for reinstatement and pay the applicable reinstatement fees as stated in WAC 480-15-230.

(b) If the carrier files an application for reinstatement after thirty days of cancellation, the application will be considered in all aspects to be an application for new authority and will be subject to all terms and conditions specified in WAC 480-15-240 for new entrants.

AMENDATORY SECTION (Amending Docket TV-070466, General Order R-547, filed 12/27/07, effective 1/27/08)

**WAC 480-15-610 Advertising.** (1) Carriers must include the commission-issued permit number, name or trade name as recorded at the commission, ((business)) physical address and ((business)) telephone number in any advertising for household goods moving services. Advertising includes, but is not limited to:

(a) Advertisements in telephone books, newspapers, correspondence, cards, or any other written document.

(b) Signs, posters or similar displays.

(c) Web sites or other on-line advertising.

(2) Advertisements may not be misleading, false or deceptive.

(3) Radio or television advertising need not contain the carrier's permit number if the carrier provides its permit number, physical address, and telephone number to the person selling the advertisement and it is recorded in the advertising contract.

(4) Carriers may advertise services provided as an agent of, or connecting carrier to, another household goods carrier

if they include the name and permit number of the other household goods carrier in their advertising.

~~((4))~~ (5) No person may falsify a permit number or use a false or inaccurate permit number in connection with any advertisement, solicitation or any form of identification as an authorized household goods carrier.

(6) Carriers may not advertise services or rates and charges that conflict with those in the tariff.

**WSR 09-24-108**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**

[Filed December 2, 2009, 9:42 a.m., effective January 2, 2010]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The rules will assist in the implementation of chapter 72, Laws of 2007 (ESSB 5920, RCW 51.32.099) which mandates that L&I develop rules for approving nonaccredited and unlicensed training providers.

**WAC 296-19A-500 Definitions.**

- "Training provider" defined.
- "Accredited" defined.
- "Licensed" defined.

**WAC 296-19A-510 What training programs can the department approve and issue a provider account number to?**

- An accredited training program or provider.
- A licensed training program or provider.
- Approved apprenticeship programs.
- A training provider on the "eligible training provider list" (ETPL).
- Nonaccredited or unlicensed programs must file a separate application for approval.

**WAC 296-19A-520 What are the requirements for providing training services to Washington injured workers?**

- Legal requirements for doing business and providing training services in Washington or other states.

**WAC 296-19A-530 What ownership and financial information must a nonaccredited or unlicensed training provider submit as part of the application to provide training services to Washington injured workers?**

- Financial documentation required of nonaccredited or unlicensed training providers.
- Public entity exemption from financial disclosure requirement.

**WAC 296-19A-540 How long must a nonaccredited or unlicensed training provider be in operation before applying to provide services to Washington injured workers?**

- Nonaccredited or unlicensed training providers must provide proof of continuous operation for at least two years prior to application for a provider number.
- Public entity exemption from the requirement of two year continuous operation prior to application requirement.

**WAC 296-19A-550 When must an approved nonaccredited or unlicensed training provider reapply in order to continue providing services to Washington injured workers?**

- An approved nonaccredited or unlicensed training provider must reapply after two years of the most recent application [to] maintain their provider number.

- Public entity exemption from the two year reapplication requirement.

**WAC 296-19A-560 What documentation does the department require from a nonaccredited or unlicensed training provider in order to be considered for approval to provide training to Washington injured workers?**

- The list of documents that a nonaccredited or unlicensed training provider must submit in order to be considered for approval including the catalog, enrollment agreement and collateral documentation describing all aspects of the provider's operation.

**WAC 296-19A-570 What factors will the department consider when deciding whether to approve a nonaccredited or unlicensed training provider for Washington injured workers?**

- Factors the department will consider when deciding whether to approve a nonaccredited or unlicensed training provider for Washington injured or ill worker.

- The factors include but are not limited to: All of the documents submitted with the application; supervision of staff; student safety; complaints; criminal history of staff; and performance data.

**WAC 296-19A-580 When must nonaccredited or unlicensed training providers conform to the requirements of chapter 296-19A WAC?**

- Nonaccredited or unlicensed providers without a provider number must be approved and receive a provider number as of the effective date of the rule.

- Nonaccredited or unlicensed providers with a provider number must reapply and be approved by June 30, 2010, to maintain provider status.

- Nonaccredited or unlicensed providers must obtain approval from the appropriate agency and submit proof with their application.

- Nonaccredited or unlicensed training providers that are exempt from the workforce training an [and] education coordinating board (WTECB) licensure must submit proof of the exemption with their application.

**WAC 296-19A-590 What criteria must training providers meet to maintain provider status?**

- Accredited and licensed training providers must maintain accreditation or licensure.

- Approved nonaccredited or unlicensed training providers must conform to chapter 296-19A WAC on an ongoing basis.

- Requirement to maintain accreditation, licensure or compliance with chapter 296-19A WAC.

- Employment preparation programs must maintain at least a 30% completion rate and a 50% placement rate in jobs for which training was provided.

- The department may consider and grant exceptions based on cause or circumstance.

Statutory Authority for Adoption: RCW 51.04.020, 51.04.030, 51.32.095, 51.32.099, and chapter 72, Laws of 2007 (ESSB 5920).

Adopted under notice filed as WSR 09-18-099 on September 1, 2009.

A final cost-benefit analysis is available by contacting Keith Klinger, P.O. Box 44329, Olympia, WA 98504-4329, phone (360) 902-6362, fax (360) 902-6706, e-mail klin235@lni.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 10, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 10, Amended 0, Repealed 0.

Date Adopted: December 1, 2009.

Judy Schurke  
Director

## Chapter 296-19A WAC

### NONACCREDITED AND UNLICENSED TRAINING PROVIDERS

#### NEW SECTION

**WAC 296-19A-500 Definitions.** (1) "Training provider" means any entity offering education in any form or manner for the purpose of instructing, training, or providing knowledge or skills.

(2) "Accredited" means the training provider has been approved by the state agency responsible for regulating degree granting institutions, or an accreditation body recognized by the secretary of the Department of Education, or the Commission on Accrediting Rehabilitation Facilities, or a public educational institution.

(3) "Licensed" means the training provider is regulated, licensed or approved by the state agency that regulates vocational education, or under any occupational licensing act, or a federal or local government agency, or the Washington state apprenticeship training council.

#### NEW SECTION

**WAC 296-19A-510 What training programs can the department approve and issue a provider account number to?** The department can approve and issue a provider account number to:

(1) An accredited training program or provider.

(2) A licensed training program or provider.

(3) An apprenticeship program approved through the Washington state apprenticeship training council.

(4) A training provider listed on the Washington state Workforce Training and Education Coordinating Board's Eligible Training Provider List or a list from a similar agency in another state.

(5) Other nonaccredited or unlicensed programs approved by the department. Nonaccredited or unlicensed programs must file a separate application for approval by the department before a provider number can be issued.

#### NEW SECTION

##### **WAC 296-19A-520 What are the requirements for providing training services to Washington injured workers?**

(1) A training provider must be approved by the department and receive a provider number to be eligible to provide training services or to receive payment for services.

(2) All training providers must:

(a) Comply with all federal and state laws, regulations, and other requirements governing their business operations;

(b) Have an admission policy allowing all qualified members of the general population to be candidates for admission;

(c) Conform to the department's orders, rules, and policies, if any;

(d) Maintain accreditation or training provider licensing, when applicable.

(3) In addition training providers that provide services within the state of Washington must:

(a) Possess a master business license from the Washington state department of licensing;

(b) Register with the Washington state department of revenue;

(c) Possess a charter from the Washington secretary of state's office if operating a limited partnership or corporation; and

(d) Comply with local ordinances governing businesses within the city or county where they will operate.

(4) In addition training providers providing services outside the state of Washington must comply with all regulatory requirements and local ordinances within the state, city and county where they will operate.

#### NEW SECTION

**WAC 296-19A-530 What ownership and financial information must a nonaccredited or unlicensed training provider submit as part of the application to provide training services to Washington injured workers?** Application must include the following information attested by the training provider's chief administrative officer:

(1) An identification of owners, shareholders, and directors:

(a) The complete legal name, current telephone number, and current mailing address of the owner;

(b) The form of ownership; e.g., sole proprietorship, partnership, limited partnership, or corporation;

(c) Names, addresses, phone numbers, birth dates, and prior training provider affiliations, if any, of all individuals with ten percent or more ownership interest;

(d) A training provider that is a corporation or subsidiary of another corporation must submit:

(i) Current evidence that the corporation is registered with the Washington secretary of state's office; and

(ii) The name, address and telephone number of the corporation's registered agent.

(e) "Ownership" means:

(i) In the case of a training provider owned by an individual, that individual;

(ii) In the case of a training provider owned by a partnership, all full, silent and limited partners having ten percent or more ownership interest; and

(iii) In the case of a training provider owned by a corporation, the corporation, each corporate director, officer, and each shareholder owning shares of issued and outstanding stock aggregating at least ten percent of the total of the issued and outstanding shares.

(f) By written notice to the department, training providers under common ownership may designate a single location as the principal facility for recordkeeping.

(2) Financial statement. The training provider must submit information reflecting its financial status at the close of its most recent fiscal year demonstrating the provider has sufficient financial resources to fulfill its commitments to students.

(3) Financial references.

(a) The training provider must submit the names of at least one bank or other financial institution and two other entities that the department may consult as financial references.

(b) A statement must be included authorizing the department to obtain financial information from the references.

(c) For new training providers that have not operated another business during the past year, a recent credit report from Equifax, Experian, Trans Union or another credit rating firm recognized by the U.S. Department of Commerce.

(4) A program that is part of a publicly funded entity; e.g., city, state, county or federal, is exempt from financial disclosure requirements.

#### NEW SECTION

##### **WAC 296-19A-540 How long must a nonaccredited or unlicensed training provider be in operation before applying to provide services to Washington injured workers?**

A nonaccredited or unlicensed training provider exempt from any other applicable state licensing requirement must provide proof of continuous operation for at least two years prior to the date of application.

Exception: A program that is part of a publicly funded entity; e.g., city, state, county or federal, is exempt from the two-year requirement.

#### NEW SECTION

**WAC 296-19A-550 When must an approved nonaccredited or unlicensed training provider reapply in order to continue providing services to Washington injured workers?** An approved nonaccredited or unlicensed training provider must reapply two years after the date of the most recent application to the department.

NEW SECTION**WAC 296-19A-560 What documentation does the department require from a nonaccredited or unlicensed training provider in order to be considered for approval to provide training to Washington injured workers?**

When a nonaccredited or unlicensed training provider seeks a provider number from the department, the provider must give the department all the following documentation, or its request will be denied:

(1) A copy of the training provider's catalog. The training provider must publish a catalog or brochure that explains its operations and requirements. The catalog must be current, comprehensive, and accurate.

(2) A copy of the training provider's enrollment agreement/contract. An enrollment agreement is any agreement that creates a binding obligation to purchase a course of instruction from a training provider.

(3) A description of the instruction program including:

(a) The number of clock hours of instruction, the method of instruction (e.g., correspondence, classroom, lab, computer assisted), and the average length of time required for successful completion;

(b) If instruction is calculated in credit hours, a description of the contact hour formula applied by the training provider; i.e., the number of contact hours applicable to each quarter or semester credit hour of lecture, laboratory/practicum, and/or internship/externship;

(c) For distance education training providers, the instructional sequences as described in the number of lessons.

"Distance education" means education provided by written correspondence or any electronic medium for students who are enrolled in a private vocational school in pursuit of an identified occupational objective, but are not attending classes at an approved site or training establishment.

(4) A document outlining the scope and sequence of courses or programs required to achieve the educational objective.

(5) A copy of the training provider's admission procedures, including policies describing all prerequisites needed by entering students to successfully complete the programs of study.

(6) Documentation indicating the total cost of training for each program, including registration fees, if any, tuition, books, supplies, equipment, laboratory usage, special clothing, student activities, insurance and all other charges and expenses necessary for the completion of the program.

(7) A copy of the training provider's cancellation and refund policy including:

(a) Cancellation before the training start date;

(b) Cancellation within thirty days of the start date; and

(c) Interruptions in service due to staffing or other reasons.

(8) The training calendar, including hours of operation, holidays, enrollment periods, and the start and end dates of terms, courses, or programs.

(9) An accurate description of the training provider's facilities and equipment available for student use, the maximum or usual class size and the average student/teacher ratio.

(10) The names and qualifications of faculty.

(11) A copy of the training provider's policy on standards of progress required including:

(a) A definition of the grading system;

(b) The minimum grades considered satisfactory;

(c) Conditions for interruption for unsatisfactory progress;

(d) A description of the probationary period, if any, allowed by the training provider;

(e) Conditions for reentrance for students dismissed for unsatisfactory progress; and

(f) A statement that a progress report will be given to the student.

(12) The training provider's policy towards student conduct, including causes for dismissal and conditions for readmission.

(13) The training provider's policy on leave, absences, class cuts, makeup work, tardiness, and interruptions for unsatisfactory attendance.

(14) Training providers that prepare students for obtaining employment, documentation of the training provider's completion rate and job placement rate, including the title, wages, and benefits obtained by graduates.

NEW SECTION**WAC 296-19A-570 What factors will the department consider when deciding whether to approve a nonaccredited or unlicensed training provider for Washington injured workers?**

The department will consider all of the information received from the training provider in its application for a provider number, including documents provided pursuant to WAC 296-19A-560. The department will review this information to ensure that the training provider provides services that are consistent with chapter 296-19A WAC and RCW 51.32.099. Furthermore, the department will consider the following factors:

(1) Whether the training provider adequately supervises its instructors to ensure that they are qualified and provide appropriate training and instruction.

(2) Whether any students have been injured as a result of the training provider's failure to use adequate safety protocols.

(3) Whether any complaints have been filed by current or former students against the training provider or any of its instructors, and, if so, whether any of these complaints have merit.

(4) Whether the training provider or any of its instructors have ever been convicted of a crime, and, if so, the nature of the crime.

(5) Whether there is any other information indicating the training provider does not provide services to its students in a manner consistent with the objectives of chapter 296-19A WAC or RCW 51.32.099.

(6) In addition training providers preparing students for employment must address the following factors:

(a) Whether any of the training provider's programs allow a student to obtain an educational or occupational credential awarded upon successful completion of program, and, if so, the type of credential(s) awarded;

(b) Whether any of the training provider's programs have clearly identified program objectives, such as information regarding specific job titles the student will qualify for on completion of training, and the projected wages and benefits of those jobs;

(c) Training provider's job placement rate, including job title, wages, and benefits obtained by graduates; and

(d) Whether the program achieved at least a thirty percent completion rate and a fifty percent job placement rate in the three quarters following graduation for the most recent fiscal year.

#### NEW SECTION

**WAC 296-19A-580 When must a nonaccredited or unlicensed training provider conform to the requirements of chapter 296-19A WAC?** (1) A nonaccredited or unlicensed training provider without a current department provider number must be approved by the department and receive a provider number in order to train Washington injured workers.

(2) A nonaccredited or unlicensed training provider who already has a department provider number must reapply for and receive approval by the department before June 30, 2010, in order to continue training Washington injured workers.

(3) A nonaccredited or unlicensed training provider must first obtain licensure or approval by the appropriate state agency and submit documentation of this licensure or approval when applying to the department to become a provider.

(4) A nonaccredited or unlicensed training provider exempt from the Washington state workforce training and education coordinating board licensure requirements must submit documentation of the exemption before an application can be reviewed.

#### NEW SECTION

**WAC 296-19A-590 What criteria must training providers meet to maintain provider status?** (1) All accredited or licensed training providers with a department provider number must maintain their accreditation or licensure status.

(2) All approved nonaccredited or unlicensed training providers with department provider numbers must conform to all requirements in chapter 296-19A WAC, on an ongoing basis.

(3) Failure to maintain accreditation, licensure, or conformance to the requirements of chapter 296-19A WAC may result in termination of the provider number.

(4) Programs that prepare students for employment must maintain at least a thirty percent completion rate and fifty percent placement rate in jobs for which training was provided during the three quarters following graduation during the most recent fiscal year, July 1 through June 30.

The department may consider and grant exceptions based on unusual cause or circumstances.

### WSR 09-24-112 PERMANENT RULES STATE BOARD OF HEALTH

[Filed December 2, 2009, 10:33 a.m., effective January 2, 2010]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Chapter 246-762 WAC, Scoliosis screening—School districts, repealing chapter due to passage of HB 1322 (chapter 41, Laws of 2009). Schools will no longer be required to screen students for scoliosis annually in grades five, seven, and nine.

Citation of Existing Rules Affected by this Order: Repealing 246-762-001, 246-762-010, 246-762-020, 246-762-030, 246-762-040, and 246-762-050.

Statutory Authority for Adoption: HB 1322 (chapter 41, Laws of 2009).

Adopted under notice filed as WSR 09-16-121 on August 4, 2009.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 6.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 6.

Date Adopted: December 1, 2009.

Craig McLaughlin  
Executive Director

#### REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 246-762-001	What is the purpose of scoliosis screening in public schools?
WAC 246-762-010	What words and terms are defined for this chapter?
WAC 246-762-020	When are students screened for scoliosis?
WAC 246-762-030	What are the qualifications for persons who do screening?
WAC 246-762-040	What are the medical standards for screening?
WAC 246-762-050	What happens to screening results?